

1 Gary A. Gotto, 007401
2 James A. Bloom, 026643
3 KELLER ROHRBACK, P.L.C.
4 3101 North Central Avenue, Suite 1400
5 Phoenix, Arizona 85012-2643
6 602-248-0088
7 ggotto@krplc.com
8 jbloom@krplc.com

9 Attorneys for Mortgages Ltd. 401(k) Plan

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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF ARIZONA

In re
MORTGAGES LTD.,

Debtor.

Chapter 11
Case No. 2:08-bk-07465-
RJH
DECLARATION OF
JAMES CORDELLO

James Cordello (“Declarant”) declares as follows:

1. Declarant has firsthand knowledge of the matters set forth herein.
2. Declarant is a current trustee and fiduciary of the Mortgages Ltd. 401(k) Plan.
3. Attached hereto as Exhibit 1 is a true and correct copy of the Ecco Loan Promissory Note.
4. Attached hereto as Exhibit 2 is a true and correct copy of the Ecco Loan Deed of Trust.
5. Attached hereto as Exhibit 3 is a true and correct copy of the Ecco Loan Servicing Agent Agreement.

- 1 6. Attached hereto as Exhibit 4 is a true and correct copy of the Hurst Loan
- 2 Promissory Note.
- 3 7. Attached hereto as Exhibit 5 is a true and correct copy of the Hurst Loan
- 4 Deed of Trust.
- 5 8. Attached hereto as Exhibit 6 is a true and correct copy of the Hurst Loan
- 6 Servicing Agent Agreement.
- 7 9. Attached hereto as Exhibit 7 is a true and correct copy of the 43rd and
- 8 Olney Loan Promissory Note.
- 9 10. Attached hereto as Exhibit 8 is a true and correct copy of the 43rd and
- 10 Olney Loan Deed of Trust.
- 11 11. Attached hereto as Exhibit 9 is a true and correct copy of the 43rd and
- 12 Olney Loan Servicing Agent Agreement.
- 13 12. Attached hereto as Exhibit 10 is a true and correct copy of the
- 14 Bisontown Loan Promissory Note.
- 15 13. Attached hereto as Exhibit 11 is a true and correct copy of the
- 16 Bisontown Loan Deed of Trust.
- 17 14. Attached hereto as Exhibit 12 is a true and correct copy of the
- 18 Bisontown Loan Servicing Agent Agreement.
- 19 15. Attached hereto as Exhibit 13 is a true and correct copy of the CDIG
- 20 Loan Promissory Note.
- 21 16. Attached hereto as Exhibit 14 is a true and correct copy of the CDIG
- 22 Loan Deed of Trust.
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- 1 17. Attached hereto as Exhibit 15 is a true and correct copy of the CDIG
2 Loan Servicing Agent Agreement.
- 3 18. Attached hereto as Exhibit 16 is a true and correct copy of the
4 Downtown Community Builders Loan Promissory Note.
- 5 19. Attached hereto as Exhibit 17 is a true and correct copy of the
6 Downtown Community Builders Loan Deed of Trust.
- 7 20. Attached hereto as Exhibit 18 is a true and correct copy of the
8 Downtown Community Builders Loan Servicing Agent Agreement.
- 9 21. Attached hereto as Exhibit 19 is a true and correct copy of the GP
10 Properties Loan Promissory Note.
- 11 22. Attached hereto as Exhibit 20 is a true and correct copy of the GP
12 Properties Loan Deed of Trust.
- 13 23. Attached hereto as Exhibit 21 is a true and correct copy of the GP
14 Properties Loan Servicing Agent Agreement.
- 15 24. Attached hereto as Exhibit 22 is a true and correct copy of the Vanderbilt
16 Loan Promissory Note.
- 17 25. Attached hereto as Exhibit 23 is a true and correct copy of the Vanderbilt
18 Loan Deed of Trust.
- 19 26. Attached hereto as Exhibit 24 is a true and correct copy of the Vanderbilt
20 Loan Servicing Agent Agreement.
- 21 27. Attached hereto as Exhibit 25 is a true and correct copy of the Ecco Loan
22 Trustee's Deed.
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1 28. Attached hereto as Exhibit 26 is a true and correct copy of the Hurst
2 Loan Trustee's Deed.

3 29. Attached hereto as Exhibit 27 is a true and correct copy of an email
4 chain between Cathy Reece to Chris Olson.
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6 30. Attached hereto as Exhibit 28 is a true and correct copy of an email
7 chain between Cathy Reece to Chris Olson.

8 31. Attached hereto as Exhibit 29 is a true and correct copy of a Promissory
9 Note Indorsement ("P.N.I.") from the Mortgages Ltd. 401(k) Plan to another investor
10 in the Vanderbilt Loan.

11 32. Attached hereto as Exhibit 30 is a true and correct copy of the Master
12 Agency Agreement.
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14 33. Attached hereto as Exhibit 31 is a true and correct copy of the
15 Termination E-mail sent by Chris Olson on behalf of the Mortgages Ltd. 401(k) Plan.
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17 34. Attached hereto as Exhibit 32 is a true and correct copy of a letter sent
18 by Mark Winkleman on behalf of ML Manager to the investors in the GP Properties
19 Loan, dated November 3, 2009 (available at
20 <http://www.mtg ltd.com/webs/MLMNews/2009.11.03%20Loan%20%23860206%20-%20GP%20Properties%20Carefree%20Cave%20Creek,%20L.L.C.%2011032009%20update.pdf>).
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24 35. Attached hereto as Exhibit 33 is a true and correct copy of an email
25 chain between Declarant and Nechelle Wimmer of ML Servicing evidencing a
26 conversation between Declarant and Mark Winkleman of ML Manager.

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36. Attached hereto as Exhibit 34 is a true and correct copy of the Mortgages Ltd. 401(k) Plan Document.

37. Attached hereto as Exhibit 35 is a true and correct copy of the Adoption Agreement for the Mortgages Ltd. 401(k) Plan.

38. On August 28, 2009 a meeting of the investors in the GP Properties Carefree Cave Creek, LLC loan was held at the offices of National Bank of Arizona in Phoenix, Arizona.

39. Most of the investors attended in person. However, a few of the investors, including myself, attended via telephone.

40. I attended the meeting in my capacity as an incoming trustee of the Mortgages Ltd. 401(k) Plan. (I was officially appointed trustee effective September 25, 2009.)

41. In attendance, among others, were Scott Summers, then and currently a Board member of ML Manager, LLC, Jan Sterling, then and currently a Board member of ML Liquidating Trust, LLC, Karen Epstein, a current Board member of ML Manager, LLC and Mark Winkleman of ML Manager, LLC.

42. During this meeting Mr. Scott Summers remarked that the investors in the GP Properties Carefree Cave Creek, LLC Loan were lucky because this Loan was and is a Mortgages Ltd. 401k Plan loan, and was as such not subject to the bankruptcy estate or chargeable with exit financing.

1 43. Neither any of the Board members nor Mr. Mark Winkleman objected or
2 disagreed with this statement, and the meeting continued under the premise that the
3 Mortgages Ltd. 401k loans were not subjected to the burden of the Exit Financing.

4 44. Certain loans, including the GP Properties Carefree Cave Creek, LLC
5 loan were funded not by Mortgages Ltd. itself, but directly by the Mortgages Ltd.
6 401(k) Plan. The different source of funding was more than a mere formality, absent
7 the Plan funding the loan, the Plan would not have been permitted to invest in the loan.
8 This different type of loan has different fees associated with it as well, as Mortgages
9 Ltd. (the Plan's sponsor and the Debtor here) could not manage the loan for profit
10 without running afoul of ERISA's prohibited transaction rules.

11 45. With the exception of the CDIG loan, all of the loans in the 401(k)
12 Portfolio have been foreclosed and title has vested in the 401(k) Plan.

13 46. Even with respect to loans as to which the 401(k) Plan holds less than
14 100%, ML Manager has specifically allowed the 401(k) Plan to "take the lead" with
15 respect to management and administration, with the 401(k) Plan paying directly for
16 services and other expenses.

17 47. The Master Agency Agreement has been terminated by the action of the
18 401(k) Plan's Trustee (who at the time was Chris Olson).

19 48. The assets in the 401(k) Portfolio are not under the control of an
20 Investment Manager, nor are they properly subject to Employer or Participant
21 direction of investment.

22 49. I declare under penalty of perjury that the foregoing is true and correct.
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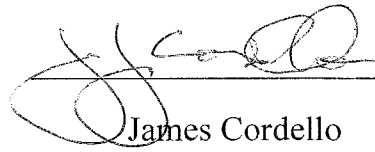
KELLER ROHRBACK, P.L.C.

ATTORNEYS AT LAW

NATIONAL BANK PLAZA, SUITE 1400
3101 NORTH CENTRAL AVENUE
PHOENIX, ARIZONA 85012-2643
TEL. (602) 248-0088 FAX (602) 248-2822

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DATED this 9th day of August, 2010.



James Cordello

Ex. 1

Delay-Flex® Mortgage Line
PROMISSORY NOTE
Interest Only/Commercial

Loan No. 859705

June 27, 2007

Loan Amount: \$3,500,000.00

"Maker" (individually and collectively):

Ecco Holdings, L.L.C., an Arizona limited liability company
1170 N Gilbert Rd., Ste 115
Gilbert, AZ 85234

"Holder": **Scott M. Coles or Christopher J. Olson, CPA, Trustees of the Mortgages Ltd.**
401(k) Plan

1. PROMISE TO PAY

a. As consideration for the receipt of a loan and other value, Maker hereby promises to pay the outstanding balance of the Designated Loan Amount **\$3,500,000.00** in United States currency (the "Principal"), plus interest, to the order of the Holder, **Scott M. Coles or Christopher J. Olson, CPA, Trustees of the Mortgages Ltd. 401(k) Plan**, or any subsequent holder of this Promissory Note (this "Note"). Maker understands and agrees that **Scott M. Coles or Christopher J. Olson, CPA, Trustees of the Mortgages Ltd. 401(k) Plan**, may subsequently transfer this Note, subject to the terms and conditions contained herein. **Scott M. Coles or Christopher J. Olson, CPA, Trustees of the Mortgages Ltd. 401(k) Plan**, or anyone who takes this Note by transfer and who is entitled to receive payments under this Note, is referred to hereinafter as the "Holder."

b. In connection with this Note and on the same date, Maker or a third party trustor executed a Deed of Trust, Assignment of Rents and Leases, Security Agreement and Fixture Filing (the "Deed of Trust") securing this Note (the "Deed of Trust") and a Servicing Agent Agreement. This Note, the Deed of Trust, the Servicing Agent Agreement and any other agreement, document or instrument evidencing, governing or securing the payment of the indebtedness evidenced by the Note are collectively referred to herein as the "Loan Documents". Maker understands and agrees that the Servicing Agent Agreement, which is incorporated herein by reference, authorizes the Servicing Agent appointed thereunder to, among other things, act on the Holder's behalf in accordance with this Note.

2. INTEREST

Interest will be charged on that portion of the Principal which has been committed by Holder, beginning, at Holder's discretion, on the Loan Funding Date or the Commitment Termination Date (in the event that the Loan closing was delayed for any reason other than one caused by Holder) continuing until the Principal has been paid in full. The 'Loan Funding Date' is the date upon which Lender allocates and designates sums sufficient to fund this Loan. The 'Commitment Termination Date' is the date upon which Lender's Loan commitment expires. Beginning on the Loan Funding Date or the Commitment Termination Date, as the case may be, and so long as no event of default exists, interest will accrue and be paid at the rate of **13.25%** per annum. In the event of default, Maker agrees to pay the Default Interest Rate as set forth herein.

3. DELAY-FLEX® MORTGAGE LINE

a. **Purpose.** Under the Delay-Flex® Mortgage Line, Maker may, subject to the conditions set forth in the Loan Documents and described herein, obtain the Delay-Flex amount designated as such and in accordance to the portions set-forth in the Delay-Flex Funding Schedule outlined in the Delay-Flex Disbursement Summary executed in connection with this Loan.

b. **The Funding of each Delay-Flex portion is subject to Holder's discretionary approval and satisfaction of the following conditions:**

(1) There is no then-existing default under any of the Loan Documents and there exist no facts which, with the giving of notice or passage of time, would constitute a default under any of the Loan Documents;



MORTGAGES LTD.
MORTGAGE FINANCIAL SERVICES, LLC (MFLS) (MFLS) (MFLS)

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Loan No. 859705

June 27, 2007

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- (2) Holder, or its agent, has conducted an inspection of the Trust Property and the present condition of the Trust Property has been approved;
- (3) The increased loan amount following the funding of each Delay-Flex portion, if made, will not exceed Holder's lending guidelines for the Trust Property;
- (4) Holder may further condition any delayed funding on endorsements to the Holders Title Policy insuring the continued validity and priority of the Deed of Trust, Holder's approval of Maker's proposed utilization of the Delay-Flex proceeds and any other reasonable assurances or conditions Holder may require or impose;
- (5) Beneficiary shall fund each Delay-Flex portion on a date set by Beneficiary at its sole and absolute discretion, which will occur no earlier than the 30th day prior to the Fund Date set forth in the Delay-Flex Funding Schedule and no later than the 30th consecutive day following the Fund Date set forth in the Delay-Flex Funding Schedule; and
- (6) **Funding the total Delay-Flex portion of the loan is not to exceed eighteen (18) months from the date of Loan closing. The Delay-Flex Funding Schedule must be completed by Loan closing and included in the Disbursement Summary. Any modification to the Delay-Flex Funding Schedule requires written approval from Holder or Servicing Agent.**

c. **Deed of Trust.** The Deed of Trust secures the entire Designated Loan Amount regardless of the amount of the Initial Funding or any subsequent fundings on the Loan account. However, the payoff amount required to release the Deed of Trust shall be based on the actual outstanding balance of the Loan account at the time of payoff.

4. PAYMENTS

a. **Time of Payments.** Maker will pay interest only by making monthly payments on the 1st day of each month beginning August 1, 2007. Maker will continue to make monthly payments until Maker has paid all of the Principal, interest and any other charges that Maker may owe under this Note or the other Loan Documents. Monthly payments received by Holder in advance will not be posted to Maker's account greater than 14 calendar days prior to the payment due date. In the event that Maker received an Advance, Holder shall re-calculate the amount of Maker's

b. Maker's monthly payments will be applied to the following in such order as Holder, in its sole discretion, may determine

- (i) To the payment of any costs, fees or other charges incurred under this Note and the other Loan Documents;
- (ii) To the payment of accrued interest; and
- (iii) To the reduction of the Principal balance.

c. All remaining Principal, together with accrued unpaid interest and any other amounts due hereunder or under the Loan Documents (collectively, the "Maker's Liabilities") shall be due and payable in full on December 28, 2008 (the "Maturity Date"), unless Maker's Liabilities become due and payable sooner because of acceleration, in which case Maker's Liabilities shall be due and payable in full on the date of such acceleration. Maker understands that the Maturity Date requires Maker to pay all Principal, interest and all other charges then due.

d. **Place of Payments.** Maker will make all monthly payments to Servicing Agent at 55 E. Thomas Road, Phoenix, Arizona 85012, or at a different address if Servicing Agent has given Maker written notice of a different address.

5. RIGHT TO PREPAY AND PREPAYMENT PREMIUM

a. Maker has the right to make payments of Principal at any time before they are due ("Prepayment") provided that:

- (1) All sums due under the Note are current;
- (2) Prepayment is made on a monthly payment due date;
- (3) Payment of a prepayment premium equal to 5% of the Principal balance of the Note before reduction, if Prepayment is made before June 28, 2007; and



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(4) At the time of making a Prepayment, Maker advises Servicing Agent, in writing that Maker is making a Prepayment.

b. Any payment of Principal only is considered a Prepayment. Holder will use all of Maker's Prepayments to reduce the amount of Principal that Maker owes under this Note. If Maker makes a partial Prepayment, there may be a change in the amount of Maker's monthly payment.

6. LOAN CHARGES

a. **Note Interest Rate.** If Holder charges or if Maker pays any fees, charges or other sums pursuant to this Note or any other Loan Documents which, under the law, may be deemed to be interest, then the interest rate set forth in Section 3 above shall be deemed to be increased to include such additional interest. Therefore, if it is determined that the rate of interest applicable to this Note is greater than the rate of interest stated in Section 3 above, then the actual rate thus determined shall become the agreed upon and contracted rate of interest for this Note.

b. **Interpretation and Remedy.** Notwithstanding any provision herein or in any of the Loan Documents, the total liability for payments in the nature of interest shall not exceed the limits now imposed by the usury laws of Arizona, if any. If a law, which applies to this Note and which sets maximum loan charges, is finally interpreted so that the interest or other loan charges collected or to be collected in connection with this Note exceed the permitted limits, then: (i) loan charges shall be reduced by Holder in an amount sufficient to reduce the loan charges to the permitted limit; and (ii) any sums already collected from Maker which exceeded permitted limits will be refunded to Maker. Holder may choose to make this refund by reducing the Principal Maker owes under this Note or by making a direct payment to Maker. If a refund reduces Principal, then the reduction will be treated as a partial Prepayment and the provisions of 5 will not apply.

7. MAKER'S FAILURE TO PAY AS REQUIRED

a. **Late Charge for Overdue Payments.** If Holder has not received the full amount of any of Maker's monthly payments by the close of business on a date which is five (5) calendar days after the date it is due, Maker will pay a late charge to Holder. The amount of the late charge will be 35% of the monthly Principal and Interest payment. In the event that this Note is not paid in full by the Maturity Date, Maker acknowledges that a late charge will be assessed in the amount of 3% of the remaining Principal balance on the next day following the Maturity Date and on the same day each month thereafter until the Note is paid in full.

b. **Default.** A default under this Note if exists if any of the following occurs:

- (i) Maker Fails to pay the full amount of each monthly payment on or before the date it is due;
- (ii) Maker Fails to pay all sums due as of the Maturity Date;
- (iii) Maker Fails to pay all sums required by any other Loan Documents;
- (iv) Maker Fails to perform or observe any covenants or obligations set forth herein or in any other Loan Documents; or
- (v) Any default exists under and of the other Loan Documents.

c. **Cross Default.** In the event that Maker has secured or secures additional loans through Mortgages Ltd. (the "Additional Loans", including Loan No. 856805), regardless as to whether Mortgages Ltd. has assigned its interests in the Additional Loans or this Loan, then a default in any Additional Loan shall constitute a default in this Loan and a default in this Loan shall constitute a default in the Additional Loans.

d. **Acceleration.** If a default exists, then Holder may accelerate the Maturity Date and declare that all sums owing under this Note and the other Loan Documents are immediately due and payable, without notice.

e. **No Waiver By Holder.** Failure of Holder, for any period of time or on more that one occasion, to exercise its option to accelerate the Maturity Date shall not constitute a waiver of the right to exercise the same at any time during the continued existence of an event of default or any subsequent event of default.



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Loan No. 859705

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f. **Payment of Holder's Costs and Expenses.** If an event of default occurs, Maker shall pay all costs of enforcement, collection and preparation therefor, whether or not any action or proceeding is commenced in any court and, if commenced, during all appeals, including attorneys' fees, guarantor collection expenses (as described in the Servicing Agent Agreement), appraisal fees, inspection fees, expert witness fees, foreclosure processing fees, litigation costs and all other related expenses (collectively, "Default Costs"). Maker, at the option of Holder, shall appear and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Holder and shall pay all costs and expenses of Holder, including the cost of evidence of title and attorneys' fees, in any such action or proceeding in which Holder may appear or be named, with interest thereon at the Default Interest Rate from the date incurred or expended until paid in full.

g. **Default Interest.** If a default exists, then (in addition to the late charge as stated in Section 7(a) above) the interest rate on the unpaid Principal shall be **increased to 27% per annum** (the "Default Interest Rate") commencing on the date through which interest was last paid, and shall continue, at the option of the Holder, until all payments have been made current, all sums due under this Note and the other Loan Documents have been paid in full and/or all non-monetary defaults under the Loan Documents have been cured to the Holder's satisfaction. Any advances made by Holder, pursuant to the terms of the Loan Documents, and all Default Costs shall accrue interest at the Default Interest Rate. In the event Maker files or is involuntarily placed in bankruptcy, Maker hereby agrees that Holder shall be entitled to interest on all Loan arrearages of whatever nature at the Default Interest Rate.

8. NOTICES

Unless applicable law requires a different method, any notice that must be given to Maker under this Note will be given by mailing it by first class mail or by delivering it to Maker at the address stated above or at a different address if Maker gives Servicing Agent written notice of a different address. Any notice that must be given to Holder shall be given by mailing it by first class mail to Servicing Agent, at 55 E. Thomas Road, Phoenix, Arizona 85012, or at a different address if Servicing Agent has given Maker written notice of a different address.

9. OBLIGATIONS OF PERSONS UNDER THIS NOTE

Any person who is a guarantor, surety or indorser of this Note is also obligated to perform under the terms of this Note. Any subsequent person who takes over Maker's rights under this Note by whatever means, including the obligations of a guarantor, surety or indorser of this Note, is also bound by all of the promises and liabilities created by this Note and the other Loan Documents. Holder may enforce its rights under this Note against each Maker or successor, jointly and severally. This means that each signer may be required to pay all sums owed under this Note irrespective of the type, value or ownership of the property securing the Note.

10. WAIVERS

Maker, for itself and all endorsers, guarantors and sureties of this Note, and their heirs, personal representatives, successors, assigns, beneficiaries and trustees, hereby waives presentment for payment, demand, notice of nonpayment, notice of dishonor, protest of any dishonor, notice of protest and protest of this Note, and all other notices in connection with the delivery, acceptance, performance, default or enforcement of the payment of this Note, and agrees that their respective liability shall be unconditional and without regard to the liability of any other party and shall not be in any manner affected by any indulgence, extension of time, renewal, waiver or modification granted or consented to by Holder. Maker, for itself and all endorsers, guarantors and sureties of the Note, and their heirs, personal representatives, successors, assigns, beneficiaries and trustees, hereby consents to every extension of time, renewal, waiver or modification that may be granted by Holder with respect to the payment or other provisions of this Note, and to the release of any makers, endorsers, guarantors or sureties, and of any collateral given to secure the payment hereof, or any part hereof, with or without substitution, and agrees that additional makers, endorsers, guarantors or sureties may become parties hereto without notice to Maker or to any endorser, guarantor or surety and without affecting the liability of any of them.

11. SECURITY

This Note and the other Loan Documents, including, among others, the Deed of Trust, were executed by Maker and, if necessary, various other parties to protect Holder from possible losses which might result if Maker does not perform the obligations set forth in this Note. The Loan Documents describe how, and under what conditions, Maker may be required to make immediate payment in full of all sums Maker owes under this Note. Some of those conditions, but not all, are described as follows:



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- a. If Maker or another party, such as a third party trustor of the Deed of Trust securing this Note, sells, conveys, transfers, assigns, contracts for sale, leases with option to purchase or further encumbers the property securing the Note (the "Secured Property") or any part thereof, including, but not limited to, any further assignment of the Secured Property's income, wraparound mortgage or purchase contract;
- b. If Maker is a limited liability company and any ownership interest in Maker is sold, conveyed or transferred;
- c. If Maker is a partnership and any general partnership interest in Maker is sold, conveyed or transferred, either voluntarily or involuntarily without the prior written consent of Holder; or
- d. If Maker is a corporation and the controlling interest in Maker is sold, conveyed or transferred.

Upon the occurrence of any of the above or any other triggering events set forth in the Loan Documents, Holder, at its option, shall have the right to accelerate the sums owing under the Note and those sums shall become immediately due and payable to Holder. This provision shall apply to each and every such sale, conveyance, transfer, lease, encumbrance or assignment, regardless as to whether Holder has consented or waived its rights in connection with any such previous sale, conveyance, transfer, lease, encumbrance or assignment by Maker.

12. TIME

Time is of the essence in all aspects of this Note and the Loan Documents.

13. GENERAL

- a. This Note is binding on Maker and Maker's heirs, personal representatives, successors, permitted assigns, beneficiaries and trustees.
- b. This Note and the benefits hereunder are not assignable or transferable by Maker. However, Holder may assign its rights under this Note and the other Loan Documents without prior notice to Maker.
- c. Maker acknowledges that Mortgages Ltd. is Holder's Servicing Agent.
- d. This Note shall be governed by, construed and enforced in accordance with the laws of the State of Arizona, without regard to the choice of law rules of the State of Arizona. Maker hereby submits to the jurisdiction of any Arizona State or Federal Court sitting in the City of Phoenix in any action or proceeding arising out of or relating to this Note. Maker hereby waives the defense of an inconvenient forum.
- e. Maker, and Holder by its acceptance of this Note, hereby waive their respective rights to a trial by jury in any action or proceeding based upon, or related to, the subject matter of this Note and the business relationship that it being established. This waiver is knowingly, intentionally, voluntarily and irrevocably made by Maker and by Holder and Maker acknowledges that neither Holder nor any person acting on behalf of Holder has made any representations of fact to include this waiver of trial by jury or has taken any actions which in any way modify or nullify its effect. Maker and Holder acknowledge that this waiver is a material inducement to enter into a business relationship, that Maker and holder have already relied on this waiver in entering into this Note and that each of them will continue to rely on this waiver in their related future dealings.
- f. This Note, together with the other Loan Documents, sets forth the entire agreement and understanding between Maker and Holder, and supersedes all prior agreements, arrangements and understandings, written or oral, between Maker and Holder.
- g. This Note may be amended, modified, superseded, canceled, renewed or extended and the terms or covenants hereof may be waived only by a written instrument executed by Maker, Holder. The failure of Servicing Agent, at any time or times, to require performance of any provision of this Note shall in no manner affect the right of the Holder or Servicing Agent at a later time to enforce the same. No waiver by Holder or Servicing Agent of the breach of any term or covenant contained in this Note, whether by conduct or otherwise, in any one or more instances, shall be deemed to be, or construed as, a further or continuing waiver by Holder or Servicing Agent of any such breach, or a waiver of the breach of any other term or covenant contained in this Note.



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PROMISSORY NOTE

Loan No. 859705

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h. If any term or other provision of this Note or any other Loan Document is declared invalid, illegal or incapable of being enforced by any rule of law or public policy, all other conditions and provisions of this Note shall nevertheless remain in full force and effect.

i. Notwithstanding any provision contained in this Note or any of the other Loan Documents to the contrary, including, without limitation, Maker's right to obtain advances or disbursements under the Loan, Holder may, in Holder's sole and absolute discretion, exercise Holder's rights and enforce Holder's remedies under and pursuant to Title 33, Chapter 7, Article 9 of Arizona Revised Statutes (including, without limitation, A.R.S. Section 33-1058), without any liability to Maker and without releasing Maker from any of Maker's obligations, duties and liabilities under the Loan Documents.

j. As used in this Note, the word "include(s)" means "include(s), without limitation," and the word "including" means "including, without limitation."

SEE ATTACHED SIGNITURE PAGE



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MLPLAN-002919

PROMISSORY NOTE SIGNATURE PAGE

IN WITNESS WHEREOF, this Note has been executed as of the date set forth on the first page.

MAKER:

Ecco Holdings, L.L.C., an Arizona limited liability company




By: Eric E. Capranica
Its: Manager

STATE OF AZ)
)ss
COUNTY OF MARICOPA)

The foregoing instrument was acknowledged before me this 27th day of JUNE, 2007 by Eric E. Capranica of Ecco Holdings, L.L.C., an Arizona limited liability company on behalf of the limited liability company




Notary Public

My Commission Expires: JULY 1, 2009



Ex. 2



When recorded return to:

MORTGAGES LTD.
55 E. Thomas Rd.
Phoenix, Arizona 85012

DATE/TIME: 06/28/07 1145
FEE: \$32.00
PAGES: 17
FEE NUMBER: 2007-075340

**DEED OF TRUST, ASSIGNMENT OF RENTS AND LEASES,
SECURITY AGREEMENT AND FIXTURE FILING**

Loan No. 859705 June 27, 2007

Secured Loan Amount: \$3,500,000.00

⑦ "Trustor" (individually and collectively):

Ecco Holdings, L.L.C., an Arizona limited liability company
1170 N Gilbert Rd., Ste 115
Gilbert, AZ 85234

"Trustee": **Scott M. Coles, a licensed real estate broker**
55 E. Thomas Rd.
Phoenix, AZ 85012

"Beneficiary": **Scott M. Coles or Christopher J. Olson, CPA, Trustees of the Mortgages
Ltd. 401(k) Plan**
55 E. Thomas Rd.
Phoenix, Arizona 85012

This Deed of Trust, Assignment of Rents, Leases, Security Agreement, and Fixture Filing (this "Deed of Trust"), is executed by Trustor in favor of Trustee for the benefit of Beneficiary as of the date written above. In connection with this Deed of Trust and on the same date, Trustor or a third party borrower has executed a Promissory Note (the "Note"), a Servicing Agent Agreement and other related documents to evidence and secure the monetary and non-monetary obligations owed to Beneficiary by Trustor and related third parties. These documents, including this Deed of Trust, and any other agreement, document, or instrument evidencing, governing or securing the payment of the indebtedness evidenced by the Note, are collectively referred to as the "Loan Documents." Trustor understands and agrees that Servicing Agent Agreement, which is incorporated herein by reference, authorizes Servicing Agent appointed thereunder to, among other things, act on the Beneficiary's behalf in accordance with this Deed of Trust.

1. TRUST PROPERTY

For good and valuable consideration, including the indebtedness referenced herein and the trust created hereby, the receipt and sufficiency of which is hereby acknowledged, Trustor irrevocably grants, transfers, conveys and assigns to Trustee, in trust, with the power of sale, for the benefit and security of Beneficiary, all of Trustor's present and future estate, right, title and interest, under and subject to the terms and conditions set forth herein, in and to that certain real property located in **Pinal County, Arizona**, more particularly described in **Exhibit A** attached hereto and incorporated herein by this reference (the "Real Property"), together with all of the following:

- a. Buildings, structures, fixtures or other improvements now or hereafter placed on the Real Property (collectively, the "Improvements");
- b. All existing and future leases, subleases, licenses and other agreements for the use and occupancy of all or any portion of the Real Property;
- c. All rents, issues and profits and income generated by the Real Property (the "Property Income");
- d. All classes of property now or at any time hereafter attached to or used in any way in connection with the use, operation or occupancy of the Real Property;



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- e. All property, rights, permits and privileges now or hereafter owned by Trustor or now or hereafter appurtenant to the Real Property, which entitle Trustor or the Real Property to receive all available utilities for use thereon;
- f. All awards resulting from eminent domain or condemnation in whole or in part, proceeds of insurance required on the Real Property and any other award for damage to or destruction of the Real Property or the Improvements;
- g. Any licenses, contracts, permits and agreements required or used in connection with the ownership, operation or maintenance of the Real Property, and the right to the use of any trade names, trademarks or service marks, now or hereafter associated with operation of any business conducted on the Real Property;
- h. All "Impounds," as defined herein, held by Beneficiary or its Servicing Agent for the benefit of Trustor, including, but not limited to, Impounds for taxes, assessments, insurance, homeowners' dues and construction;
- i. All easements, profits, rights of way and other rights now owned or hereafter assigned to Trustor; and
- j. All proceeds of the foregoing, including all proceeds of and all unearned premiums due from all insurance policies covering the Real Property.

All of the foregoing are collectively referred to hereinafter as the "Trust Property."

2. TRUSTOR'S REPRESENTATIONS AND WARRANTIES

Trustor hereby represents and warrants that Trustor has a good, marketable and insurable title to the Trust Property acceptable to Beneficiary and that Trustor holds fee simple title to the Real Property. Trustor forever warrants and shall defend title to the Trust Property for the Beneficiary, its successors and assigns, against all claims whatsoever; subject, however, to the following:

- a. The right, power and authority hereinafter given to and conferred upon Beneficiary to collect and apply such Property Income; and
- b. Any easements and restrictions approved by Beneficiary and listed in the schedule of exceptions to coverage in any title insurance policy insuring Beneficiary's interest in the Trust Property.

3. SECURITY

This Deed of Trust secures the following (the "Obligations"), in such order of priority as Beneficiary may elect:

- a. Strict performance of every obligation of Trustor and the third party borrower, if any, under all Loan Documents;
- b. Payment of all sums due under the Note including the principal amount of the 'Initial Funding' of \$3,500,000.00, interest thereon and all other charges assessed thereunder, such as late charges, notice fees and prepayment premiums;
- c. In the event that this Deed of Trust secures a Note with an Equity-Flex[®] Mortgage Line and "Advances," as defined therein, are made by Beneficiary, then payment of the aggregate amount of all Advances and all Equity-Flex Fees (as defined in said Note);
- d. In the event of default, payment of interest at the "Default Interest Rate," as defined by the Note;



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e. Payment of all sums incurred by Beneficiary or its Servicing Agent, with interest thereon, to protect, preserve, repair or maintain the Trust Property or to cure any senior or junior loans, trust deeds, mortgages or other security instruments, including taxes, assessments, homeowners' dues, ground rents, force placed insurance, attorneys' fees, litigation costs, appraisal fees, inspection fees, project manager fees, receiver fees and other expert or consulting fees;

f. Payment of all sums incurred by Beneficiary or its Servicing Agent, with interest thereon, in the event of Trustor or the third party borrower's default under the Loan Documents, including, without limitation, attorneys' fees, litigation costs and expenses, appellate costs and expenses, bankruptcy fees, foreclosure fees, trustee fees, receiver fees, expert fees and witness fees;

g. Payment of all sums incurred by Beneficiary or its Servicing Agent, with interest thereon, in the collection of amounts owed by any guarantor of the Note, including attorneys' fees, litigation costs and expenses, appellate costs and expenses, bankruptcy fees, foreclosure fees, trustee fees, receiver fees, expert fees and witness fees;

h. Strict performance of every obligation of Trustor and the third party borrower, if any, contained in any agreement, document or instrument, hereafter executed by Trustor or the third party borrower, reciting that the obligations thereunder are secured by this Deed of Trust, which includes Advance Agreements, forbearance agreements, extension agreements, payment plans and Note modifications;

i. Payment of all other sums, with interest thereon, that hereafter may be loaned to Trustor or the third party borrower, if any, or their successors or assigns, by Beneficiary or its successors or assigns when evidenced by an agreement or promissory note reciting that they are secured by this Deed of Trust, which includes, but is not limited to, Advance Agreements, forbearance agreements, extension agreements, payment plans and Note modifications;

j. Strict compliance with and performance of each and every provision of any declaration of covenants, conditions and restrictions, any maintenance, easement and party wall agreement or any other agreement, document or instrument by which the Trust Property is bound or may be affected; and

k. In the event of default, payment of any fees incurred by Beneficiary to Servicing Agent to effect a sale in whole or in part of Beneficiary's interest in the Loan Documents.

4. TRUSTOR'S OBLIGATIONS

a. **Trust Property.** Trustor shall keep the Trust Property in good condition and repair. Trustor shall not remove or demolish any Improvements on the Real Property. Trustor shall complete or restore promptly and in good and workmanlike manner any Improvement which may be constructed, damaged or destroyed, and pay, when due, all claims for labor performed and materials furnished therefor. Trustor shall comply with all laws affecting the Trust Property or requiring any alterations or Improvements to be made thereon. Trustor shall not (i) commit or permit waste of the Trust Property or (ii) abandon the Trust Property. Trustor shall not initiate or acquiesce in a change in the zoning classification of the Real Property without Beneficiary's prior written consent. Trustor shall not commit, suffer or permit any act to or upon the Trust Property in violation of any law. Trustor shall do all acts which, from the character or use of the Trust Property, may be reasonably necessary.

b. **Appraisal.** If the Loan's principal exceeds \$250,000.00, then Trustor shall obtain, at Trustor's sole cost and expense, a MAI or equivalently certified appraisal of the Trust Property addressed to Beneficiary and prepared by an appraiser approved by Beneficiary. Trustor shall provide Beneficiary a copy of the appraisal and all relevant supporting documents within 90 days of the date of the Loan closing. If the appraisal is not received by Beneficiary within that 90 day period, then the Loan shall be in default and Beneficiary shall be entitled to pursue any and all remedies available under the Loan Documents. In addition, at the request of Beneficiary, Trustor shall provide an updated MAI or equivalently certified appraisal of the Trust Property within 30 days of such request. If such updated appraisal is not received by Beneficiary within that 30 day period, then the Loan shall be in default and Beneficiary shall be entitled to pursue any and all remedies available under the Loan Documents.



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c. **Insurance and Casualty.** Trustor shall keep all Improvements now or hereafter erected on the Real Property continuously insured against loss by fire or other hazards in an amount not less than the replacement cost of the Improvements, and shall maintain and evidence liability insurance in the minimum amount of \$1,000,000 or in such other amount required by Beneficiary. When requested by Beneficiary, Trustor shall provide and maintain insurance policies with annual premiums in amounts required by Beneficiary covering vandalism and malicious mischief, sprinkler leakage, rent abatement, business loss, flood damage and/or all other risks commonly insured against by persons owning like properties in the locality of the Property or commonly required by prudent institutional investors making loans secured by liens against such properties. All insurance policies or certificates shall be held by Beneficiary, shall be in such companies as Beneficiary may approve and shall name the Beneficiary as an additional insured with the proceeds payable first to Beneficiary, as its interest may appear, and then to Trustor. All insurance policies shall provide that Beneficiary is to receive 30 days notice prior to cancellation or non-renewal and shall otherwise be in the form and substance satisfactory to Beneficiary. All renewal policies shall be delivered to Beneficiary 30 days before the expiration of the then existing policies together with satisfactory proof that the premiums for renewal have been paid. The amount collected under any insurance policy may be applied in whole or in part by Beneficiary to any indebtedness hereby secured and in such order as Beneficiary may determine whether or not then due, or, at the option of Beneficiary, the entire amount so collected or any part thereof may be released to Trustor for restoration or repair of the Trust Property upon such terms and conditions as are acceptable to Beneficiary. Such application or release shall not cure or waive any default hereunder or cause discontinuance of any action that may have been or may thereafter be taken by Beneficiary or Trustee because of such default. In the event of loss, Trustor shall give immediate notice to Beneficiary. If Trustor has not given proof of loss, then Beneficiary may make proof of loss at any time. Each insurance company is hereby authorized and directed to make payment for any loss directly to Beneficiary, instead of to Trustor, or to Trustor and Beneficiary jointly. Beneficiary shall not be liable for any insurance, for the collection of any insurance proceeds or for the insolvency of any insurer. Any application of insurance proceeds to the outstanding Loan balance by Beneficiary shall not cure or waive any event of default. In the event of the sale of the Trust Property under the power of sale granted to Trustee, the judicial foreclosure of this Deed of Trust or the takeover of possession by a court appointed receiver or trustee, then all right, title and interest of Trustor to such policies of insurance shall inure to the benefit of and shall pass to the successor title-holder of the Trust Property (or to the receiver, if applicable).

d. **Litigation.** If an event of default occurs under the Loan Documents, Trustor shall pay all costs of enforcement, collection and preparation therefor, whether or not any action or proceeding is commenced in any court through all appeals, which includes Servicing Agent administration fees, attorneys' fees, appraisal fees, inspection fees, expert witness fees and foreclosure processing fees. Trustor, at the option of Beneficiary, shall appear and defend any action or proceeding purporting to affect the Trust Property or the rights or powers of Beneficiary and shall pay all costs and expenses of Beneficiary, including all costs of proving title and attorney's fees, with interest thereon at the Default Interest Rate from the date incurred or expended.

e. **Property Payments.** Trustor shall pay, when due, and before any interest, collection fees or penalties shall accrue, the following:

- (1) All taxes, assessments, homeowners' dues, owners' association fees, ground rents, and any other charges and obligations which may become a lien or charge against the Trust Property;
- (2) All encumbrances, charges and liens on the Trust Property or any part thereof; and
- (3) All costs, fees and expenses incurred under this Deed of Trust and the other Loan Documents, including all Trustee's fees for the issuance of any deed of partial or full release and partial or full reconveyance and all charges, costs and expenses incurred in the event of default or reinstatement.

f. **Right to Cure.** If Trustor fails to make any payment or to do any act as required hereby, Beneficiary or Trustee, but without obligation to do so and without prior notice or demand upon Trustor and without releasing Trustor from any obligation herein, may take such action in such manner and to such extent as either may deem necessary to protect the Trust Property. Beneficiary or Trustee may enter the Real Property for such purposes, appear in and defend any action or proceeding purporting to affect the Trust Property or the rights or powers of Beneficiary or Trustee and pay, purchase, contest or compromise any encumbrance, charge or lien, which in the judgment of either Beneficiary or Trustee appears to jeopardize Beneficiary's security hereunder, and, in exercising any such powers, pay necessary expenses, employ counsel and pay attorneys' fees.



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g. **Expenditures.** Trustor shall pay immediately all sums expended by Beneficiary or Trustee pursuant to the provisions of this Deed of Trust or the other Loan Documents, together with interest from date of such expenditure at the Default Interest Rate. Any amount paid by Beneficiary or Trustee to protect the Trust Property, together with interest thereon, shall become a part of the indebtedness secured by this Deed of Trust and a lien on the Trust Property, and shall be immediately due and payable to Beneficiary or Trustee.

h. **Impounds.** Whenever required by Beneficiary, Trustor shall pay with each monthly installment payment an additional sum equal to 1/12th of the annual real property taxes, special assessments, homeowners' or owners' association dues, ground rents, if any, and insurance premiums next due on the Trust Property ("Impounds"), as may be estimated by Beneficiary, which will be held by Beneficiary in a special account (the "Impound Account"). Impounds may be commingled with other Impounds held by Beneficiary or its Servicing Agent. Any interest on Impounds shall accrue to Beneficiary or its Servicing Agent. Impounds may be used to pay taxes, assessments, homeowners' or owners' association dues, ground rents, if any, and insurance premiums before delinquent or before the insurance expires. If any of the Impounds, in the opinion of Beneficiary, are insufficient to accumulate a fund with which to pay such items, Trustor shall pay Beneficiary upon demand the amount necessary to make up the deficiency. If the Impounds held by Beneficiary exceed the amount necessary, in the opinion of Beneficiary, to pay such items, such excess shall, at Beneficiary's option, be refunded to Trustor or shall be credited on any sums due Beneficiary under this Deed of Trust or the other Loan Documents. If there is a default under this Deed of Trust or the other Loan Documents, Beneficiary may apply, at its discretion, the amount then remaining in the Impound Account to any sums due under this Deed of Trust or the other Loan Documents. Any Impound amount is subject to change in the event that the county tax assessor increases or decreases the valuation of the Trust Property, or in the event that there is any other change of circumstances affecting the Trust Property. Any sums held in any construction loan account shall be considered an "Impound."

i. **Financial Statements.** Trustor shall provide in form and substance satisfactory to Beneficiary: (a) within 90 days after the end of each calendar year, a statement of income and expenses, relating to the Trust Property for such calendar year; (b) within 90 days after the end of each calendar year, financial statements for such year from Trustor and any Guarantor of the Loan; (c) within 30 days after the end of each calendar year, a rent roll for the Trust Property as of January 1 of the current year; (d) upon the request of Beneficiary, all filed Federal and State income tax returns for Trustor and any Guarantor of the Loan; and (e) such other financial information concerning the Trust Property, Trustor, or any Guarantor as Beneficiary may reasonably require from time to time. Beneficiary or its designated agent shall have the right to inspect the books and records with respect to the Trust Property at any time, upon reasonable notice to Trustor.



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j. Environmental Matters.

(i) Trustor represents and warrants to Beneficiary, to the best of Trustor's knowledge after all appropriate inquiry, and covenants that there are no, nor will there be, for so long as any of the indebtedness secured hereby remains outstanding, any Hazardous Materials (as defined below) generated, released, stored, buried, or deposited over, beneath, in or upon the Real Property or on or beneath the surface of adjacent property, except as such Hazardous Materials may be used, stored or transported in connection with the permitted uses of the Trust Property and then only in de minimus quantities and only to the extent permitted by law after obtaining all necessary permits and licenses therefor. "Hazardous Materials" shall mean and include any pollutants, flammables, explosives, petroleum (including crude oil) or any fraction thereof, radioactive materials, hazardous wastes, dangerous or toxic substances or related materials, including substances defined as or included within the definition of toxic or hazardous substances, wastes or materials under any federal, state or local laws, ordinances, regulations or guidelines which relate to pollution, the environment or the protection of public health and safety, or limiting, prohibiting or otherwise regulating the presence, sale, recycling, generation, manufacture, use, transportation, disposal, release, storage, treatment of, or response or exposure to, toxic or hazardous substances, wastes or materials. Such laws, ordinances and regulations are hereinafter collectively referred to as the "Hazardous Materials Laws."

(ii) Trustor shall, and Trustor shall cause all employees, agents, tenants, contractors and subcontractors of Trustor and any other persons from time to time present on or occupying the Trust Property to, keep and maintain the Trust Property in compliance with, and not cause or knowingly permit the Trust Property to be in violation of, any applicable Hazardous Materials Laws. Neither Trustor, nor any employees, agents, tenants, contractors or subcontractors of Trustor, nor any other persons occupying or present upon the Trust Property, shall use, generate, manufacture, store or dispose of on, under or about the Real Property, or transport to or from the Real Property any Hazardous Materials, except as such Hazardous Materials may be used, stored or transported in connection with the permitted uses of the Trust Property and then only in de minimus quantities and only to the extent permitted by law after obtaining all necessary permits and licenses therefor.

(iii) Trustor shall be solely responsible for, and shall indemnify, defend, protect and hold harmless Beneficiary, its directors, officers, employees, agents, successors and assigns for, from and against, any claim, demand, lawsuit, loss, damage, cost, expense or liability directly or indirectly arising out of or attributable to the use, generation, storage, release, threatened release, discharge, disposal or presence of Hazardous Materials on, under or about the Real Property (whether occurring prior to or during the pendency of the indebtedness secured hereby or otherwise and regardless of by whom caused, whether by Trustor or any predecessor in title or any owner of land adjacent to the Real Property or any other third party, or any employee, agent, tenant, contractor or subcontractor of Trustor or any predecessor in title or any such adjacent land owner or any third party) including: (i) claims of third parties (including governmental agencies) for injury or death to any person or for damage or destruction of any property; (ii) claims for response costs, clean-up costs, costs and expenses of removal and restoration, including fees of attorneys and experts, and costs of determining the existence of Hazardous Materials and reporting same to any governmental agency; (iii) any and all other claims for expenses or obligations, including attorneys' fees, costs and other expenses; (iv) any and all penalties threatened, sought or imposed on account of a violation of any Hazardous Materials Laws; (v) all fees of any consultants, attorneys and engineering firms retained in connection with monitoring the obligations of Trustor under this Deed of Trust; and (vi) any loss occasioned by diminution in the value of the Trust Property which results from any of the foregoing.

5. EQUITY-FLEX®/ DELAY FLEX® MORTGAGE LINE

a. Equity-Flex®. If that this Deed of Trust secures a Note with an Equity-Flex® Mortgage Line, Trustor may use, subject to the conditions set forth in the Note, the existing equity in the Trust Property in order to obtain additional funds beyond the amount of the Initial Funding of \$3,500,000.00 up to the Secured Loan Amount of \$3,500,000.00. This Deed of Trust secures the entire Secured Loan Amount regardless of the amount of the Initial Funding or any subsequent draws ('Advances') on the Loan account. The payoff amount required to release this Deed of Trust shall be based on the actual outstanding balance of the Loan account at the time of payoff.

Notice: If Beneficiary consents to alienation, assignment or transfer of the Trust Property or the obligations under this Deed of Trust in accordance with Section 14, all assignees, transferees and junior lien holders are hereby advised that this Deed of Trust provides for adjustable release provisions and fluctuating principal balances at Beneficiary's discretion.



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b. **Delay-Flex[®].** If this Deed of Trust secures a Note with a Delay-Flex[®] Mortgage Line, Trustor may, subject to the conditions set forth in the Loan Documents and described herein, obtain the Delay-Flex amount designated as such and in accordance to the portions set-forth in the Delay-Flex Funding Schedule outlined in the Delay-Flex Disbursement Summary executed in connection with this Loan. This Deed of Trust secures the entire Designated Loan Amount regardless of the amount of the Initial Funding or any subsequent fundings on the Loan account. However, the payoff amount required to release the Deed of Trust shall be based on the actual outstanding balance of the Loan account at the time of payoff.

c. **The Funding of each Delay-Flex portion is subject to Beneficiary's discretionary approval and satisfaction of the following conditions:**

(i) There is no then-existing default under any of the Loan Documents and there exist no facts which, with the giving of notice or passage of time, would constitute a default under any of the Loan Documents;

(ii) Beneficiary, or its agent, has conducted an inspection of the Trust Property and the present condition of the Trust Property has been approved;

(iii) The increased loan amount following the funding of each Delay-Flex portion, if made, will not exceed Beneficiary's lending guidelines for the Trust Property;

(iv) Beneficiary may further condition any delayed funding on endorsements to Beneficiary's Title Policy insuring the continued validity and priority of this Deed of Trust, Beneficiary's approval of Trustor's proposed utilization of the Delay-Flex proceeds and any other reasonable assurances or conditions Beneficiary may require or impose;

(v) Beneficiary shall fund each Delay-Flex portion on a date set by Beneficiary at its sole and absolute discretion, which will occur no earlier than the thirtieth (30th) day prior to the Fund Date set forth in the Delay-Flex Funding Schedule and no later than the thirtieth (30th) consecutive day following the Fund Date set forth in the Delay-Flex Funding Schedule; and

(vi) **Funding the total Delay-Flex portion of the Loan is not to exceed 18 months from the date of Loan closing. The Delay-Flex Funding Schedule must be completed by Loan closing and included in the Disbursement Summary. Any modification to the Delay-Flex Funding Schedule requires written approval from Beneficiary or Servicing Agent.**

Notice: If Beneficiary consents to alienation, assignment or transfer of the Trust Property or the obligations under this Deed of Trust in accordance with Section 14, all assignees, transferees and junior lien holders are hereby advised that this Deed of Trust provides for adjustable release provisions and fluctuating principal balances at Beneficiary's discretion.

6. **CONSTRUCTION MORTGAGE**

This Deed of Trust may constitute a "construction mortgage" within the meaning of A.R.S. Section 47-16334 and is entitled to the benefits of A.R.S. Section 47-9334(H). If this Deed of Trust secures a construction loan, the proceeds of the obligations secured by this Deed of Trust are to be used by Trustor for the purpose of acquiring title to the Real Property and funding the acquisition, construction and improvement of the Improvements, or refinancing such secured obligations. If this Deed of Trust secures a construction loan, notice is hereby given that the proceeds of the Note secured hereby may be collaterally assigned to Beneficiary or its agent pursuant to the terms of the Construction Loan Agreement executed herewith.

7. **CONDEMNATION**

If any portion of the Trust Property is condemned or threatened to be condemned by the governing authority, Beneficiary, without notice, shall have the right to accelerate all sums owed under the Loan Documents, which are secured by this Deed of Trust, and those sums shall become immediately due and payable to Beneficiary irrespective of their maturity date. All awards of damages for any condemnation or taking, for injury to the Trust Property by reason of public use or for damages from private trespass or injury to the Trust Property, are hereby assigned, transferred and conveyed to Beneficiary and shall be paid to Beneficiary as further security for the Loan. Upon receipt of such monies, Beneficiary may hold the same as such further security, or apply or release the same in the same manner and with the same effect as herein provided for the disposition of proceeds of fire or other insurance.



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8. BENEFICIARY'S OPTIONS

Without affecting the obligation of Trustor to pay and perform as required herein, without affecting the personal liability of any person for payment of the indebtedness secured hereby, and without affecting the lien or priority of lien hereof on the Trust Property, Beneficiary may, at its option:

- a. Release and reconvey all or any part of the Trust Property;
- b. Consent to the making and/or recording of any map or plat of the Trust Property or any part thereof;
- c. Join in granting any easement on the Trust Property;
- d. Join in or consent to any extension agreement or any agreement subordinating the lien, encumbrance or charge hereof;
- e. Extend the time for payment for all or any part of the indebtedness secured hereby, accept a renewal note therefore, reduce the payments thereon, release any person liable for all or any part thereof or otherwise change the terms of all or any part of the obligation or Note secured hereby; or
- f. Take and hold other security for the payment and performance of the obligation and Note secured hereby, and enforce, exchange, substitute, subordinate, waive or release any such security.

Any of the foregoing actions by Beneficiary or the Trustee at Beneficiary's direction may be taken without the consent of any junior lienholder, and shall not affect the priority of this Deed of Trust over any junior lien.

9. SECURITY AGREEMENT AND FIXTURE FILING

This Deed of Trust shall cover, and the Trust Property shall include, all property now or hereafter affixed on, attached to or incorporated upon the Real Property which, to the fullest extent permitted by law, shall be deemed a "fixture." To the extent that the Trust Property consists of rights in action or personal property covered by the Uniform Commercial Code, this Deed of Trust shall also constitute a security agreement, and Trustor hereby grants to Beneficiary, as secured party, a security interest in such property, including all proceeds thereof, for the purpose of securing the obligations herein and the other Loan Documents. In addition, for the purpose of securing the obligations herein and the other Loan Documents, Trustor, as debtors, hereby grants to Beneficiary, as secured party, a security interest in the following:

- a. All personal property (including all goods, supplies, equipment, furniture, furnishings, fixtures, machinery, inventory and construction materials) in which Trustor now or hereafter acquires an interest or right, which is now or hereafter located on or affixed to the Real Property or the Improvements, or used or useful in the operation, use, or occupancy thereof or in the construction of any additional improvements thereon, together with any interest of Trustor in and to such personal property which is leased by Trustor or is subject to any superior security interest, and all books, records, leases and other agreements, documents, and instruments of whatever kind or character, relating to the Real Property, the Improvements, or such personal property;
- b. All fees, income, rents, issues, profits, earnings, receipts, royalties, and revenues that may accrue from the personal property described in clause (a) above or any part thereof, or from the Real Property or the Improvements, or that may be received or receivable by Trustor from any hiring, using, letting, leasing, subhiring, subletting, subleasing, occupancy, operation or use thereof;
- c. All of Trustor's present and future rights to receive payments of money, services, or property, including rights to receive capital contributions or subscription payments from the members, partners, shareholders or principals of Trustor, amounts payable on account of the sale of ownership interests in Trustor or the capital stock of Trustor, accounts and other accounts receivable, security deposits, chattel paper, notes, drafts, contract rights, instruments, general intangibles, and principal, interest and payments due on account of goods sold or leased, services rendered, loans made or credit extended, together with title to or interest in all agreements, documents, and instruments, evidencing, securing or guarantying the same;



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d. All other intangible property and rights relating to the Real Property, the Improvements, the personal property described in clause (a) above or the operation, occupancy, or use thereof including all governmental and non-governmental permits, licenses (including Trustor's interest in any liquor license related to business operations conducted on the Real Property), and all approvals relating to construction on or operation, occupancy, or use of the Real Property or the Improvements, all names under or by which the Real Property or the Improvements may at any time be operated or known, all rights to carry on business under any such names, or any variant thereof, all trade names and trademarks relating in any way to the Real Property or the Improvements, and all good will in any way relating to the Real Property or the Improvements;

e. Trustor's rights under all insurance policies covering the Real Property, the Improvements or the personal property described in clause (a) above, and any and all proceeds, loss payments, and unearned premiums payable or refundable regarding the same;

f. All reserves, deferred payments, deposits, impound accounts, refunds, cost savings, and payments of any kind relating to the construction of any improvements on the Real Property;

g. All water stock or water rights relating to the Real Property;

h. All architectural, structural, mechanical, and engineering plans and specifications prepared for construction of improvements on the Real Property, or extraction of minerals or gravel from the Real Property, and all studies, data, and drawings relating thereto; and also all contracts and agreements of Trustor relating to such plans and specifications or to such studies, data, and drawings, for the construction of improvements on or extraction of minerals or gravel from the Real Property;

i. All proceeds from the sale or other disposition of any of the collateral described above;

j. All of Trustor's rights in proceeds of the loan made by Beneficiary to Trustor;

k. All of Trustor's rights to security, cleaning, or other deposits from tenants relating to leases or occupancy agreements for any portion of the Real Property or the Improvements;

l. All of Trustor's rights in any Impound account held by Trustor or Beneficiary on behalf of Trustor;

m. All of Trustor's rights in any other deposit accounts of Trustor; and

n. All wells, well equipment, rights to wells, permits and licenses, water rights and all other related property used in connection with the operation of any well on the Real Property or appurtenant to the Real Property.

Trustor acknowledges and agrees that Beneficiary may maintain certain deposit accounts (including a payment impound account and/or a construction impound account) in the name of Beneficiary for the benefit of Trustor and such accounts may include funds disbursed or to be disbursed with respect to the Loan. Trustor acknowledges and agrees that all such funds are the property of Beneficiary and Trustor hereby disclaims any interest therein.



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Trustor shall promptly replace any personal property that is consumed or worn out in ordinary usage and such replacement shall be secured hereby. Trustor may sell or dispose of only that part of the personal property that Trustor is obligated to replace, and all proceeds from any such sale or disposition in excess of the amount expended for such replacements shall promptly be paid to Beneficiary to be applied according to the Loan Documents, whether or not then due. Trustor shall immediately notify Beneficiary of any change in the location of Trustor's chief executive office or residence (if Trustor is an individual without an office) in accordance with the terms of this Deed of Trust, and any change in location of the personal property encumbered hereby, except if replaced as permitted herein. All Trustor's representations, warranties and covenants contained in this Deed of Trust shall apply to the personal property encumbered hereby whether or not expressly referred to herein. Trustor's representations, warranties and covenants and warranties contained in this Section are in addition to, and not in limitation of, those contained in the other provisions of this Deed of Trust. Upon its recording in the real property records, this Deed of Trust shall be effective as a fixture filing. The filing of any other financing statement relating to any other personal property, rights or interests described herein shall not be construed to diminish any of Beneficiary's rights or priorities hereunder. Trustor hereby authorizes and empowers Beneficiary and irrevocably appoints Beneficiary its attorney-in-fact to execute and file, on Trustor's behalf, all financing statements and refilings and continuations thereof as Beneficiary deems necessary or advisable to create, preserve and protect the security interest created hereby.

This Deed of Trust covers certain goods, which are or are to become fixtures related to the Real Property and CONSTITUTES A FIXTURE FILING with respect to such goods executed by Trustor, as debtor, in favor of Beneficiary, as secured party. For purposes of the Uniform Commercial Code, the following information is supplied:

Name and Address of Debtor: Ecco Holdings, L.L.C., an Arizona limited liability company
1170 N Gilbert Rd., Ste 115
Gilbert, AZ 85234

Name and Address of Record Owner: Ecco Holdings, L.L.C., an Arizona limited liability company
1170 N Gilbert Rd., Ste 115
Gilbert, AZ 85234

Description of Real Estate: See Exhibit A attached hereto.

Name and Address of Secured Party: Mortgages Ltd., as agent
55 E. Thomas Road
Phoenix, Arizona 85012

This Deed of Trust covers goods that are or are to become fixtures.

10. RELEASE AND RECONVEYANCE

- a. The release provisions contained in this Deed of Trust are subject to subsequent modification by separate agreements, which include, but are not limited to, Equity-Flex® Advance Agreements and/or upon the subsequent funding of Delay-Flex® Mortgage Line advances.
- b. At any time, when Trustor is not in default under the Loan Documents, Beneficiary will execute or direct the Trustee to execute and deliver a Partial Deed of Release and Reconveyance, subject to any prepayment provisions contained in the Note, as follows: (i) Upon the payment of a principal reduction of a minimum of \$182,000.00 per lot plus ½ the difference between the net sales price and the minimum release price per lot released, (APN No. 100-01-001C), (ii) Upon payment of a Release Fee of \$75.00 per lot released, (iii) Upon payment of any prepayment penalties, if any, due pursuant to the Note, (iv) Upon Mortgages Ltd.'s receipt and approval of a Partial Release Endorsement to title policy if required by Beneficiary, (v) Upon payment of all applicable ALTA title policy endorsement and recording costs.



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b. Upon payment in full and satisfaction of the Obligations, Beneficiary will surrender this Deed of Trust and the other Loan Documents to Trustee for cancellation, retention and payment of Trustee's fees, and Trustee shall release and reconvey, without covenant or warranty, express or implied, the Trust Property then held hereunder. The recitals in such reconveyance or any matters or facts shall be conclusive proof of the truthfulness thereof. The grantee in such reconveyance may be described as "the person or persons legally entitled thereto."

11. ASSIGNMENT OF RENTS, LEASES AND PROFITS

To facilitate payment and performance of the obligations under this Deed of Trust and the other Loan Documents, Trustor hereby absolutely sells, transfers and assigns to Beneficiary all right, title and interest of Trustor in and to the following:

a. All existing and future leases, subleases, licenses and other agreements for the use and occupancy of all or a portion of the Trust Property, whether written or oral and whether for a definite term or month-to-month, together with any and all extensions, modifications and renewals thereof (collectively, the "Leases"); and

b. All income, receipts, revenues, royalties, rents, issues, profits and benefits now or hereafter arising from or out of the Leases or from or out of the Trust Property or any part thereof (collectively, the "Rents").

So long as there shall not have occurred an event of default under this Deed of Trust or any of the other Loan Documents, Trustor shall have the right to collect all Rents, and shall hold the same, in trust. Beneficiary may, at its option, upon default, at any time, without notice, either by person, by agent or by receiver appointed by a court, and without regard to the adequacy of any security for the indebtedness hereby secured or the solvency of Trustor, collect the Trust Property income (including the Rents) by any method authorized by law and apply the same, less costs and expenses of operation and collection, including attorneys' fees, Trustee's fees and Servicing Agent's administrative fees, upon any indebtedness secured hereby, Servicing Agent's administrative fees, upon any indebtedness secured hereby, and in such order as Beneficiary may determine. The entering upon and taking possession of the Trust Property, the collection of Trust Property income and the application thereof shall not cure or waive any default or notice of Trustee's sale or invalidate any act done pursuant to such notice. Beneficiary shall have the right to exercise all its rights as provided by A.R.S. §§ 33-702(B) and 33-807, which may be revised from time to time. It is expressly covenanted and agreed by the Trustor, that at the time of the execution and delivery of this Deed of Trust there has been no prepayment of any Rents by any of the tenants occupying the Trust Property or the Leases. It is further covenanted and agreed that Trustor, its successors or assigns, shall have no right, power or authority to alter, modify or amend the terms, or any of them, of the Lease in any particular whatsoever, without first obtaining the consent in writing of Beneficiary, its successors or assigns to such alteration, modification or amendment. Nothing herein contained shall be construed as making Beneficiary, or its successors or assigns, a mortgagee in possession, nor shall Beneficiary, or its successors or assigns be liable for laches, or failure to collect said rents, issues, profits, revenues, royalties, rights and benefits, and it is understood that Beneficiary, its successors or assigns, are to be account only for such sums as are actually collected.

12. DEFAULT AND REMEDIES

a. **Default.** Among other things constituting a default under the provisions of the Loan Documents, Trustor shall be deemed in default upon the occurrence of any of the following events:

- (1) Trustor, third party borrower, any endorser or any guarantor fails to make payment of any indebtedness secured hereby in accordance with the Loan Documents;
- (2) Trustor, third party borrower, any endorser of the Note or any guarantor fails to perform any obligation required by and in accordance with the Loan Documents, or any representation by Trustor, third party borrower, any endorser of the Note or any guarantor in any of the Loan Documents is untrue;
- (3) The death, incapacity, dissolution, winding-up or termination of the existence of Trustor, third party borrower, any endorser of the Note or any guarantor;
- (4) The calling of a meeting of the creditors of Trustor, third party borrower, any endorser of the Note or any guarantor;
- (5) The making by Trustor, third party borrower, any endorser of the Note or any guarantor of an assignment for the benefit of any of its creditors;
- (6) Trustor, third party borrower, any endorser of the Note or any guarantor becomes insolvent;



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(7) Trustor, third party borrower, any endorser of the Note or any guarantor fails to pay its debts as they mature;

(8) Trustor, third party borrower, any endorser of the Note or any guarantor admits in writing that such party is unable to pay such party's debts as they mature;

(9) A receiver, trustee, custodian or conservator is appointed to manage over all or any part of the assets of Trustor, third party borrower, any endorser of the Note or any guarantor;

(10) The occurrence of any material adverse change in the condition (financial or otherwise) of Trustor, third party Borrower, any endorser of the Note or any guarantor;

(11) In the event that Trustor has secured or secures additional loans through Mortgages Ltd. (the "Additional Loans", including Loan No(s). 856805), regardless as to whether Mortgages Ltd. has assigned its interests in the Additional Loans or this Loan, then a default under any Additional Loan shall constitute a default under this Loan and a default under this Loan shall constitute a default under the Additional Loans; or

(12) Beneficiary in good faith deems itself insecure or believes the prospect for payment or performance is impaired.

b. **Acceleration.** Upon the occurrence of any of the foregoing events of default, Beneficiary, without notice, may declare all sums secured hereby immediately due and payable and may apply or cause to be applied amounts in any Impound Account to the obligations secured by this Deed of Trust in any manner that Beneficiary elects. Notwithstanding anything in this Deed of Trust or any other Loan Document to the contrary: (a) it shall be a default under this Deed of Trust if Trustor, third party borrower, the Note's endorser or any guarantor becomes the subject of any bankruptcy or voluntary or involuntary insolvency proceeding, in or out of court, for the adjustment of debtor-creditor relations ("Insolvency Proceedings"); and (b) if the any Insolvency Proceedings occur, any obligation of Beneficiary to make further advances shall terminate, and all sums of principal and interest under the Note shall automatically become due and payable without notice of default, presentment or demand for payment, protest or notice of nonpayment or dishonor, or other notices or demands of any kind or character.

c. **Trustee's Sale.** Should Beneficiary elect to have the Trust Property sold by Trustee, Beneficiary shall deliver to Trustee written notice, setting forth the nature of the default, and of the election to cause the Trust Property to be sold. Beneficiary also shall deposit with Trustee this Deed of Trust, the Note and all other Loan Documents evidencing expenditures secured hereby. Trustee shall record and give notice of the Trustee's Sale in the manner required by law, and after the lapse of such time as may then be required by law, Trustee shall sell, in the manner required by law, the Trust Property at public auction, at the time and place fixed by the notice of Trustee's Sale to the highest bidder for cash in lawful money of the United States, payable at the time of sale. Notice to Trustor shall be given in accordance with the provisions of A.R.S. Sections 33-808 and 33-809. Trustee, at Trustee's discretion, may postpone or continue the sale from time to time by giving notice of postponement or continuance by public declaration at the time and place last appointed for the sale. Trustee shall deliver to the purchaser at the Trustee's Sale a Deed conveying the Trust Property, but without any covenant or warranty, expressed or implied. The recitals in such deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any persons, including Trustor, Trustee or Beneficiary, may purchase the Trust Property at the Trustee's Sale. Beneficiary may bid for and purchase the Trust Property and shall be entitled to apply all or any part of the indebtedness secured hereby as a credit against the purchase price. The purchaser at the Trustee's sale shall be entitled to immediate possession of the Trust Property as against the Trustee or other persons in possession and shall have a right to the summary proceedings to obtain possession provided in Title 12, Chapter 8, Article 4, Arizona Revised Statutes, together with costs and attorneys' fees accrued therefor. After deducting all Trustee's costs, fees and expenses and of this Deed of Trust, including the costs of evidence of title in connection with the sale, Beneficiary and Trustee's attorneys' fees and Servicing Agent's administrative fees, Trustee shall apply the sale proceeds to the payment of all sums then secured hereby and all other sums due under the terms hereof, with accrued interest, and then the remainder, if any, to the person or persons legally entitled thereto or as provided in A.R.S. § 33-812.

d. **Deficiency Judgment.** To the extent permitted by law, Beneficiary shall be entitled to a deficiency judgment against Trustor for any balance remaining due hereunder after a Trustee's sale of the Trust Property.

e. **Foreclosure and Other Remedies.** In lieu of a Trustee's sale, pursuant to the power of sale conferred hereby, this Deed of Trust may be foreclosed in the same manner provided by law for the foreclosure of mortgages on real property. Beneficiary shall also have the right to exercise any or all remedies available hereunder and at law or in equity, including all remedies of a secured party under the Uniform Commercial Code with respect to any personal property secured hereby, the appointment of a receiver, provisional remedies and injunctive relief. All Beneficiary's rights and remedies shall be cumulative.



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f. **Appointment of Receiver or Mortgagee in Possession.** If an event of default is continuing or if Beneficiary shall have accelerated the indebtedness secured hereby, Beneficiary, upon application to a court of competent jurisdiction, shall be entitled as a matter of strict right, without notice, and without regard to the occupancy or value of any security for the indebtedness secured hereby or the insolvency of any party bound for its payment, to the appointment, at Beneficiary's option, of itself as mortgagee in possession, or of a receiver to take possession of and to operate the Trust Property, and to collect and apply the Rents. Beneficiary and such receiver and their representatives shall have no liability for any loss, damage, injury, cost or expense resulting from any action or omission which was taken or omitted in good faith.

13. SUCCESSOR TRUSTEE

Beneficiary may appoint a successor Trustee in the manner prescribed by law. A successor Trustee shall, without conveyance from the predecessor Trustee, succeed to all the predecessor's title, estate, rights, powers and duties. Trustee may resign at any time by complying with applicable law and by mailing or delivering notice thereof to Beneficiary and Trustor, and having so resigned shall be relieved of all liability and responsibility to Trustor, Beneficiary or otherwise hereunder. Any reference to "Trustee" herein shall include all successor trustees. Trustee shall not be liable for any action taken when acting in good faith, or upon any information supplied or direction given by Beneficiary.

14. ALIENATION

The Trust Property and the obligations under this Deed of Trust are not alienable, assignable or transferable by Trustor. Upon the occurrence any of the following, without prior written consent of Beneficiary or its Servicing Agent:

- a. Trustor sells, conveys, transfers, assigns, contracts for sale, leases with option to purchase or further encumbers the Trust Property or any part thereof, including any further assignment of the Trust Property's income, or a wraparound mortgage or purchase contract specifically excepting however, a subordinate lien to secure a 2nd lien on the Trust Property by a Deed of Trust upon the review and approval of said Deed of Trust and Promissory Note by the Beneficiary and provided that the Note secured by the Deed of Trust does not mature on or before December 28, 2008 only;
- b. If Trustor is a corporation, the controlling interest in Trustor is sold, conveyed or transferred;
- c. If Trustor is a limited liability company, any interest in Trustor is sold, conveyed or transferred;
- d. If Trustor is a partnership, any general partnership interest, or the majority of limited parties interests, in Trustor is sold, conveyed or transferred, either voluntarily or involuntarily;

Beneficiary, without notice, shall have the right to accelerate all sums owed under the Loan Documents, which are secured by this Deed of Trust, and those sums shall become immediately due and payable to Beneficiary irrespective of their maturity date. This provision shall apply to each and every such sale, conveyance, transfer, lease, encumbrance or assignment, regardless as to whether Beneficiary has consented or waived its rights in connection with any previous sale, conveyance, transfer, lease, encumbrance or assignment.

15. THIRD PARTY BORROWER PROVISIONS.

The following provisions apply to the extent that a third party borrower has executed the Note:

- a. Trustor waives each of the following:
 - (i) Any right to require Beneficiary to make presentments or demands or to give notices of any kind, including demand for performance, notice of non-performance, protest, notice of protest, notice of dishonor, notice of acceptance of this Deed of Trust, notice of the existence, creation or incurrence of existing or new debt, notice of modification, payment, default or change or action of any kind relating to the Obligations.
 - (ii) Any defense to liability on this Deed of Trust based on any disability or other defense of the third party borrower or based upon any cessation of the liability of the third party borrower to Beneficiary for any reason other than the payment of the Obligations in full.
 - (iii) Any right to require Beneficiary to proceed against the third party borrower.



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(iv) Any right to require Beneficiary to proceed against any other security held from third party borrower or from Trustor.

(v) To the extent permitted by applicable law, the benefit of any statute of limitations pertaining to the Obligations or to this Deed of Trust or affecting Trustor's liability on this Deed of Trust or its enforcement.

(vi) Any defense based upon an election of remedies by Beneficiary, including any election to proceed against any collateral by judicial or nonjudicial foreclosure, whether real property or personal property, or by deed in lieu thereof, and whether or not every aspect of any foreclosure sale is commercially reasonable, and whether or not any such election of remedies destroys or otherwise impairs the subrogation rights of Trustor or the rights of Trustor to proceed against the third party borrower or any guarantor or Trustor for reimbursement, or both.

(vii) The benefits of any statutory provision limiting the liability of a surety, including the provisions of A.R.S. Sections 12-1641 through 12-1644, A.R.S. Section 12-1566, A.R.S. Section 33-814, A.R.S. Section 44-142, A.R.S. Section 47-3605 and Rule 17(f) of the Arizona Rules of Civil Procedure.

(viii) Any defense based upon the application by third party borrower of the proceeds of the loan evidenced by the Note for purposes other than the purposes represented by third party borrower to Beneficiary or intended or understood by Beneficiary or Trustor.

b. Trustor acknowledges and agrees that Beneficiary, without affecting Trustor's liability, may take any one or more of the following actions, at any one or more times:

(i) Renew, compromise, extend, accelerate or otherwise change the time for payment of, or the terms of, all or any part of the Obligations.

(ii) Take additional security for the payment of the Obligations, and exchange, enforce, alter or release all or any part of any security.

(iii) Add, release or substitute any one or more other third party trustors or guarantors.

(iv) Assign the Obligations in whole or part.

16. GENERAL

a. **Time.** Time is of the essence in all aspects of this Deed of Trust and the other Loan Documents.

b. **Liability.** This Deed of Trust applies to, inures to the benefit of and binds Trustor, Trustee and Beneficiary (collectively, the "Parties") and their heirs, personal representatives, successors, permitted assigns, beneficiaries and trustees. All liability created hereunder shall be joint and several.

c. **Assignability.** Beneficiary and Trustee may assign their rights and obligations under this Deed of Trust without prior notice to Trustor. "Beneficiary" shall include the owner and holder of the Note secured hereby, whether or not named as Beneficiary herein.

d. **Servicing Agent.** Trustor acknowledges that Mortgages Ltd. is the Servicing Agent and may enforce the terms of this Deed of Trust and the other Loan Documents on behalf of Beneficiary.

e. **Severability.** If any term or other provision of this Deed of Trust or any other Loan Document is declared invalid, illegal or incapable of being enforced by any rule of law or public policy, all other conditions and provisions of this Deed of Trust shall nevertheless remain in full force and effect.

f. **Law.** This Deed of Trust shall be governed by, construed and enforced in accordance with the laws of the State of Arizona, without regard to the choice of law rules of the State of Arizona. In the event any statute or law referred to herein is subsequently amended or renumbered, the statute as amended or renumbered shall be intended by the Parties to be referred to herein, thereafter, and should said statute or law be repealed, if law permits, that statute or law as it exists on the date hereof is intended to be a part hereof.



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g. **Jurisdiction and Venue.** Trustor hereby submits to the jurisdiction and venue of any Arizona State or Federal Court sitting in the City of Phoenix in any action or proceeding arising out of or relating to this Deed of Trust. Trustor hereby waives the defense of an inconvenient forum.

h. **Jury Trial Waiver.** Trustor, and Beneficiary, by its acceptance of this Deed of Trust, hereby waive their respective rights to a trial by jury in any action or proceeding based upon, or related to, the subject matter of this Deed of Trust and the business relationship that is being established. This waiver is knowingly, intentionally, voluntarily and irrevocably made by Trustor and Beneficiary, and Trustor acknowledges that neither Beneficiary, nor any person acting on behalf of Beneficiary, has made any representations of fact to include this waiver of trial by jury or has taken any actions which in any way modify or nullify its effect. Trustor and Beneficiary acknowledge that this waiver is a material inducement to enter into a business relationship, that each of them has already relied on this waiver in entering into this Deed of Trust and that each of them will continue to rely on this waiver in their related future dealings.

i. **Promotional Information.** Beneficiary shall have the right to release information related to this Deed of Trust and the other Loan Documents ("Promotional Information"), including photographs of the Trust Property, characteristics of the Trust Property, Loan characteristics, financing terms and aspects of underwriting, for advertising, marketing and other promotional purposes, such as commercials, advertising fliers, trade articles, Internet releases and public presentations. Beneficiary shall not be held liable to Trustor for the release of Promotional Information.

j. **Modification.** This Deed of Trust may be amended, modified, superseded, canceled, renewed or extended and the terms or covenants hereof may be waived only by a written instrument executed by all Parties.

k. **Waiver.** The failure of Beneficiary, at any time or times, to require performance of any provision of this Deed of Trust shall in no manner affect the right of Beneficiary at a later time to enforce that provision. Further, if payment of any sum secured hereby is accepted after its due date, Beneficiary does not waive its right either to require prompt payment when due of all other sums or to declare a default for failure to pay as required by the Loan Documents. No waiver by Beneficiary of the breach of any term or covenant contained in this Deed of Trust, whether by conduct or otherwise, in any one or more instances, shall be deemed to be, or construed as, a further or continuing waiver by Beneficiary of any such breach, or a waiver of the breach of any other term or covenant contained in this Deed of Trust.

l. **Waiver of Statute of Limitations.** To the extent permitted by applicable law, Trustor hereby waives the right to assert any statute of limitations as a bar to the enforcement of the lien created by any of the Loan Documents or to any action brought to enforce the Note or any other obligations secured by any of the Loan Documents.

m. **Waiver of Homestead and Redemption.** Trustor hereby waives all right of homestead exemption in the Trust Property. Trustor hereby waives all right of redemption on behalf of Trustor and on behalf of all other persons acquiring any interest or title in the Trust Property subsequent to the date of this Deed of Trust, except decree or judgment creditors of Trustor.

n. **Interpretation.** As used in this Deed of Trust, the word "include(s)" means "include(s), without limitation," and the word "including" means "including, without limitation."

o. **Variable Rate.** THIS DEED OF TRUST MAY SECURE A VARIABLE INTEREST RATE LOAN.

SEE ATTACHED SIGNATURE PAGE



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IN WITNESS WHEREOF, this Deed of Trust has been executed as of the date set forth on the first page.

TRUSTOR:

Ecco Holdings, L.L.C., an Arizona limited liability company

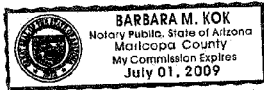
[Signature]

By: Eric E. Capranica

Its: Manager

STATE OF AZ)
)ss
COUNTY OF MARICOPA)

The foregoing instrument was acknowledged before me this 27th day of JUNE, 2007 by Eric E. Capranica of Ecco Holdings, L.L.C., an Arizona limited liability company on behalf of the limited liability company



[Signature]
Notary Public

My Commission Expires: JULY 1, 2009



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EXHIBIT "A"

Loan No.: 859705

Borrower: Ecco Holdings, L.L.C., an Arizona limited liability company

That part of the West half of the Northeast quarter of Section 11, Township 1 North, Range 8 East of the Gila and Salt River Base and Meridian, Pinal County, Arizona lying South of Arizona Highway 88 as it existed June 22, 1992, more particularly described as follows:

COMMENCING at the Northeast corner of said West half of the Northeast quarter;

THENCE South 00 degrees 03 minutes 36 seconds East, along the East line thereof, a distance of 404.06 feet to the POINT OF BEGINNING;

THENCE continuing South 00 degrees 03 minutes 36 seconds East, a distance of 1407.06 feet;

THENCE North 62 degrees 00 minutes 00 seconds West, a distance of 1137.09 feet to the centerline of the easement recorded in Docket 1689, Page 609;

THENCE North 36 degrees 48 minutes 12 seconds West, a distance of 5.00 feet to the North line of said easement;

THENCE along said North line North 53 degrees 11 minutes 48 seconds East, a distance of 309.19 feet;

THENCE along said North line North 50 degrees 20 minutes 29 seconds East, a distance of 302.20 feet;

THENCE along said North line 46 degrees 48 minutes 48 seconds East, a distance of 314.19 feet;

THENCE along said North line North 46 degrees 54 minutes 37 seconds East, a distance of 299.71 feet;

THENCE North 47 degrees 21 minutes 31 seconds East, a distance of 105.62 feet to the East line of the West half of the Northeast quarter of said Section 11 and the POINT OF BEGINNING;

EXCEPT all uranium, thorium, or other material which is or may be determined to be peculiarly essential to the production of fissionable materials whether or not of commercial value pursuant to the provisions of the Act of August 1, 1946 (60 Stat. 755) as set forth in the Patent on said land.

APN: 100-01-001C/Pinal

Ex. 3

SERVICING AGENT AGREEMENT

Loan No. 859705

June 27, 2007

“Borrower” (individually and collectively):

Ecco Holdings, L.L.C., an Arizona limited liability company

“Lender”: **Scott M. Coles or Christopher J. Olson, Trustees of the Mortgages Ltd. 401(k) Plan**

“Servicing Agent”: **Mortgages Ltd., an Arizona corporation.**

In consideration of the reciprocal promises contained herein, Borrower, Lender and Servicing Agent (collectively, the “Parties”) hereby agree to the following.

1. APPOINTMENT AND AUTHORITY OF SERVICING AGENT

Trustor and Beneficiary hereby appoint Mortgages Ltd. to act as the Servicing Agent with regard to the Loan. Servicing Agent is authorized to perform any and all of the following tasks:

- a. Hold the originals of the Promissory Note, Deed of Trust, Fee Schedule and all other documents executed by the Borrower or any other party in connection with the Loan (collectively, the “Loan Documents”).
 - b. Service and administer the Loan in any manner provided by the Loan Documents.
 - c. Process any and all Loan payments from Borrower or other payor.
 - d. Assess and process all fees and charges set forth in the Loan Documents including, but not limited to, administrative fees, notice fees and late charges.
 - e. Apply any funds received by Servicing Agent to the fees and costs incurred or assessed by Beneficiary before applying the funds to the amounts owing under the Loan Documents (including notice fees, service fees, administrative fees, inspection fees, appraisal fees, expert fees, attorneys’ fees, litigation costs, forced placed insurance premiums, late charges and guarantor collection expenses (*as described herein*)). Any insurance placed by Servicing Agent may be placed with an affiliate of servicing Agent or a captive insurance company.
 - f. Retain deposits received under the Loan Documents as impounds for the payment of the following:
 - (1) Future payments due;
 - (2) Taxes and assessments;
 - (3) Construction;
 - (4) Insurance premiums;
 - (5) Extension fees;
 - (6) Administration fees; and
 - (7) Any other expenditure required under the Loan Documents.
- (Any impound account may be held in the name of Servicing Agent for the benefit of Lender and others, and Servicing Agent may apply and/or disburse any such deposits in accordance with the Loan Documents).
- g. Evaluate, effectuate and process an assumption of the Loan, and assess and receive an assumption fee and/or an interest rate increase.
 - h. Sign, file and record all documents which are reasonable or desirable to facilitate servicing of the loan, including:
 - (1) deeds of release and reconveyance (full and partial);
 - (2) endorsements and assignments of Loan Documents (including assignments of all or a portion of the beneficial interest of any deed of trust included in the Loan Documents);



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SERVICING AGENT AGREEMENT

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- (3) corrections, amendments, **modifications** and extensions of Loan Documents;
- (4) disclaimers;
- (5) financing statements; and
- (6) assumptions and various certifications.

i. Incur all fees, costs and expenses deemed necessary by Servicing Agent to protect Beneficiary's interests under the Loan Documents;

j. Incur all fees, costs and expenses deemed necessary by Servicing Agent to protect the property securing the Loan (the "Trust Property"), including insurance premiums, receiver fees, property manager fees, maintenance expenses and security expenses.

k. Obtain forced placed insurance on any portion of the Trust Property in the event the Borrower fails to maintain insurance as required by the Loan Documents.

l. Sign, file and record any and all documents reasonable or desirable to protect Lender's interests and/or pursue Lender's remedies upon default, including:

- (1) a statement of breach or non-performance;
- (2) a substitution of trustee;
- (3) a notice of election to foreclose;
- (4) a notice of trustee's sale;
- (5) an affidavit of non-military service;
- (6) a notice of proposed disposition of collateral and various verifications.

m. In the event of default and at Servicing Agent's discretion, commence foreclosure of the Trust Property, initiate a trustee's sale and/or institute any proceeding necessary to collect the sums due under the Loan Documents or to enforce any provision therein, including:

- (1) pursuing an action against any borrower or guarantor of the Loan;
- (2) pursuing injunctive relief, the appointment of a receiver, provisional remedies or a deficiency judgment;
- (3) pursuing claims in bankruptcy court;
- (4) pursuing an appeal;
- (5) collecting rents; and
- (6) taking possession or operating the Trust Property).

n. In the event of default and at Servicing Agent's discretion effect a sale of Lender's interest, in whole or in part, in the Loan Documents at the expense of Trustor which expense shall be secured by the Deed of Trust.

o. Retain attorneys, trustees and other agents necessary to collect the sums due under the Loan Documents, to protect the Trust Property and/or to proceed with foreclosure of the Trust Property, initiate a trustee's sale and/or institute, defend, appear or otherwise participate in any proceeding (legal, administrative or otherwise) that Servicing Agent deems reasonable and desirable.

p. Incur and pay such costs, expenses and fees as Servicing Agent deems appropriate in undertaking and pursuing enforcement of the Loan Documents and/or collection of amounts owed thereunder, including attorney fees, receiver fees, trustee fees, expert fees and any fees, costs and expenses incurred in an effort to collect against any borrower or any guarantor of the Loan.

2. ACCOMMODATION.

Servicing Agent provides its services as an accommodation only, and shall incur no responsibility or liability to any person, including, Borrower and Lender for any act or omission by Servicing Agent or any person or entity active for Servicing Agent.



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SERVICING AGENT AGREEMENT

Loan No. 859705

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3. ASSIGNMENT, RESIGNATION AND TERMINATION.

a. Servicing Agent shall have the right to assign the collection account or resign as Servicing Agent at any time, provided that Servicing Agent notifies Lender and Borrower of such assignment or resignation in writing.

(1) If Servicing Agent assigns the collection account, Servicing Agent will deliver all Loan Documents, directions and account records to assignee, at which time Servicing Agent will have no further duties or liabilities hereunder.

(2) If Servicing Agent resigns, Lender shall have the right to designate a new collection agent and Servicing Agent shall deliver to Lender all Loan Documents, directions and account records to Lender or the newly designated collection agent, at which time Servicing Agent will have no further duties or liabilities hereunder.

b. If that the ownership of the Trust Property becomes vested in the Lender by trustee's sale, judicial foreclosure or otherwise, then this Agreement shall automatically terminate and Servicing Agent will have no further duties or liabilities hereunder.

c. Upon Servicing Agent's assignment or resignation, or termination of this Agreement, Borrower shall immediately reimburse Lender for all fees, costs and expenses incurred hereunder. After such reimbursement and payment, Borrower shall remain obligated to indemnify, in accordance with Section 4 hereof, for liabilities which accrued prior to such resignation or termination.

4. INDEMNITY

a. Lender and Borrower shall immediately indemnify and hold Servicing Agent harmless for, from and against any and all liabilities incurred by Servicing Agent in performing under the terms of this Agreement or otherwise arising, directly or indirectly, from the Loan or Loan Documents, including all attorneys' fees, insurance premiums, expenses, costs, damages and expenses.

b. In the event that Servicing Agent requests that Lender and/or Borrower pay any amount owed hereunder, Lender and/or Borrower shall remit that amount to Servicing Agent within 5 business days of Servicing Agent's request.

5. BORROWER'S OBLIGATIONS

a. Standard Fees and Costs. Borrower shall pay to Servicing Agent, for the account of Beneficiary, its current fees and costs, including those items set forth in the Fee Schedule received by Borrower. The Fee Schedule is subject to change without notice as to the amounts and items included therein. Borrower shall pay a servicing set-up fee of \$1,500.00, and a monthly servicing fee of \$30.00. When the Loan is paid in full, Borrower shall pay a Close Out Fee of \$1,500.00, which is in addition to the monthly servicing fee. There will be a \$30.00 charge to Borrower for each payoff request.

b. Late Fees and Notices. In the event that a regular payment is not received by Servicing Agent on or before the fifth calendar day after the due date, a late charge of 35% of the monthly Principal and Interest payment will be charged and Borrower shall pay that amount to Servicing Agent, for the account of Lender. The parties agree that this late payment charge is intended to compensate Lender for losses incurred as a result of the late payment and that such late payment charge does not constitute and shall not be construed as a penalty. Servicing Agent will charge \$125.00, plus postage, for each notice sent regarding late payments, nonpayment of taxes, assessments, insurance premiums or any other matter that affects the Trust Property. Servicing Agent will charge \$25.00 for each notice sent regarding returned checks, plus any actual charges assessed by the financial institution of the Servicing Agent as a result of each returned check. These notice fees are subject to change at the Servicing Agent's discretion. In the event that the Loan is not paid in full by the maturity date, Borrower acknowledges that a late charge will be assessed, for the account of Lender, in the amount of 3% of the remaining principal balance of the Loan on the first day after Borrower's failure to pay and on the same day each month thereafter, until the final payment is received by Servicing Agent. All fees and charges are independent of one another and any default interest assessed; thus, a matured loan shall accrue default interest, maturity late fees and any other applicable fees and charges.

c. Payment Statements. Servicing Agent, as a convenience only, will provide to Borrower a monthly payment statement. Borrower acknowledges and agrees that it is obligated to make all payments when due under the Loan Documents, whether or not such payment statement is received by Borrower.



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SERVICING AGENT AGREEMENT

Loan No. 859705

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6. PARTIAL AND FINAL PAYMENTS

a. **Partial Payments.** In the event that Servicing Agent receives and processes a partial payment of any amount due under the Loan Documents, such act shall not constitute full payment, estoppel or a waiver of any right of Lender or Servicing Agent to recover the deficiency or to require future payments to be made in full.

b. **Final Payment.** In the event that the final sum to pay the principal balance in total is received by Servicing Agent after 1:00 p.m., interest shall be charged through the next normal business day.

7. GENERAL PROVISIONS

a. This Agreement is binding on the Parties and their heirs, personal representatives, successors, permitted assigns, beneficiaries and trustees.

b. This Agreement and the benefits hereunder are **not** assignable or transferable by Borrower. Lender may assign Lender's rights and obligations under this Agreement without prior notice to Borrower. Lender, however, must give Servicing Agent prior written notice. After assignment, Lender shall have no further duties or liabilities to Borrower.

c. This Agreement shall be governed by, construed and enforced in accordance with the laws of the State of Arizona, without regard to the choice of law rules of the State of Arizona. The Parties hereby submit to the exclusive jurisdiction of any Arizona State or Federal Court sitting in the City of Phoenix in any action or proceeding arising out of or relating to this Agreement. The Parties waive the defense of an inconvenient forum.

d. The Parties voluntarily, knowingly, irrevocably and unconditionally waive the right to a jury trial on any contested matters arising from this Agreement or the Loan Documents.

e. This Agreement sets forth the entire agreement and understanding of the Parties with respect to the subject matter hereof and is to be read in consistency and accordance with the other Loan Documents.

f. This Agreement may be amended, modified, superseded, canceled, renewed or extended and the terms and covenants hereof may be waived only by a written instrument signed by all of the parties hereto. The failure of Servicing Agent or Beneficiary at any time or times to require performance of any provision of this Agreement shall in no manner affect the right of Servicing Agent at a later time to enforce the same. No waiver by Beneficiary or Servicing Agent of the breach of any term or covenant contained in this Agreement, whether by conduct or otherwise, in any one or more instances, shall be deemed to be, or construed as, a further or continuing waiver by Servicing Agent or Lender of any such breach, or a waiver of the breach of any other term or covenant contained in this Agreement.

g. If any term or other provision of this Agreement is declared invalid, illegal or incapable of being enforced by any rule of law or public policy, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect.

h. As used in this Agreement, the word "include(s)" means "Include(s), without limitation," and the word "Including" means "including, but without limitation."

i. No remedy herein conferred upon or reserved to Servicing Agent is intended to be exclusive of any other remedy herein or by law provided or permitted, but each shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute.



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SERVICING AGENT AGREEMENT

Loan No. 859705

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This Agreement is effective on the date set forth on the first page.

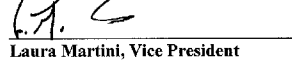
BORROWER:

Ecco Holdings, L.L.C., an Arizona limited liability company


By: Eric E. Capranica
Its: Manager

SERVICING AGENT:

MORTGAGES LTD., an Arizona corporation


Laura Martini, Vice President

LENDER:

Scott M. Coles or Christopher J. Olson, Trustees of the Mortgages Ltd. 401(k) Plan


Scott M. Coles, Trustee



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CONSTRUCTION LOAN AGREEMENT

Loan No. 859705

June 27, 2007

"Lender": Scott M. Coles or Christopher J. Olson, CPA, Trustees of the Mortgages Ltd. 401(k) Plan, and its successors and assigns

"Borrower" (individually and collectively):

Ecco Holdings, L.L.C., an Arizona limited liability company

In consideration of Lender's commitment to make the above-referenced loan (the "Loan") secured by a Deed of Trust, Assignment of Rents and Leases, Security Agreement and Fixture Filing of even date herewith (the "Deed of Trust"), Borrower agrees with Lender to the following.

1. LOAN DOCUMENTS

Borrower or some third party will execute and deliver to Lender on Lender's form a Promissory Note and Deed of Trust, together with all other documents required by Lender in connection with the Loan (collectively, the "Loan Documents"), and if Borrower is a corporation, limited liability company, partnership or trust, it will supply Lender with certified copies of all appropriate documents, such as corporate resolutions, partnership agreements and trust documents, which authorize the Loan and the execution of the Loan Documents.

2. PERMANENT COMMITMENT

At the option of Lender, Borrower shall assign the commitment from the permanent lender, if any, to Lender as additional collateral for the Loan and obtain the acceptance of the assignment by the permanent lender, if required. Borrower shall fully comply with and meet all of the requirements made by the permanent lender so that the commitment of the permanent lender will remain in full force and effect.

3. FIXTURES

All items which might be determined to be fixtures as defined in the Uniform Commercial Code and the laws of the State of Arizona will be fully paid for prior to installation so that no one has or will have a security interest therein. On demand, Borrower shall furnish or cause to be furnished to Lender or Lender's agent with a waiver or release of security interest on all such fixtures executed by all persons who might have a security interest therein. If any financing statement or security agreement on fixtures is filed, Borrower shall immediately obtain a release of the same. At its discretion, Lender may, out of the loan proceeds in the construction account, apply any portion thereof to the direct payment of any security interest on any fixture installed or to be installed on the Property. In the event a fixture is removed or attempted to be removed from the Property either before the final disbursement of the Loan proceeds or at any time thereafter by anyone claiming a security interest prior and superior to the lien of the Deed of Trust to Lender, Borrower shall obtain a release of such security and will indemnify, defend, protect and hold Lender harmless for, from and against any and all losses and expenses arising therefrom, including Lender's attorney's fees and costs. On request of Lender or Lender's agent, Borrower shall furnish to Lender a list of all fixtures to be incorporated into the Property, the names of the fixture's installer, supplier, distributor and manufacturer, and the approximate cost of each fixture.

4. USE OF LOAN PROCEEDS

Unless otherwise specified in writing, the proceeds of the Loan and interest earned, if any, on Loan proceeds, will be used solely to pay actual costs of constructing the building and improvements and for no other purpose, except that after a default all Loan proceeds held in a Construction Loan Account, as defined herein, may be applied as set forth in the Loan Documents.



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CONSTRUCTION LOAN AGREEMENT

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5. INSURANCE

Borrower shall carry or cause a third party to carry such insurance on the building and improvements as required by Lender, which may include, *inter alia*, course of construction insurance, to be in an amount determined at Lender's sole discretion, with Lender's loss-payable endorsement attached. The Deed of Trust contains additional provisions related to the insurance required by lender.

6. PLANS AND SPECIFICATIONS

The building and improvements to be constructed on the Property shall be constructed and completed in accordance with the plans and specifications filed with Lender **on or before nine months** from the date of this Agreement (the "Completion Date"), free and clear of all liens and in a manner satisfactory to Lender and all appropriate regulatory agencies, associations or other entities. No changes will be made in the plans or specifications without Borrower first obtaining Lender's written consent.

7. DEFAULTS AND REMEDIES

a. Among other things constituting default under the provisions of the Loan Documents, Borrower shall be deemed in default upon the occurrence of any of the following events.

- (1) The building and improvements are not completed by the Completion Date;
- (2) The construction work is abandoned or stopped for a period of 30 days (except for a temporary stoppage due to a strike or an act of God);
- (3) Borrower or any third party Trustor breaches any provisions of this Agreement or any other provisions contained in the Loan Documents;
- (4) The permanent lender withdraws or cancels its commitment, or Borrower fails to comply with that commitment;
- (5) The building or improvements on the Property are damaged or destroyed by fire or other casualty;
- (6) The death or incapacity of any Borrower;
- (7) If Lender, in its judgment, determines that the remaining Loan funds are insufficient to pay the remaining costs of construction;
- (8) Borrower or Borrower's contractor abandons the construction job;
- (9) A petition in bankruptcy or any arrangement of composition with creditors for reorganization is filed by or against Borrower or any of Borrower's contractors;
- (10) A mechanic's or materialmen's lien or any other claim of lien is filed or recorded against the Property;
- (11) A stop notice is served upon Borrower, Lender or any of its agents;
- (12) Any suit or legal action is filed affecting the Property or Borrower;
- (13) Borrower is delinquent on Borrower's payments or obligations under the Loan Documents; **or**
- (14) Any default exists under any of the other Loan Documents

b. In the event of default, Lender may, at its option and without notice, do one or more of the following:

- (1) Incur and assess such fees as set forth in the Loan Documents, such as, *inter alia*, stop notice fees, administrative fees and attorneys' fees.
- (2) Withhold making further disbursements;
- (3) Declare the amount of the Loan immediately due and payable;
- (4) Apply any amount of the Loan proceeds remaining in the construction loan account to the Loan balance;
- (5) Take possession of the Property, seize all personal property thereon (e.g., supplies, materials, inventory, etc.) and cause the building and/or improvements to be completed or secured at the expense of Borrower, which sums shall be secured by the Deed of Trust;
- (6) Immediately foreclose the Deed of Trust or cause the Trustee to exercise the power of sale granted therein;
- (7) Apply any remaining Loan funds to the direct payment of bills, claims, stop notices or liens of laborers or materialmen, which Lender, in its sole judgment, believes to be valid, without recourse against Lender in the event they are not valid;
- (8) File suit for any sums owing under the Loan Documents or for damages caused by Borrower's default;
- (9) Take such other action as Lender may deem necessary to protect Lender's interests; **or**



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CONSTRUCTION LOAN AGREEMENT

Loan No. 859705

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(10) Exercise any other right or remedy provided by any of the Loan Documents or provided at law or in equity.

8. CONSTRUCTION LOAN ACCOUNT

a. The Loan proceeds and the interest earned, if any, thereon, shall be held by Lender in a Construction Loan Account. Progress payments may be disbursed by checks made payable, in Lender's sole discretion, to Borrower and/or any of Borrower's contractors, subcontractors and suppliers. Each of the progress payments shall be made by Lender only after a satisfactory progress inspection report is made by Lender's inspector and upon the furnishing to Lender of receipts, waivers, releases or other proof satisfactory to Lender that all prior disbursements have been applied to the cost of construction. In the event Lender's loan requires more than 5 inspections, Lender may charge an additional fee for each inspection.

b. The final disbursement of the Loan proceeds, after deducting all Loan expenses and fees, shall be disbursed by Lender when the construction work is 100% complete, occupancy is authorized by the appropriate regulatory entity and Lender has been furnished with such satisfactory inspections, reports, affidavits, receipts, waivers, releases, notices of completion or other documents as Lender may require for its protection. Borrower authorizes Lender to file a notice of completion on Borrower's behalf.

c. Any inspections or determinations made by Lender, or waivers, releases or other instruments obtained by Lender, are made or obtained solely for Lender's own benefit and not in any way for the benefit or protection of the undersigned Borrower. Lender may accept and rely on any statements, figures, or representations of any contractor, builder, architect and/or any Borrower regarding labor and materials furnished or incorporated in the work and the cost thereof and as to matters relating to the construction work without the necessity of verifying the same. Any statement or representation by Borrower shall bind all Borrowers, if more than one. At its discretion, Lender may waive any inspections and make disbursements of the Loan proceeds solely upon the statements and representations of any contractor, builder, architect and/or Borrower. Lender has no obligation to Borrower for the performance of any contractor, builder or architect in carrying out the construction or improvements on the Property. Borrower shall make Borrower's own contractual arrangements with any contractor he/she/it employs, shall make Borrower's own arrangements with such contractor for any bonds required and shall be responsible for furnishing any receipts, releases and/or waivers Borrower may require for Borrower's protection. Lender, at its sole and absolute discretion, may require Borrower to post a bond of any nature and in any amount Lender deems necessary for its protection. Additionally, Lender shall approve and receive proof of any and all performance and/or completion bond coverage and be named as Additional Insured on such Bonding, to be determined at Lender's sole and absolute discretion.

d. In the event that Lender's estimated cost of completing any construction line item exceeds the remaining amount budgeted for that line item or that Lender's total estimated cost of completing the construction of the building and/or improvements exceeds the remaining amount of the Construction Loan Account (the "construction deficiency"), Borrower shall, on Lender's demand and at Lender's election, either:

- (1) Deposit an amount equal to the construction deficiency with Lender; or
- (2) Pay the construction deficiency towards the construction of the building and/or improvements prior to obtaining any further disbursements from Lender, and furnish Lender with proof, satisfactory to Lender, of Borrower's expenditure (i.e., paid invoices, receipts, lien waivers, releases, etc.)

9. BENEFIT

This Agreement is made for the sole protection of Borrower, Lender, and Lender's assignees, if any, and no other person shall have any right of action hereunder. Loan proceeds held in the Construction Loan Account are not held for the benefit of any of Borrower's laborers, materialmen, contractors or any other persons.



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CONSTRUCTION LOAN AGREEMENT

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10. CONSTRUCTION DISBURSEMENT POLICY

- a. When the Loan is closed, the balance of the Loan funds will be deposited in an adequately insured financial institution (the "Construction Loan Account"). Lender shall have the option of depositing said funds into either a savings account, which allows only six disbursements per month, or a regular, non-interest bearing, checking account with unlimited disbursements. If any interest is earned, it will accrue to Borrower to be applied in accordance with Section 4 of this Agreement.
- b. The initial disbursement from the Construction Loan Account will not be available to Borrower until Lender has been informed by the selected financial institution that the Construction Loan Account is open and the funds deposited therein are available for withdrawal. (This may be up to one week after the Loan records.)
- c. Funds will be disbursed according to the construction budget approved by Lender. Any changes affecting disbursements under the construction budget must have prior written approval from Lender.
- d. Lien waivers must be obtained from all subcontractors, material suppliers and all casual labor. Lender will provide Borrower with blank lien waivers for all reimbursement items. Checks issued by Lender will have lien waivers attached.
- e. Lender will require signed lien waivers for all casual labor for which reimbursement is requested and paid receipts for all material reimbursements. Subject to Lender's discretion, reimbursements will be made in the amount of \$400 or more.
- f. To avoid any delay in processing the construction disbursement, Borrower must follow these procedures:
- (1) Disbursement requests received in Lender's office by noon on Wednesday of any particular week will cause a disbursement to be available for Borrower to pick up after 3:00 p.m. on Friday of that week; or, if not picked up, then that disbursement will be mailed to Borrower. (Due to the large volume of disbursement requests, there will be no exceptions to this disbursement policy.)
 - (2) Borrower's request must include the following:
 - (a) The name shown on Borrower's account;
 - (b) Borrower's loan number;
 - (c) Check amount, to whom check is payable and purpose of disbursement (e.g., electrical material, drywall labor, etc.);
 - (d) All supporting documentation (e.g., invoices, proposals, estimates, lien waivers, etc.);
 - (e) Legal description of Property and/or its address; and
 - (f) Whether check is to be picked-up by Borrower or mailed.
- g. Before additional disbursements will be made, Lender must have in its possession, all paid bills and lien waivers for all prior checks issued.
- h. Anything charged on charge cards, credit lines or credit cards shall be Borrower's responsibility to pay; Lender will not reimburse for these expenditures. Lender will not issue checks to Borrower's credit card company.
- i. Lender will erect a construction sign on the Property which must remain on display throughout the course of construction.
- j. Disbursement checks issued by Lender are valid for 60 days from the date of issue. A stop payment will be issued on all lost or stolen checks and all checks which have not cleared the financial institution within 60 days from the date of issue. A stop payment fee will be charged against the Construction Loan Account for each applicable check.

11. GENERAL

- a. This Agreement is binding on Lender and Borrower (collectively, the "Parties") and their heirs, personal representatives, successors, permitted assigns, beneficiaries and trustees.
- b. This Agreement and the benefits hereunder are not assignable or transferable by Borrower. However, Lender may assign its rights and obligations under this Agreement and the other Loan Documents without prior notice to Borrower.



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CONSTRUCTION LOAN AGREEMENT

Loan No. 859705

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- c. Borrower acknowledges that Mortgages Ltd. is Lender's Loan Administrator
- d. Borrower specifically represents that there are no restrictions or zoning regulations which will restrict or prevent the proposed construction and intended use of the Property.
- e. This Agreement shall be governed by, construed and enforced in accordance with the laws of the State of Arizona, without regard to the choice of law rules of the State of Arizona. Borrower hereby submits to the jurisdiction of any Arizona State or Federal Court sitting in the City of Phoenix in any action or proceeding arising out of or relating to this Agreement. Borrower hereby waives the defense of an inconvenient forum.
- f. This Agreement sets forth the entire agreement and understanding of the Parties and supersedes all prior agreements, arrangements and understandings, written or oral, between the Parties.
- g. This Agreement may be amended, modified, superseded, canceled, renewed or extended and the terms or covenants hereof may be waived only by a written instrument executed by both Parties. The failure of Lender at any time or times to require performance of any provision of this Agreement shall in no manner affect the right of Lender at a later time to enforce the same. No waiver by Lender of the breach of any term or covenant contained in this Agreement, whether by conduct or otherwise, in any one or more instances, shall be deemed to be, or construed as, a further or continuing waiver by Lender of any such breach, or a waiver of the breach of any other term or covenant contained in this Agreement.
- h. If any term or other provision of this Agreement or any other Loan Document is declared invalid, illegal or incapable of being enforced by any rule of law or public policy, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect.

This Agreement is effective on the date set forth on the first page.

BORROWER:

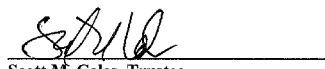
Ecco Holdings, L.L.C., an Arizona limited liability company



By: Eric E. Capranica
Its: Manager

LENDER:

Scott M. Coles or Christopher J. Olson, CPA, Trustees of the Mortgages Ltd. 401(k) Plan



Scott M. Coles, Trustee



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Ex. 4

Delay-Flex[®] Mortgage Line
PROMISSORY NOTE
Interest Only/Commercial

Loan No. 861005

August 29, 2007

Loan Amount: \$4,300,000.00

“Maker” (individually and collectively):

James T. Hurst and Linda L. Hurst, husband and wife
5025 N Central Ave #420
Phoenix, AZ 85012

“Holder”:
 Scott M. Coles or Christopher J. Olson, CPA, Trustees of the Mortgages Ltd.
 401(k) Plan

1. PROMISE TO PAY

a. As consideration for the receipt of a loan and other value, Maker hereby promises to pay the outstanding balance of the Designated Loan Amount **\$4,300,000.00** in United States currency (the "Principal"), plus interest, to the order of the Holder, **Scott M. Coles or Christopher J. Olson, CPA, Trustees of the Mortgages Ltd. 401(k) Plan**, or any subsequent holder of this Promissory Note (this "Note"). Maker understands and agrees that **Scott M. Coles or Christopher J. Olson, CPA, Trustees of the Mortgages Ltd. 401(k) Plan**, may subsequently transfer this Note, subject to the terms and conditions contained herein. **Scott M. Coles or Christopher J. Olson, CPA, Trustees of the Mortgages Ltd. 401(k) Plan**, or anyone who takes this Note by transfer and who is entitled to receive payments under this Note, is referred to hereinafter as the "Holder."

b. In connection with this Note and on the same date, Maker or a third party trustor executed a Deed of Trust, Assignment of Rents and Leases, Security Agreement and Fixture Filing (the "Deed of Trust") securing this Note (the "Deed of Trust") and a Servicing Agent Agreement. This Note, the Deed of Trust, the Servicing Agent Agreement and any other agreement, document or instrument evidencing, governing or securing the payment of the indebtedness evidenced by the Note are collectively referred to herein as the "Loan Documents". Maker understands and agrees that the Servicing Agent Agreement, which is incorporated herein by reference, authorizes the Servicing Agent appointed thereunder to, among other things, act on the Holder's behalf in accordance with this Note.

2. INTEREST

Interest will be charged on that portion of the Principal which has been committed by Holder, beginning, at Holder's discretion, on the Loan Funding Date or the Commitment Termination Date (in the event that the Loan closing was delayed for any reason other than one caused by Holder) continuing until the Principal has been paid in full. 'The Loan Funding Date' is the date upon which Lender allocates and designates sums sufficient to fund this Loan. The 'Commitment Termination Date' is the date upon which Lender's Loan commitment expires. Beginning on the Loan Funding Date or the Commitment Termination Date, as the case may be, and so long as no event of default exists, interest will accrue and be paid at the rate of **13.25%** per annum. In the event of default, Maker agrees to pay the Default Interest Rate as set forth herein.

3. DELAY-FLEX[®] MORTGAGE LINE

a. **Purpose.** Under the Delay-Flex[®] Mortgage Line, Maker may, subject to the conditions set forth in the Loan Documents and described herein, obtain the Delay-Flex amount designated as such and in accordance to the portions set-forth in the Delay-Flex Funding Schedule outlined in the Delay-Flex Disbursement Summary executed in connection with this Loan.

b. **The Funding of each Delay-Flex portion is subject to Holder's discretionary approval and satisfaction of the following conditions:**

- (1) There is no then-existing default under any of the Loan Documents and there exist no facts which, with the giving of notice or passage of time, would constitute a default under any of the Loan Documents;
- (2) Holder, or its agent, has conducted an inspection of the Trust Property and the present condition of the Trust Property has been approved;



PROMISSORY NOTE

Loan No. 861005

August 29, 2007

Page 2

- (3) The increased loan amount following the funding of each Delay-Flex portion, if made, will not exceed Holder's lending guidelines for the Trust Property;
- (4) Holder may further condition any delayed funding on endorsements to the Holders Title Policy insuring the continued validity and priority of the Deed of Trust, Holder's approval of Maker's proposed utilization of the Delay-Flex proceeds and any other reasonable assurances or conditions Holder may require or impose;
- (5) Beneficiary shall fund each Delay-Flex portion on a date set by Beneficiary at its sole and absolute discretion, which will occur no earlier than the 30th day prior to the Fund Date set forth in the Delay-Flex Funding Schedule and no later than the 30th consecutive day following the Fund Date set forth in the Delay-Flex Funding Schedule; **and**
- (6) **Funding the total Delay-Flex portion of the loan is not to exceed nine (9) months from the date of Loan closing. The Delay-Flex Funding Schedule must be completed by Loan closing and included in the Disbursement Summary. Any modification to the Delay-Flex Funding Schedule requires written approval from Holder or Servicing Agent.**

c. **Deed of Trust.** The Deed of Trust secures the entire Designated Loan Amount regardless of the amount of the Initial Funding or any subsequent fundings on the Loan account. However, the payoff amount required to release the Deed of Trust shall be based on the actual outstanding balance of the Loan account at the time of payoff.

4. PAYMENTS

a. **Time of Payments.** Maker will pay **interest only** by making monthly payments on the **1st** day of each month beginning **October 1, 2007**. Maker will continue to make monthly payments until Maker has paid all of the Principal, interest and any other charges that Maker may owe under this Note or the other Loan Documents. Monthly payments received by Holder in advance will not be posted to Maker's account greater than 14 calendar days prior to the payment due date.

b. Maker's monthly payments will be applied to the following in such order as Holder, in its sole discretion, may determine

- (i) To the payment of any costs, fees or other charges incurred under this Note and the other Loan Documents;
- (ii) To the payment of accrued interest; **and**
- (iii) To the reduction of the Principal balance.

c. All remaining Principal, together with accrued unpaid interest and any other amounts due hereunder or under the Loan Documents (collectively, the "Maker's Liabilities") shall be due and payable in full on **August 30, 2008** (the "Maturity Date"), unless Maker's Liabilities become due and payable sooner because of acceleration, in which case Maker's Liabilities shall be due and payable in full on the date of such acceleration. Maker understands that the Maturity Date requires Maker to pay all Principal, interest and all other charges then due.

d. **Place of Payments.** Maker will make all monthly payments to Servicing Agent at 55 E. Thomas Road, Phoenix, Arizona 85012, or at a different address if Servicing Agent has given Maker written notice of a different address.

5. RIGHT TO PREPAY AND PREPAYMENT PREMIUM

a. Maker has the right to make payments of Principal at any time before they are due ("Prepayment") provided that:

- (1) All sums due under the Note are current;
- (2) Prepayment is made on a monthly payment due date;
- (3) Payment of a prepayment premium equal to **5%** of the Principal balance of the Note before reduction, if Prepayment is made before **August 30, 2007**; **and**
- (4) At the time of making a Prepayment, Maker advises Servicing Agent, in writing that Maker is making a Prepayment.



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PROMISSORY NOTE

Loan No. 861005

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b. Any payment of Principal only is considered a Prepayment. Holder will use all of Maker's Prepayments to reduce the amount of Principal that Maker owes under this Note. If Maker makes a partial Prepayment, there may be a change in the amount of Maker's monthly payment.

6. LOAN CHARGES

a. **Note Interest Rate.** If Holder charges or if Maker pays any fees, charges or other sums pursuant to this Note or any other Loan Documents which, under the law, may be deemed to be interest, then the interest rate set forth in Section 3 above shall be deemed to be increased to include such additional interest. Therefore, if it is determined that the rate of interest applicable to this Note is greater than the rate of interest stated in Section 3 above, then the actual rate thus determined shall become the agreed upon and contracted rate of interest for this Note.

b. **Interpretation and Remedy.** Notwithstanding any provision herein or in any of the Loan Documents, the total liability for payments in the nature of interest shall not exceed the limits now imposed by the usury laws of Arizona, if any. If a law, which applies to this Note and which sets maximum loan charges, is finally interpreted so that the interest or other loan charges collected or to be collected in connection with this Note exceed the permitted limits, then: **(i)** loan charges shall be reduced by Holder in an amount sufficient to reduce the loan charges to the permitted limit; **and (ii)** any sums already collected from Maker which exceeded permitted limits will be refunded to Maker. Holder may choose to make this refund by reducing the Principal Maker owes under this Note or by making a direct payment to Maker. If a refund reduces Principal, then the reduction will be treated as a partial Prepayment and the provisions of 5 will not apply.

7. MAKER'S FAILURE TO PAY AS REQUIRED

a. **Late Charge for Overdue Payments.** If Holder has not received the full amount of any of Maker's monthly payments by the close of business on a date which is five (5) calendar days after the date it is due, Maker will pay a late charge to **Holder**. The amount of the late charge will be **35%** of the monthly Principal and Interest payment. In the event that this Note is not paid in full by the Maturity Date, Maker acknowledges that a late charge will be assessed in the amount of **3%** of the remaining Principal balance on the next day following the Maturity Date and on the same day each month thereafter until the Note is paid in full.

b. **Default.** A default under this Note if exists if any of the following occurs:

- (i) Maker Fails to pay the full amount of each monthly payment on or before the date it is due;
- (ii) Maker Fails to pay all sums due as of the Maturity Date;
- (iii) Maker Fails to pay all sums required by any other Loan Documents;
- (iv) Maker Fails to perform or observe any covenants or obligations set forth herein or in any other Loan Documents; **or**
- (v) Any default exists under and of the other Loan Documents.

c. **Cross Default.** In the event that Maker has secured or secures additional loans through Mortgages Ltd., regardless as to whether Mortgages Ltd. has assigned its interests in the Additional Loans or this Loan, then a default in any Additional Loan shall constitute a default in this Loan and a default in this Loan shall constitute a default in the Additional Loans.

d. **Acceleration.** If a default exists, then Holder may accelerate the Maturity Date and declare that all sums owing under this Note and the other Loan Documents are immediately due and payable, without notice.

e. **No Waiver By Holder.** Failure of Holder, for any period of time or on more that one occasion, to exercise its option to accelerate the Maturity Date shall not constitute a waiver of the right to exercise the same at any time during the continued existence of an event of default or any subsequent event of default.



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PROMISSORY NOTE

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f. Payment of Holder's Costs and Expenses. If an event of default occurs, Maker shall pay all costs of enforcement, collection and preparation therefor, whether or not any action or proceeding is commenced in any court and, if commenced, during all appeals, including attorneys' fees, guarantor collection expenses (as described in the Servicing Agent Agreement), appraisal fees, inspection fees, expert witness fees, foreclosure processing fees, litigation costs and all other related expenses (collectively, "Default Costs"). Maker, at the option of Holder, shall appear and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Holder and shall pay all costs and expenses of Holder, including the cost of evidence of title and attorneys' fees, in any such action or proceeding in which Holder may appear or be named, with interest thereon at the Default Interest Rate from the date incurred or expended until paid in full.

g. Default Interest. If a default exists, then (in addition to the late charge as stated in Section 7(a) above) the interest rate on the unpaid Principal shall be **increased to 27% per annum** (the "Default Interest Rate") commencing on the date through which interest was last paid, and shall continue, at the option of the Holder, until all payments have been made current, all sums due under this Note and the other Loan Documents have been paid in full and/or all non-monetary defaults under the Loan Documents have been cured to the Holder's satisfaction. Any advances made by Holder, pursuant to the terms of the Loan Documents, and all Default Costs shall accrue interest at the Default Interest Rate. In the event Maker files or is involuntarily placed in bankruptcy, Maker hereby agrees that Holder shall be entitled to interest on all Loan arrearages of whatever nature at the Default Interest Rate.

8. NOTICES

Unless applicable law requires a different method, any notice that must be given to Maker under this Note will be given by mailing it by first class mail or by delivering it to Maker at the address stated above or at a different address if Maker gives Servicing Agent written notice of a different address. Any notice that must be given to Holder shall be given by mailing it by first class mail to Servicing Agent, at 55 E. Thomas Road, Phoenix, Arizona 85012, or at a different address if Servicing Agent has given Maker written notice of a different address.

9. OBLIGATIONS OF PERSONS UNDER THIS NOTE

Any person who is a guarantor, surety or indorser of this Note is also obligated to perform under the terms of this Note. Any subsequent person who takes over Maker's rights under this Note by whatever means, including the obligations of a guarantor, surety or indorser of this Note, is also bound by all of the promises and liabilities created by this Note and the other Loan Documents. Holder may enforce its rights under this Note against each Maker or successor, jointly and severally. This means that each signer may be required to pay all sums owed under this Note irrespective of the type, value or ownership of the property securing the Note.

10. WAIVERS

Maker, for itself and all endorsers, guarantors and sureties of this Note, and their heirs, personal representatives, successors, assigns, beneficiaries and trustees, hereby waives presentment for payment, demand, notice of nonpayment, notice of dishonor, protest of any dishonor, notice of protest and protest of this Note, and all other notices in connection with the delivery, acceptance, performance, default or enforcement of the payment of this Note, and agrees that their respective liability shall be unconditional and without regard to the liability of any other party and shall not be in any manner affected by any indulgence, extension of time, renewal, waiver or modification granted or consented to by Holder. Maker, for itself and all endorsers, guarantors and sureties of the Note, and their heirs, personal representatives, successors, assigns, beneficiaries and trustees, hereby consents to every extension of time, renewal, waiver or modification that may be granted by Holder with respect to the payment or other provisions of this Note, and to the release of any makers, endorsers, guarantors or sureties, and of any collateral given to secure the payment hereof, or any part hereof, with or without substitution, and agrees that additional makers, endorsers, guarantors or sureties may become parties hereto without notice to Maker or to any endorser, guarantor or surety and without affecting the liability of any of them.

11. SECURITY

This Note and the other Loan Documents, including, among others, the Deed of Trust, were executed by Maker and, if necessary, various other parties to protect Holder from possible losses which might result if Maker does not perform the obligations set forth in this Note. The Loan Documents describe how, and under what conditions, Maker may be required to make immediate payment in full of all sums Maker owes under this Note. Some of those conditions, but not all, are described as follows:



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PROMISSORY NOTE

Loan No. 861005

August 29, 2007

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- a. If Maker or another party, such as a third party trustor of the Deed of Trust securing this Note, sells, conveys, transfers, assigns, contracts for sale, leases with option to purchase or further encumbers the property securing the Note (the "Secured Property") or any part thereof, including, but not limited to, any further assignment of the Secured Property's income, wraparound mortgage or purchase contract;
- b. If Maker is a limited liability company and any ownership interest in Maker is sold, conveyed or transferred;
- c. If Maker is a partnership and any general partnership interest in Maker is sold, conveyed or transferred, either voluntarily or involuntarily without the prior written consent of Holder; **or**
- d. If Maker is a corporation and the controlling interest in Maker is sold, conveyed or transferred.

Upon the occurrence of any of the above or any other triggering events set forth in the Loan Documents, Holder, at its option, shall have the right to accelerate the sums owing under the Note and those sums shall become immediately due and payable to Holder. This provision shall apply to each and every such sale, conveyance, transfer, lease, encumbrance or assignment, regardless as to whether Holder has consented or waived its rights in connection with any such previous sale, conveyance, transfer, lease, encumbrance or assignment by Maker.

12. TIME

Time is of the essence in all aspects of this Note and the Loan Documents.

13. GENERAL

- a. This Note is binding on Maker and Maker's heirs, personal representatives, successors, permitted assigns, beneficiaries and trustees.
- b. This Note and the benefits hereunder are not assignable or transferable by Maker. However, Holder may assign its rights under this Note and the other Loan Documents without prior notice to Maker.
- c. Maker acknowledges that Mortgages Ltd. is Holder's Servicing Agent.
- d. This Note shall be governed by, construed and enforced in accordance with the laws of the State of Arizona, without regard to the choice of law rules of the State of Arizona. Maker hereby submits to the jurisdiction of any Arizona State or Federal Court sitting in the City of Phoenix in any action or proceeding arising out of or relating to this Note. Maker hereby waives the defense of an inconvenient forum.
- e. Maker, and Holder by its acceptance of this Note, hereby waive their respective rights to a trial by jury in any action or proceeding based upon, or related to, the subject matter of this Note and the business relationship that it being established. This waiver is knowingly, intentionally, voluntarily and irrevocably made by Maker and by Holder and Maker acknowledges that neither Holder nor any person acting on behalf of Holder has made any representations of fact to include this waiver of trial by jury or has taken any actions which in any way modify or nullify its effect. Maker and Holder acknowledge that this waiver is a material inducement to enter into a business relationship, that Maker and holder have already relied on this waiver in entering into this Note and that each of them will continue to rely on this wavier in their related future dealings.
- f. This Note, together with the other Loan Documents, sets forth the entire agreement and understanding between Maker and Holder, and supersedes all prior agreements, arrangements and understandings, written or oral, between Maker and Holder.
- g. This Note may be amended, modified, superseded, canceled, renewed or extended and the terms or covenants hereof may be waived only by a written instrument executed by Maker, Holder. The failure of Servicing Agent, at any time or times, to require performance of any provision of this Note shall in no manner affect the right of the Holder or Servicing Agent at a later time to enforce the same. No waiver by Holder or Servicing Agent of the breach of any term or covenant contained in this Note, whether by conduct or otherwise, in any one or more instances, shall be deemed to be, or construed as, a further or continuing waiver by Holder or Servicing Agent of any such breach, or a waiver of the breach of any other term or covenant contained in this Note.



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PROMISSORY NOTE

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h. If any term or other provision of this Note or any other Loan Document is declared invalid, illegal or incapable of being enforced by any rule of law or public policy, all other conditions and provisions of this Note shall nevertheless remain in full force and effect.

i. Notwithstanding any provision contained in this Note or any of the other Loan Documents to the contrary, including, without limitation, Maker's right to obtain advances or disbursements under the Loan, Holder may, in Holder's sole and absolute discretion, exercise Holder's rights and enforce Holder's remedies under and pursuant to Title 33, Chapter 7, Article 9 of Arizona Revised Statutes (including, without limitation, A.R.S. Section 33-1058), without any liability to Maker and without releasing Maker from any of Maker's obligations, duties and liabilities under the Loan Documents.

j. As used in this Note, the word "include(s)" means "include(s), without limitation," and the word "including" means "including, without limitation."

IN WITNESS WHEREOF, this Note has been executed as of the date set forth on the first page.

MAKER:

James F. Hurst
James F. Hurst

Linda L. Hurst
Linda L. Hurst



STATE OF AZ)
)ss
COUNTY OF MARICOPA)

The foregoing instrument was acknowledged before me 30th day of August, 2007 by **James T. Hurst.**

Diane M. Ellis
Notary Public

My Commission Expires:

STATE OF AZ)
)ss
COUNTY OF MARICOPA)



The foregoing instrument was acknowledged before me 30th day of August, 2007 by **Linda L. Hurst.**

Diane M. Ellis
Notary Public

My Commission Expires:



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Ex. 5

When recorded return to:

MORTGAGES LTD.
55 E. Thomas Rd.
Phoenix, Arizona 85012

**DEED OF TRUST, ASSIGNMENT OF RENTS AND LEASES,
SECURITY AGREEMENT AND FIXTURE FILING**

Loan No. 861005 **August 29, 2007**

Secured Loan Amount: \$4,300,000.00

“**Trustor**” (individually and collectively):

James T. Hurst and Linda L. Hurst, husband and wife, as as community property with right of survivorship
5025 N Central Ave #420
Phoenix, AZ 85012

“**Trustee**”:
Scott M. Coles, a licensed real estate broker
55 E. Thomas Rd.
Phoenix, AZ 85012

“**Beneficiary**”:
Scott M. Coles or Christopher J. Olson, CPA, Trustees of the Mortgages Ltd. 401(k) Plan
55 E. Thomas Rd.
Phoenix, Arizona 85012

This Deed of Trust, Assignment of Rents, Leases, Security Agreement, and Fixture Filing (this “Deed of Trust”), is executed by Trustor in favor of Trustee for the benefit of Beneficiary as of the date written above. In connection with this Deed of Trust and on the same date, Trustor or a third party borrower has executed a Promissory Note (the “Note”), a Servicing Agent Agreement and other related documents to evidence and secure the monetary and non-monetary obligations owed to Beneficiary by Trustor and related third parties. These documents, including this Deed of Trust, and any other agreement, document, or instrument evidencing, governing or securing the payment of the indebtedness evidenced by the Note, are collectively referred to as the “Loan Documents.” Trustor understands and agrees that Servicing Agent Agreement, which is incorporated herein by reference, authorizes Servicing Agent appointed thereunder to, among other things, act on the Beneficiary’s behalf in accordance with this Deed of Trust.

1. TRUST PROPERTY

For good and valuable consideration, including the indebtedness referenced herein and the trust created hereby, the receipt and sufficiency of which is hereby acknowledged, Trustor irrevocably grants, transfers, conveys and assigns to Trustee, in trust, with the power of sale, for the benefit and security of Beneficiary, all of Trustor’s present and future estate, right, title and interest, under and subject to the terms and conditions set forth herein, in and to that certain real property located in **Maricopa County**, Arizona, more particularly described in **Exhibit A** attached hereto and incorporated herein by this reference (the “Real Property”), together with all of the following:

- a. Buildings, structures, fixtures or other improvements now or hereafter placed on the Real Property (collectively, the “Improvements”);
- b. All existing and future leases, subleases, licenses and other agreements for the use and occupancy of all or any portion of the Real Property;
- c. All rents, issues and profits and income generated by the Real Property (the “Property Income”);
- d. All classes of property now or at any time hereafter attached to or used in any way in connection with the use, operation or occupancy of the Real Property;



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**DEED OF TRUST, ASSIGNMENT OF RENTS AND LEASES,
SECURITY AGREEMENT AND FIXTURE FILING**

Loan No. 861005

August 29, 2007

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e. All property, rights, permits and privileges now or hereafter owned by Trustor or now or hereafter appurtenant to the Real Property, which entitle Trustor or the Real Property to receive all available utilities for use thereon;

f. All awards resulting from eminent domain or condemnation in whole or in part, proceeds of insurance required on the Real Property and any other award for damage to or destruction of the Real Property or the Improvements;

g. Any licenses, contracts, permits and agreements required or used in connection with the ownership, operation or maintenance of the Real Property, and the right to the use of any trade names, trademarks or service marks, now or hereafter associated with operation of any business conducted on the Real Property;

h. All "Impounds," as defined herein, held by Beneficiary or its Servicing Agent for the benefit of Trustor, including, but not limited to, Impounds for taxes, assessments, insurance, homeowners' dues and construction;

i. All easements, profits, rights of way and other rights now owned or hereafter assigned to Trustor; and

j. All proceeds of the foregoing, including all proceeds of and all unearned premiums due from all insurance policies covering the Real Property.

All of the foregoing are collectively referred to hereinafter as the "Trust Property."

2. TRUSTOR'S REPRESENTATIONS AND WARRANTIES

Trustor hereby represents and warrants that Trustor has a good, marketable and insurable title to the Trust Property acceptable to Beneficiary and that Trustor holds fee simple title to the Real Property. Trustor forever warrants and shall defend title to the Trust Property for the Beneficiary, its successors and assigns, against all claims whatsoever; subject, however, to the following:

a. The right, power and authority hereinafter given to and conferred upon Beneficiary to collect and apply such Property Income; and

b. Any easements and restrictions approved by Beneficiary and listed in the schedule of exceptions to coverage in any title insurance policy insuring Beneficiary's interest in the Trust Property.

3. SECURITY

This Deed of Trust secures the following (the "Obligations"), in such order of priority as Beneficiary may elect:

a. Strict performance of every obligation of Trustor and the third party borrower, if any, under all Loan Documents;

b. Payment of all sums due under the Note including the principal amount of the 'Initial Funding' of \$4,300,000.00, interest thereon and all other charges assessed thereunder, such as late charges, notice fees and prepayment premiums;

c. In the event that this Deed of Trust secures a Note with an Equity-Flex[®] Mortgage Line and "Advances," as defined therein, are made by Beneficiary, then payment of the aggregate amount of all Advances and all Equity-Flex Fees (as defined in said Note);

d. In the event of default, payment of interest at the "Default Interest Rate," as defined by the Note;



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**DEED OF TRUST, ASSIGNMENT OF RENTS AND LEASES,
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Loan No. 861005

August 29, 2007

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e. Payment of all sums incurred by Beneficiary or its Servicing Agent, with interest thereon, to protect, preserve, repair or maintain the Trust Property or to cure any senior or junior loans, trust deeds, mortgages or other security instruments, including taxes, assessments, homeowners' dues, ground rents, force placed insurance, attorneys' fees, litigation costs, appraisal fees, inspection fees, project manager fees, receiver fees and other expert or consulting fees;

f. Payment of all sums incurred by Beneficiary or its Servicing Agent, with interest thereon, in the event of Trustor or the third party borrower's default under the Loan Documents, including, without limitation, attorneys' fees, litigation costs and expenses, appellate costs and expenses, bankruptcy fees, foreclosure fees, trustee fees, receiver fees, expert fees and witness fees;

g. Payment of all sums incurred by Beneficiary or its Servicing Agent, with interest thereon, in the collection of amounts owed by any guarantor of the Note, including attorneys' fees, litigation costs and expenses, appellate costs and expenses, bankruptcy fees, foreclosure fees, trustee fees, receiver fees, expert fees and witness fees;

h. Strict performance of every obligation of Trustor and the third party borrower, if any, contained in any agreement, document or instrument, hereafter executed by Trustor or the third party borrower, reciting that the obligations thereunder are secured by this Deed of Trust, which includes Advance Agreements, forbearance agreements, extension agreements, payment plans and Note modifications;

i. Payment of all other sums, with interest thereon, that hereafter may be loaned to Trustor or the third party borrower, if any, or their successors or assigns, by Beneficiary or its successors or assigns when evidenced by an agreement or promissory note reciting that they are secured by this Deed of Trust, which includes, but is not limited to, Advance Agreements, forbearance agreements, extension agreements, payment plans and Note modifications;

j. Strict compliance with and performance of each and every provision of any declaration of covenants, conditions and restrictions, any maintenance, easement and party wall agreement or any other agreement, document or instrument by which the Trust Property is bound or may be affected; **and**

k. In the event of default, payment of any fees incurred by Beneficiary to Servicing Agent to effect a sale in whole or in part of Beneficiary's interest in the Loan Documents.

4. TRUSTOR'S OBLIGATIONS

a. **Trust Property.** Trustor shall keep the Trust Property in good condition and repair. Trustor shall not to remove or demolish any Improvements on the Real Property. Trustor shall complete or restore promptly and in good and workmanlike manner any Improvement which may be constructed, damaged or destroyed, and pay, when due, all claims for labor performed and materials furnished therefor. Trustor shall comply with all laws affecting the Trust Property or requiring any alterations or Improvements to be made thereon. Trustor shall not (i) commit or permit waste of the Trust Property or (ii) abandon the Trust Property. Trustor shall not initiate or acquiesce in a change in the zoning classification of the Real Property without Beneficiary's prior written consent. Trustor shall not commit, suffer or permit any act to or upon the Trust Property in violation of any law. Trustor shall do all acts which, from the character or use of the Trust Property, may be reasonably necessary.

b. **Appraisal.** If the Loan's principal exceeds \$250,000.00, then Trustor shall obtain, at Trustor's sole cost and expense, a MAI or equivalently certified appraisal of the Trust Property addressed to Beneficiary and prepared by an appraiser approved by Beneficiary. Trustor shall provide Beneficiary a copy of the appraisal and all relevant supporting documents within 90 days of the date of the Loan closing. If the appraisal is not received by Beneficiary within that 90 day period, then the Loan shall be in default and Beneficiary shall be entitled to pursue any and all remedies available under the Loan Documents. In addition, at the request of Beneficiary, Trustor shall provide an updated MAI or equivalently certified appraisal of the Trust Property within 30 days of such request. If such updated appraisal is not received by Beneficiary within that 30 day period, then the Loan shall be in default and Beneficiary shall be entitled to pursue any and all remedies available under the Loan Documents.



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**DEED OF TRUST, ASSIGNMENT OF RENTS AND LEASES,
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c. Insurance and Casualty. Trustor shall keep all Improvements now or hereafter erected on the Real Property continuously insured against loss by fire or other hazards in an amount not less than the replacement cost of the Improvements, and shall maintain and evidence liability insurance in the minimum amount of **\$1,000,000** or in such other amount required by Beneficiary. When requested by Beneficiary, Trustor shall provide and maintain insurance policies with annual premiums in amounts required by Beneficiary covering vandalism and malicious mischief, sprinkler leakage, rent abatement, business loss, flood damage and/or all other risks commonly insured against by persons owning like properties in the locality of the Property or commonly required by prudent institutional investors making loans secured by liens against such properties. All insurance policies or certificates shall be held by Beneficiary, shall be in such companies as Beneficiary may approve and shall name the Beneficiary as an additional insured with the proceeds payable first to Beneficiary, as its interest may appear, and then to Trustor. All insurance policies shall provide that Beneficiary is to receive 30 days notice prior to cancellation or non-renewal and shall otherwise be in the form and substance satisfactory to Beneficiary. All renewal policies shall be delivered to Beneficiary 30 days before the expiration of the then existing policies together with satisfactory proof that the premiums for renewal have been paid. The amount collected under any insurance policy may be applied in whole or in part by Beneficiary to any indebtedness hereby secured and in such order as Beneficiary may determine whether or not then due, or, at the option of Beneficiary, the entire amount so collected or any part thereof may be released to Trustor for restoration or repair of the Trust Property upon such terms and conditions as are acceptable to Beneficiary. Such application or release shall not cure or waive any default hereunder or cause discontinuance of any action that may have been or may thereafter be taken by Beneficiary or Trustee because of such default. In the event of loss, Trustor shall give immediate notice to Beneficiary. If Trustor has not given proof of loss, then Beneficiary may make proof of loss at any time. Each insurance company is hereby authorized and directed to make payment for any loss directly to Beneficiary, instead of to Trustor, or to Trustor and Beneficiary jointly. Beneficiary shall not be liable for any insurance, for the collection of any insurance proceeds or for the insolvency of any insurer. Any application of insurance proceeds to the outstanding Loan balance by Beneficiary shall not cure or waive any event of default. In the event of the sale of the Trust Property under the power of sale granted to Trustee, the judicial foreclosure of this Deed of Trust or the takeover of possession by a court appointed receiver or trustee, then all right, title and interest of Trustor to such policies of insurance shall inure to the benefit of and shall pass to the successor title-holder of the Trust Property (or to the receiver, if applicable).

d. Litigation. If an event of default occurs under the Loan Documents, Trustor shall pay all costs of enforcement, collection and preparation therefor, whether or not any action or proceeding is commenced in any court through all appeals, which includes Servicing Agent administration fees, attorneys' fees, appraisal fees, inspection fees, expert witness fees and foreclosure processing fees. Trustor, at the option of Beneficiary, shall appear and defend any action or proceeding purporting to affect the Trust Property or the rights or powers of Beneficiary and shall pay all costs and expenses of Beneficiary, including all costs of proving title and attorney's fees, with interest thereon at the Default Interest Rate from the date incurred or expended.

e. Property Payments. Trustor shall pay, when due, and before any interest, collection fees or penalties shall accrue, the following:

- (1) All taxes, assessments, homeowners' dues, owners' association fees, ground rents, and any other charges and obligations which may become a lien or charge against the Trust Property;
- (2) All encumbrances, charges and liens on the Trust Property or any part thereof; **and**
- (3) All costs, fees and expenses incurred under this Deed of Trust and the other Loan Documents, including all Trustee's fees for the issuance of any deed of partial or full release and partial or full reconveyance and all charges, costs and expenses incurred in the event of default or reinstatement.

f. Right to Cure. If Trustor fails to make any payment or to do any act as required hereby, Beneficiary or Trustee, but without obligation to do so and without prior notice or demand upon Trustor and without releasing Trustor from any obligation herein, may take such action in such manner and to such extent as either may deem necessary to protect the Trust Property. Beneficiary or Trustee may enter the Real Property for such purposes, appear in and defend any action or proceeding purporting to affect the Trust Property or the rights or powers of Beneficiary or Trustee and pay, purchase, contest or compromise any encumbrance, charge or lien, which in the judgment of either Beneficiary or Trustee appears to jeopardize Beneficiary's security hereunder, and, in exercising any such powers, pay necessary expenses, employ counsel and pay attorneys' fees.



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**DEED OF TRUST, ASSIGNMENT OF RENTS AND LEASES,
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Loan No. 861005

August 29, 2007

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g. Expenditures. Trustor shall pay immediately all sums expended by Beneficiary or Trustee pursuant to the provisions of this Deed of Trust or the other Loan Documents, together with interest from date of such expenditure at the Default Interest Rate. Any amount paid by Beneficiary or Trustee to protect the Trust Property, together with interest thereon, shall become a part of the indebtedness secured by this Deed of Trust and a lien on the Trust Property, and shall be immediately due and payable to Beneficiary or Trustee.

h. Impounds. Whenever required by Beneficiary, Trustor shall pay with each monthly installment payment an additional sum equal to 1/12th of the annual real property taxes, special assessments, homeowners' or owners' association dues, ground rents, if any, and insurance premiums next due on the Trust Property ("Impounds"), as may be estimated by Beneficiary, which will be held by Beneficiary in a special account (the "Impound Account"). Impounds may be commingled with other Impounds held by Beneficiary or its Servicing Agent. Any interest on Impounds shall accrue to Beneficiary or its Servicing Agent. Impounds may be used to pay taxes, assessments, homeowners' or owners' association dues, ground rents, if any, and insurance premiums before delinquent or before the insurance expires. If any of the Impounds, in the opinion of Beneficiary, are insufficient to accumulate a fund with which to pay such items, Trustor shall pay Beneficiary upon demand the amount necessary to make up the deficiency. If the Impounds held by Beneficiary exceed the amount necessary, in the opinion of Beneficiary, to pay such items, such excess shall, at Beneficiary's option, be refunded to Trustor or shall be credited on any sums due Beneficiary under this Deed of Trust or the other Loan Documents. If there is a default under this Deed of Trust or the other Loan Documents, Beneficiary may apply, at its discretion, the amount then remaining in the Impound Account to any sums due under this Deed of Trust or the other Loan Documents. Any Impound amount is subject to change in the event that the county tax assessor increases or decreases the valuation of the Trust Property, or in the event that there is any other change of circumstances affecting the Trust Property. Any sums held in any construction loan account shall be considered an "Impound."

i. Financial Statements. Trustor shall provide in form and substance satisfactory to Beneficiary: (a) within 90 days after the end of each calendar year, a statement of income and expenses, relating to the Trust Property for such calendar year; (b) within 90 days after the end of each calendar year, financial statements for such year from Trustor and any Guarantor of the Loan; (c) within 30 days after the end of each calendar year, a rent roll for the Trust Property as of January 1 of the current year; (d) upon the request of Beneficiary, all filed Federal and State income tax returns for Trustor and any Guarantor of the Loan; and (e) such other financial information concerning the Trust Property, Trustor, or any Guarantor as Beneficiary may reasonably require from time to time. Beneficiary or its designated agent shall have the right to inspect the books and records with respect to the Trust Property at any time, upon reasonable notice to Trustor.

j. Environmental Matters.

(i) Trustor represents and warrants to Beneficiary, to the best of Trustor's knowledge after all appropriate inquiry, and covenants that there are no, nor will there be, for so long as any of the indebtedness secured hereby remains outstanding, any Hazardous Materials (as defined below) generated, released, stored, buried, or deposited over, beneath, in or upon the Real Property or on or beneath the surface of adjacent property, except as such Hazardous Materials may be used, stored or transported in connection with the permitted uses of the Trust Property and then only in de minimus quantities and only to the extent permitted by law after obtaining all necessary permits and licenses therefor. "Hazardous Materials" shall mean and include any pollutants, flammables, explosives, petroleum (including crude oil) or any fraction thereof, radioactive materials, hazardous wastes, dangerous or toxic substances or related materials, including substances defined as or included within the definition of toxic or hazardous substances, wastes or materials under any federal, state or local laws, ordinances, regulations or guidelines which relate to pollution, the environment or the protection of public health and safety, or limiting, prohibiting or otherwise regulating the presence, sale, recycling, generation, manufacture, use, transportation, disposal, release, storage, treatment of, or response or exposure to, toxic or hazardous substances, wastes or materials. Such laws, ordinances and regulations are hereinafter collectively referred to as the "Hazardous Materials Laws."



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(ii) Trustor shall, and Trustor shall cause all employees, agents, tenants, contractors and subcontractors of Trustor and any other persons from time to time present on or occupying the Trust Property to, keep and maintain the Trust Property in compliance with, and not cause or knowingly permit the Trust Property to be in violation of, any applicable Hazardous Materials Laws. Neither Trustor, nor any employees, agents, tenants, contractors or subcontractors of Trustor, nor any other persons occupying or present upon the Trust Property, shall use, generate, manufacture, store or dispose of on, under or about the Real Property, or transport to or from the Real Property any Hazardous Materials, except as such Hazardous Materials may be used, stored or transported in connection with the permitted uses of the Trust Property and then only in de minimus quantities and only to the extent permitted by law after obtaining all necessary permits and licenses therefor.

(iii) Trustor shall be solely responsible for, and shall indemnify, defend, protect and hold harmless Beneficiary, its directors, officers, employees, agents, successors and assigns for, from and against, any claim, demand, lawsuit, loss, damage, cost, expense or liability directly or indirectly arising out of or attributable to the use, generation, storage, release, threatened release, discharge, disposal or presence of Hazardous Materials on, under or about the Real Property (whether occurring prior to or during the pendency of the indebtedness secured hereby or otherwise and regardless of by whom caused, whether by Trustor or any predecessor in title or any owner of land adjacent to the Real Property or any other third party, or any employee, agent, tenant, contractor or subcontractor of Trustor or any predecessor in title or any such adjacent land owner or any third party) including: (i) claims of third parties (including governmental agencies) for injury or death to any person or for damage or destruction of any property; (ii) claims for response costs, clean-up costs, costs and expenses of removal and restoration, including fees of attorneys and experts, and costs of determining the existence of Hazardous Materials and reporting same to any governmental agency; (iii) any and all other claims for expenses or obligations, including attorneys' fees, costs and other expenses; (iv) any and all penalties threatened, sought or imposed on account of a violation of any Hazardous Materials Laws; (v) all fees of any consultants, attorneys and engineering firms retained in connection with monitoring the obligations of Trustor under this Deed of Trust; and (vi) any loss occasioned by diminution in the value of the Trust Property which results from any of the foregoing.

5. EQUITY-FLEX®/ DELAY FLEX® MORTGAGE LINE

a. **Equity-Flex®.** If that this Deed of Trust secures a Note with an Equity-Flex® Mortgage Line, Trustor may use, subject to the conditions set forth in the Note, the existing equity in the Trust Property in order to obtain additional funds beyond the amount of the Initial Funding of \$4,200,000.00 up to the Secured Loan Amount of \$4,200,000.00. This Deed of Trust secures the entire Secured Loan Amount regardless of the amount of the Initial Funding or any subsequent draws ('Advances') on the Loan account. The payoff amount required to release this Deed of Trust shall be based on the actual outstanding balance of the Loan account at the time of payoff.

Notice: If Beneficiary consents to alienation, assignment or transfer of the Trust Property or the obligations under this Deed of Trust in accordance with Section 14, all assignees, transferees and junior lien holders are hereby advised that this Deed of Trust provides for adjustable release provisions and fluctuating principal balances at Beneficiary's discretion.

b. **Delay-Flex®.** If this Deed of Trust secures a Note with a Delay-Flex® Mortgage Line, Trustor may, subject to the conditions set forth in the Loan Documents and described herein, obtain the Delay-Flex amount designated as such and in accordance to the portions set-forth in the Delay-Flex Funding Schedule outlined in the Delay-Flex Disbursement Summary executed in connection with this Loan. This Deed of Trust secures the entire Designated Loan Amount regardless of the amount of the Initial Funding or any subsequent fundings on the Loan account. However, the payoff amount required to release the Deed of Trust shall be based on the actual outstanding balance of the Loan account at the time of payoff.

c. **The Funding of each Delay-Flex portion is subject to Beneficiary's discretionary approval and satisfaction of the following conditions:**

(i) There is no then-existing default under any of the Loan Documents and there exist no facts which, with the giving of notice or passage of time, would constitute a default under any of the Loan Documents;

(ii) Beneficiary, or its agent, has conducted an inspection of the Trust Property and the present condition of the Trust Property has been approved;



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(iii) The increased loan amount following the funding of each Delay-Flex portion, if made, will not exceed Beneficiary's lending guidelines for the Trust Property;

(iv) Beneficiary may further condition any delayed funding on endorsements to Beneficiary's Title Policy insuring the continued validity and priority of this Deed of Trust, Beneficiary's approval of Trustor's proposed utilization of the Delay-Flex proceeds and any other reasonable assurances or conditions Beneficiary may require or impose;

(v) Beneficiary shall fund each Delay-Flex portion on a date set by Beneficiary at its sole and absolute discretion, which will occur no earlier than the thirtieth (30th) day prior to the Fund Date set forth in the Delay-Flex Funding Schedule and no later than the thirtieth (30th) consecutive day following the Fund Date set forth in the Delay-Flex Funding Schedule; and

(vi) **Funding the total Delay-Flex portion of the Loan is not to exceed 9 months from the date of Loan closing. The Delay-Flex Funding Schedule must be completed by Loan closing and included in the Disbursement Summary. Any modification to the Delay-Flex Funding Schedule requires written approval from Beneficiary or Servicing Agent.**

Notice: If Beneficiary consents to alienation, assignment or transfer of the Trust Property or the obligations under this Deed of Trust in accordance with Section 14, all assignees, transferees and junior lien holders are hereby advised that this Deed of Trust provides for adjustable release provisions and fluctuating principal balances at Beneficiary's discretion.

6. CONSTRUCTION MORTGAGE

This Deed of Trust may constitute a "construction mortgage" within the meaning of A.R.S. Section 47-9334 and is entitled to the benefits of A.R.S. Section 47-9334(H). If this Deed of Trust secures a construction loan, the proceeds of the obligations secured by this Deed of Trust are to be used by Trustor for the purpose of acquiring title to the Real Property and funding the acquisition, construction and improvement of the Improvements, or refinancing such secured obligations. If this Deed of Trust secures a construction loan, notice is hereby given that the proceeds of the Note secured hereby may be collaterally assigned to Beneficiary or its agent pursuant to the terms of the Construction Loan Agreement executed herewith.

7. CONDEMNATION

If any portion of the Trust Property is condemned or threatened to be condemned by the governing authority, Beneficiary, without notice, shall have the right to accelerate all sums owed under the Loan Documents, which are secured by this Deed of Trust, and those sums shall become immediately due and payable to Beneficiary irrespective of their maturity date. All awards of damages for any condemnation or taking, for injury to the Trust Property by reason of public use or for damages from private trespass or injury to the Trust Property, are hereby assigned, transferred and conveyed to Beneficiary and shall be paid to Beneficiary as further security for the Loan. Upon receipt of such monies, Beneficiary may hold the same as such further security, or apply or release the same in the same manner and with the same effect as herein provided for the disposition of proceeds of fire or other insurance.

8. BENEFICIARY'S OPTIONS

Without affecting the obligation of Trustor to pay and perform as required herein, without affecting the personal liability of any person for payment of the indebtedness secured hereby, and without affecting the lien or priority of lien hereof on the Trust Property, Beneficiary may, at its option:

- a. Release and reconvey all or any part of the Trust Property;
- b. Consent to the making and/or recording of any map or plat of the Trust Property or any part thereof;
- c. Join in granting any easement on the Trust Property;
- d. Join in or consent to any extension agreement or any agreement subordinating the lien, encumbrance or charge hereof;
- e. Extend the time for payment for all or any part of the indebtedness secured hereby, accept a renewal note therefore, reduce the payments thereon, release any person liable for all or any part thereof or otherwise change the terms of all or any part of the obligation or Note secured hereby; or



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f. Take and hold other security for the payment and performance of the obligation and Note secured hereby, and enforce, exchange, substitute, subordinate, waive or release any such security.

Any of the foregoing actions by Beneficiary or the Trustee at Beneficiary's direction may be taken without the consent of any junior lienholder, and shall not affect the priority of this Deed of Trust over any junior lien.

9. SECURITY AGREEMENT AND FIXTURE FILING

This Deed of Trust shall cover, and the Trust Property shall include, all property now or hereafter affixed on, attached to or incorporated upon the Real Property which, to the fullest extent permitted by law, shall be deemed a "fixture." To the extent that the Trust Property consists of rights in action or personal property covered by the Uniform Commercial Code, this Deed of Trust shall also constitute a security agreement, and Trustor hereby grants to Beneficiary, as secured party, a security interest in such property, including all proceeds thereof, for the purpose of securing the obligations herein and the other Loan Documents. In addition, for the purpose of securing the obligations herein and the other Loan Documents, Trustor, as debtors, hereby grants to Beneficiary, as secured party, a security interest in the following:

a. All personal property (including all goods, supplies, equipment, furniture, furnishings, fixtures, machinery, inventory and construction materials) in which Trustor now or hereafter acquires an interest or right, which is now or hereafter located on or affixed to the Real Property or the Improvements, or used or useful in the operation, use, or occupancy thereof or in the construction of any additional improvements thereon, together with any interest of Trustor in and to such personal property which is leased by Trustor or is subject to any superior security interest, and all books, records, leases and other agreements, documents, and instruments of whatever kind or character, relating to the Real Property, the Improvements, or such personal property;

b. All fees, income, rents, issues, profits, earnings, receipts, royalties, and revenues that may accrue from the personal property described in clause (a) above or any part thereof, or from the Real Property or the Improvements, or that may be received or receivable by Trustor from any hiring, using, letting, leasing, subhiring, subletting, subleasing, occupancy, operation or use thereof;

c. All of Trustor's present and future rights to receive payments of money, services, or property, including rights to receive capital contributions or subscription payments from the members, partners, shareholders or principals of Trustor, amounts payable on account of the sale of ownership interests in Trustor or the capital stock of Trustor, accounts and other accounts receivable, security deposits, chattel paper, notes, drafts, contract rights, instruments, general intangibles, and principal, interest and payments due on account of goods sold or leased, services rendered, loans made or credit extended, together with title to or interest in all agreements, documents, and instruments, evidencing, securing or guarantying the same;

d. All other intangible property and rights relating to the Real Property, the Improvements, the personal property described in clause (a) above or the operation, occupancy, or use thereof including all governmental and non-governmental permits, licenses (including Trustor's interest in any liquor license related to business operations conducted on the Real Property), and all approvals relating to construction on or operation, occupancy, or use of the Real Property or the Improvements, all names under or by which the Real Property or the Improvements may at any time be operated or known, all rights to carry on business under any such names, or any variant thereof, all trade names and trademarks relating in any way to the Real Property or the Improvements, and all good will in any way relating to the Real Property or the Improvements;

e. Trustor's rights under all insurance policies covering the Real Property, the Improvements or the personal property described in clause (a) above, and any and all proceeds, loss payments, and unearned premiums payable or refundable regarding the same;

f. All reserves, deferred payments, deposits, impound accounts, refunds, cost savings, and payments of any kind relating to the construction of any improvements on the Real Property;

g. All water stock or water rights relating to the Real Property;

h. All architectural, structural, mechanical, and engineering plans and specifications prepared for construction of improvements on the Real Property, or extraction of minerals or gravel from the Real Property, and all studies, data, and drawings relating thereto; and also all contracts and agreements of Trustor relating to such plans and specifications or to such studies, data, and drawings, for the construction of improvements on or extraction of minerals or gravel from the Real Property;



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- i. All proceeds from the sale or other disposition of any of the collateral described above;
- j. All of Trustor's rights in proceeds of the loan made by Beneficiary to Trustor;
- k. All of Trustor's rights to security, cleaning, or other deposits from tenants relating to leases or occupancy agreements for any portion of the Real Property or the Improvements;
- l. All of Trustor's rights in any Impound account held by Trustor or Beneficiary on behalf of Trustor;
- m. All of Trustor's rights in any other deposit accounts of Trustor; and
- n. All wells, well equipment, rights to wells, permits and licenses, water rights and all other related property used in connection with the operation of any well on the Real Property or appurtenant to the Real Property.

Trustor acknowledges and agrees that Beneficiary may maintain certain deposit accounts (including a payment impound account and/or a construction impound account) in the name of Beneficiary for the benefit of Trustor and such accounts may include funds disbursed or to be disbursed with respect to the Loan. Trustor acknowledges and agrees that all such funds are the property of Beneficiary and Trustor hereby disclaims any interest therein.

Trustor shall promptly replace any personal property that is consumed or worn out in ordinary usage and such replacement shall be secured hereby. Trustor may sell or dispose of only that part of the personal property that Trustor is obligated to replace, and all proceeds from any such sale or disposition in excess of the amount expended for such replacements shall promptly be paid to Beneficiary to be applied according to the Loan Documents, whether or not then due. Trustor shall immediately notify Beneficiary of any change in the location of Trustor's chief executive office or residence (if Trustor is an individual without an office) in accordance with the terms of this Deed of Trust, and any change in location of the personal property encumbered hereby, except if replaced as permitted herein. All Trustor's representations, warranties and covenants contained in this Deed of Trust shall apply to the personal property encumbered hereby whether or not expressly referred to herein. Trustor's representations, warranties and covenants and warranties contained in this Section are in addition to, and not in limitation of, those contained in the other provisions of this Deed of Trust. Upon its recording in the real property records, this Deed of Trust shall be effective as a fixture filing. The filing of any other financing statement relating to any other personal property, rights or interests described herein shall not be construed to diminish any of Beneficiary's rights or priorities hereunder. Trustor hereby authorizes and empowers Beneficiary and irrevocably appoints Beneficiary its attorney-in-fact to execute and file, on Trustor's behalf, all financing statements and refilings and continuations thereof as Beneficiary deems necessary or advisable to create, preserve and protect the security interest created hereby.



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This Deed of Trust covers certain goods, which are or are to become fixtures related to the Real Property and CONSTITUTES A FIXTURE FILING with respect to such goods executed by Trustor, as debtor, in favor of Beneficiary, as secured party. For purposes of the Uniform Commercial Code, the following information is supplied:

Name and Address of Debtor: James T. Hurst and Linda L. Hurst, husband and wife, as joint tenants with rights of survivorship
5025 N Central Ave #420
Phoenix, AZ 85012

Name and Address of Record Owner: James T. Hurst and Linda L. Hurst, husband and wife, as joint tenants with rights of survivorship
5025 N Central Ave #420
Phoenix, AZ 85012

Description of Real Estate: See Exhibit A attached hereto.

Name and Address of Secured Party: Mortgages Ltd., as agent
55 E. Thomas Road
Phoenix, Arizona 85012

This Deed of Trust covers goods that are or are to become fixtures.

10. RELEASE AND RECONVEYANCE

a. The release provisions contained in this Deed of Trust are subject to subsequent modification by separate agreements, which include, but are not limited to, Equity-Flex® Advance Agreements and/or upon the subsequent funding of Delay-Flex® Mortgage Line advances.

b. **There are no release provisions (intentional).**

c. Upon payment in full and satisfaction of the Obligations, Beneficiary will surrender this Deed of Trust and the other Loan Documents to Trustee for cancellation, retention and payment of Trustee's fees, and Trustee shall release and reconvey, without covenant or warranty, express or implied, the Trust Property then held hereunder. The recitals in such reconveyance or any matters or facts shall be conclusive proof of the truthfulness thereof. The grantee in such reconveyance may be described as "the person or persons legally entitled thereto."

11. ASSIGNMENT OF RENTS, LEASES AND PROFITS

To facilitate payment and performance of the obligations under this Deed of Trust and the other Loan Documents, Trustor hereby absolutely sells, transfers and assigns to Beneficiary all right, title and interest of Trustor in and to the following:

a. All existing and future leases, subleases, licenses and other agreements for the use and occupancy of all or a portion of the Trust Property, whether written or oral and whether for a definite term or month-to-month, together with any and all extensions, modifications and renewals thereof (collectively, the "Leases"); and

b. All income, receipts, revenues, royalties, rents, issues, profits and benefits now or hereafter arising from or out of the Leases or from or out of the Trust Property or any part thereof (collectively, the "Rents").



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So long as there shall not have occurred an event of default under this Deed of Trust or any of the other Loan Documents, Trustor shall have the right to collect all Rents, and shall hold the same, in trust. Beneficiary may, at its option, upon default, at any time, without notice, either by person, by agent or by receiver appointed by a court, and without regard to the adequacy of any security for the indebtedness hereby secured or the solvency of Trustor, collect the Trust Property income (including the Rents) by any method authorized by law and apply the same, less costs and expenses of operation and collection, including attorneys' fees, Trustee's fees and Servicing Agent's administrative fees, upon any indebtedness secured hereby, Servicing Agent's administrative fees, upon any indebtedness secured hereby, and in such order as Beneficiary may determine. The entering upon and taking possession of the Trust Property, the collection of Trust Property income and the application thereof shall not cure or waive any default or notice of Trustee's sale or invalidate any act done pursuant to such notice. Beneficiary shall have the right to exercise all its rights as provided by A.R.S. §§ 33-702(B) and 33-807, which may be revised from time to time. It is expressly covenanted and agreed by the Trustor, that at the time of the execution and delivery of this Deed of Trust there has been no prepayment of any Rents by any of the tenants occupying the Trust Property or the Leases. It is further covenanted and agreed that Trustor, its successors or assigns, shall have no right, power or authority to alter, modify or amend the terms, or any of them, of the Lease in any particular whatsoever, without first obtaining the consent in writing of Beneficiary, its successors or assigns to such alteration, modification or amendment. Nothing herein contained shall be construed as making Beneficiary, or its successors or assigns, a mortgagee in possession, nor shall Beneficiary, or its successors or assigns be liable for laches, or failure to collect said rents, issues, profits, revenues, royalties, rights and benefits, and it is understood that Beneficiary, its successors or assigns, are to be account only for such sums as are actually collected.

12. DEFAULT AND REMEDIES

a. Default. Among other things constituting a default under the provisions of the Loan Documents, Trustor shall be deemed in default upon the occurrence of any of the following events:

- (1) Trustor, third party borrower, any endorser or any guarantor fails to make payment of any indebtedness secured hereby in accordance with the Loan Documents;
- (2) Trustor, third party borrower, any endorser of the Note or any guarantor fails to perform any obligation required by and in accordance with the Loan Documents, or any representation by Trustor, third party borrower, any endorser of the Note or any guarantor in any of the Loan Documents is untrue;
- (3) The death, incapacity, dissolution, winding-up or termination of the existence of Trustor, third party borrower, any endorser of the Note or any guarantor;
- (4) The calling of a meeting of the creditors of Trustor, third party borrower, any endorser of the Note or any guarantor;
- (5) The making by Trustor, third party borrower, any endorser of the Note or any guarantor of an assignment for the benefit of any of its creditors;
- (6) Trustor, third party borrower, any endorser of the Note or any guarantor becomes insolvent;
- (7) Trustor, third party borrower, any endorser of the Note or any guarantor fails to pay its debts as they mature;
- (8) Trustor, third party borrower, any endorser of the Note or any guarantor admits in writing that such party is unable to pay such party's debts as they mature;
- (9) A receiver, trustee, custodian or conservator is appointed to manage over all or any part of the assets of Trustor, third party borrower, any endorser of the Note or any guarantor;
- (10) The occurrence of any material adverse change in the condition (financial or otherwise) of Trustor, third party Borrower, any endorser of the Note or any guarantor;
- (11) **In the event that Trustor has secured or secures additional loans through Mortgages Ltd., regardless as to whether Mortgages Ltd. has assigned its interests in the Additional Loans or this Loan, then a default under any Additional Loan shall constitute a default under this Loan and a default under this Loan shall constitute a default under the Additional Loans; or**
- (12) Beneficiary in good faith deems itself insecure or believes the prospect for payment or performance is impaired.



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b. Acceleration. Upon the occurrence of any of the foregoing events of default, Beneficiary, without notice, may declare all sums secured hereby immediately due and payable and may apply or cause to be applied amounts in any Impound Account to the obligations secured by this Deed of Trust in any manner that Beneficiary elects. Notwithstanding anything in this Deed of Trust or any other Loan Document to the contrary: (a) it shall be a default under this Deed of Trust if Trustor, third party borrower, the Note's endorser or any guarantor becomes the subject of any bankruptcy or voluntary or involuntary insolvency proceeding, in or out of court, for the adjustment of debtor-creditor relations ("Insolvency Proceedings"); and (b) if the any Insolvency Proceedings occur, any obligation of Beneficiary to make further advances shall terminate, and all sums of principal and interest under the Note shall automatically become due and payable without notice of default, presentment or demand for payment, protest or notice of nonpayment or dishonor, or other notices or demands of any kind or character.

c. Trustee's Sale. Should Beneficiary elect to have the Trust Property sold by Trustee, Beneficiary shall deliver to Trustee written notice, setting forth the nature of the default, and of the election to cause the Trust Property to be sold. Beneficiary also shall deposit with Trustee this Deed of Trust, the Note and all other Loan Documents evidencing expenditures secured hereby. Trustee shall record and give notice of the Trustee's Sale in the manner required by law, and after the lapse of such time as may then be required by law, Trustee shall sell, in the manner required by law, the Trust Property at public auction, at the time and place fixed by the notice of Trustee's Sale to the highest bidder for cash in lawful money of the United States, payable at the time of sale. Notice to Trustor shall be given in accordance with the provisions of A.R.S. Sections 33-808 and 33-809. Trustee, at Trustee's discretion, may postpone or continue the sale from time to time by giving notice of postponement or continuance by public declaration at the time and place last appointed for the sale. Trustee shall deliver to the purchaser at the Trustee's Sale a Deed conveying the Trust Property, but without any covenant or warranty, expressed or implied. The recitals in such deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any persons, including Trustor, Trustee or Beneficiary, may purchase the Trust Property at the Trustee's Sale. Beneficiary may bid for and purchase the Trust Property and shall be entitled to apply all or any part of the indebtedness secured hereby as a credit against the purchase price. The purchaser at the Trustee's sale shall be entitled to immediate possession of the Trust Property as against the Trustee or other persons in possession and shall have a right to the summary proceedings to obtain possession provided in Title 12, Chapter 8, Article 4, Arizona Revised Statutes, together with costs and attorneys' fees accrued therefor. After deducting all Trustee's costs, fees and expenses and of this Deed of Trust, including the costs of evidence of title in connection with the sale, Beneficiary and Trustee's attorneys' fees and Servicing Agent's administrative fees, Trustee shall apply the sale proceeds to the payment of all sums then secured hereby and all other sums due under the terms hereof, with accrued interest, and then the remainder, if any, to the person or persons legally entitled thereto or as provided in A.R.S. § 33-812.

d. Deficiency Judgment. To the extent permitted by law, Beneficiary shall be entitled to a deficiency judgment against Trustor for any balance remaining due hereunder after a Trustee's sale of the Trust Property.

e. Foreclosure and Other Remedies. In lieu of a Trustee's sale, pursuant to the power of sale conferred hereby, this Deed of Trust may be foreclosed in the same manner provided by law for the foreclosure of mortgages on real property. Beneficiary shall also have the right to exercise any or all remedies available hereunder and at law or in equity, including all remedies of a secured party under the Uniform Commercial Code with respect to any personal property secured hereby, the appointment of a receiver, provisional remedies and injunctive relief. All Beneficiary's rights and remedies shall be cumulative.

f. Appointment of Receiver or Mortgagee in Possession. If an event of default is continuing or if Beneficiary shall have accelerated the indebtedness secured hereby, Beneficiary, upon application to a court of competent jurisdiction, shall be entitled as a matter of strict right, without notice, and without regard to the occupancy or value of any security for the indebtedness secured hereby or the insolvency of any party bound for its payment, to the appointment, at Beneficiary's option, of itself as mortgagee in possession, or of a receiver to take possession of and to operate the Trust Property, and to collect and apply the Rents. Beneficiary and such receiver and their representatives shall have no liability for any loss, damage, injury, cost or expense resulting from any action or omission which was taken or omitted in good faith.



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13. SUCCESSOR TRUSTEE

Beneficiary may appoint a successor Trustee in the manner prescribed by law. A successor Trustee shall, without conveyance from the predecessor Trustee, succeed to all the predecessor's title, estate, rights, powers and duties. Trustee may resign at any time by complying with applicable law and by mailing or delivering notice thereof to Beneficiary and Trustor, and having so resigned shall be relieved of all liability and responsibility to Trustor, Beneficiary or otherwise hereunder. Any reference to "Trustee" herein shall include all successor trustees. Trustee shall not be liable for any action taken when acting in good faith, or upon any information supplied or direction given by Beneficiary.

14. ALIENATION

The Trust Property and the obligations under this Deed of Trust are not alienable, assignable or transferable by Trustor. Upon the occurrence any of the following, without prior written consent of Beneficiary or its Servicing Agent:

a. Trustor sells, conveys, transfers, assigns, contracts for sale, leases with option to purchase or further encumbers the Trust Property or any part thereof, including any further assignment of the Trust Property's income, or a wraparound mortgage or purchase contract;

b. If Trustor is a corporation, the controlling interest in Trustor is sold, conveyed or transferred;

c. If Trustor is a limited liability company, any interest in Trustor is sold, conveyed or transferred;

or

d. If Trustor is a partnership, any general partnership interest, or the majority of limited parties interests, in Trustor is sold, conveyed or transferred, either voluntarily or involuntarily;

Beneficiary, without notice, shall have the right to accelerate all sums owed under the Loan Documents, which are secured by this Deed of Trust, and those sums shall become immediately due and payable to Beneficiary irrespective of their maturity date. This provision shall apply to each and every such sale, conveyance, transfer, lease, encumbrance or assignment, regardless as to whether Beneficiary has consented or waived its rights in connection with any previous sale, conveyance, transfer, lease, encumbrance or assignment.

15. THIRD PARTY BORROWER PROVISIONS.

The following provisions apply to the extent that a third party borrower has executed the Note:

a. Trustor waives each of the following:

(i) Any right to require Beneficiary to make presentments or demands or to give notices of any kind, including demand for performance, notice of non-performance, protest, notice of protest, notice of dishonor, notice of acceptance of this Deed of Trust, notice of the existence, creation or incurrence of existing or new debt, notice of modification, payment, default or change or action of any kind relating to the Obligations.

(ii) Any defense to liability on this Deed of Trust based on any disability or other defense of the third party borrower or based upon any cessation of the liability of the third party borrower to Beneficiary for any reason other than the payment of the Obligations in full.

(iii) Any right to require Beneficiary to proceed against the third party borrower.

(iv) Any right to require Beneficiary to proceed against any other security held from third party borrower or from Trustor.

(v) To the extent permitted by applicable law, the benefit of any statute of limitations pertaining to the Obligations or to this Deed of Trust or affecting Trustor's liability on this Deed of Trust or its enforcement.



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initials

**DEED OF TRUST, ASSIGNMENT OF RENTS AND LEASES,
SECURITY AGREEMENT AND FIXTURE FILING**

Loan No. 861005

August 29, 2007

Page 14

(vi) Any defense based upon an election of remedies by Beneficiary, including any election to proceed against any collateral by judicial or nonjudicial foreclosure, whether real property or personal property, or by deed in lieu thereof, and whether or not every aspect of any foreclosure sale is commercially reasonable, and whether or not any such election of remedies destroys or otherwise impairs the subrogation rights of Trustor or the rights of Trustor to proceed against the third party borrower or any guarantor or Trustor for reimbursement, or both.

(vii) The benefits of any statutory provision limiting the liability of a surety, including the provisions of A.R.S. Sections 12-1641 through 12-1644, A.R.S. Section 12-1566, A.R.S. Section 33-814, A.R.S. Section 44-142, A.R.S. Section 47-3605 and Rule 17(f) of the Arizona Rules of Civil Procedure.

(viii) Any defense based upon the application by third party borrower of the proceeds of the loan evidenced by the Note for purposes other than the purposes represented by third party borrower to Beneficiary or intended or understood by Beneficiary or Trustor.

b. Trustor acknowledges and agrees that Beneficiary, without affecting Trustor's liability, may take any one or more of the following actions, at any one or more times:

(i) Renew, compromise, extend, accelerate or otherwise change the time for payment of, or the terms of, all or any part of the Obligations.

(ii) Take additional security for the payment of the Obligations, and exchange, enforce, alter or release all or any part of any security.

(iii) Add, release or substitute any one or more other third party trustors or guarantors.

(iv) Assign the Obligations in whole or part.

16. GENERAL

a. **Time.** Time is of the essence in all aspects of this Deed of Trust and the other Loan Documents.

b. **Liability.** This Deed of Trust applies to, inures to the benefit of and binds Trustor, Trustee and Beneficiary (collectively, the "Parties") and their heirs, personal representatives, successors, permitted assigns, beneficiaries and trustees. All liability created hereunder shall be joint and several.

c. **Assignability.** Beneficiary and Trustee may assign their rights and obligations under this Deed of Trust without prior notice to Trustor. "Beneficiary" shall include the owner and holder of the Note secured hereby, whether or not named as Beneficiary herein.

d. **Servicing Agent.** Trustor acknowledges that Mortgages Ltd. is the Servicing Agent and may enforce the terms of this Deed of Trust and the other Loan Documents on behalf of Beneficiary.

e. **Severability.** If any term or other provision of this Deed of Trust or any other Loan Document is declared invalid, illegal or incapable of being enforced by any rule of law or public policy, all other conditions and provisions of this Deed of Trust shall nevertheless remain in full force and effect.

f. **Law.** This Deed of Trust shall be governed by, construed and enforced in accordance with the laws of the State of Arizona, without regard to the choice of law rules of the State of Arizona. In the event any statute or law referred to herein is subsequently amended or renumbered, the statute as amended or renumbered shall be intended by the Parties to be referred to herein, thereafter, and should said statute or law be repealed, if law permits, that statute or law as it exists on the date hereof is intended to be a part hereof.

g. **Jurisdiction and Venue.** Trustor hereby submits to the jurisdiction and venue of any Arizona State or Federal Court sitting in the City of Phoenix in any action or proceeding arising out of or relating to this Deed of Trust. Trustor hereby waives the defense of an inconvenient forum.



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initials

**DEED OF TRUST, ASSIGNMENT OF RENTS AND LEASES,
SECURITY AGREEMENT AND FIXTURE FILING**

Loan No. 861005

August 29, 2007

Page 15

h. Jury Trial Waiver. Trustor, and Beneficiary, by its acceptance of this Deed of Trust, hereby waive their respective rights to a trial by jury in any action or proceeding based upon, or related to, the subject matter of this Deed of Trust and the business relationship that is being established. This waiver is knowingly, intentionally, voluntarily and irrevocably made by Trustor and Beneficiary, and Trustor acknowledges that neither Beneficiary, nor any person acting on behalf of Beneficiary, has made any representations of fact to include this waiver of trial by jury or has taken any actions which in any way modify or nullify its effect. Trustor and Beneficiary acknowledge that this waiver is a material inducement to enter into a business relationship, that each of them has already relied on this waiver in entering into this Deed of Trust and that each of them will continue to rely on this waiver in their related future dealings.

i. Promotional Information. Beneficiary shall have the right to release information related to this Deed of Trust and the other Loan Documents ("Promotional Information"), including photographs of the Trust Property, characteristics of the Trust Property, Loan characteristics, financing terms and aspects of underwriting, for advertising, marketing and other promotional purposes, such as commercials, advertising fliers, trade articles, Internet releases and public presentations. Beneficiary shall not be held liable to Trustor for the release of Promotional Information.

j. Modification. This Deed of Trust may be amended, modified, superseded, canceled, renewed or extended and the terms or covenants hereof may be waived only by a written instrument executed by all Parties.

k. Waiver. The failure of Beneficiary, at any time or times, to require performance of any provision of this Deed of Trust shall in no manner affect the right of Beneficiary at a later time to enforce that provision. Further, if payment of any sum secured hereby is accepted after its due date, Beneficiary does not waive its right either to require prompt payment when due of all other sums or to declare a default for failure to pay as required by the Loan Documents. No waiver by Beneficiary of the breach of any term or covenant contained in this Deed of Trust, whether by conduct or otherwise, in any one or more instances, shall be deemed to be, or construed as, a further or continuing waiver by Beneficiary of any such breach, or a waiver of the breach of any other term or covenant contained in this Deed of Trust.

l. Waiver of Statute of Limitations. To the extent permitted by applicable law, Trustor hereby waives the right to assert any statute of limitations as a bar to the enforcement of the lien created by any of the Loan Documents or to any action brought to enforce the Note or any other obligations secured by any of the Loan Documents.

m. Waiver of Homestead and Redemption. Trustor hereby waives all right of homestead exemption in the Trust Property. Trustor hereby waives all right of redemption on behalf of Trustor and on behalf of all other persons acquiring any interest or title in the Trust Property subsequent to the date of this Deed of Trust, except decree or judgment creditors of Trustor.

n. Interpretation. As used in this Deed of Trust, the word "include(s)" means "include(s), without limitation," and the word "including" means "including, without limitation."

o. Variable Rate. THIS DEED OF TRUST MAY SECURE A VARIABLE INTEREST RATE LOAN.

SEE ATTACHED SIGNATURE AND NOTARY PAGE



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**DEED OF TRUST, ASSIGNMENT OF RENTS AND LEASES,
SECURITY AGREEMENT AND FIXTURE FILING**

Loan No. 861005


August 29, 2007

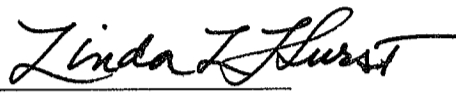
Page 16

**DEED OF TRUST, ASSIGNMENT OF RENTS AND LEASES,
SECURITY AGREEMENT AND FIXTURE FILING SIGNATURE AND NOTARY PAGE**

IN WITNESS WHEREOF, this Deed of Trust has been executed as of the date set forth on the first page.

TRUSTOR:

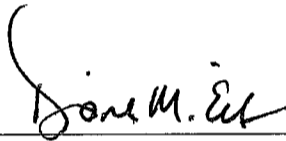

James T. Hurst


Linda L. Hurst

STATE OF AZ)
)ss
COUNTY OF MARICOPA)



The foregoing instrument was acknowledged before me 30th day of AUGUST, 2007 by James T. Hurst.

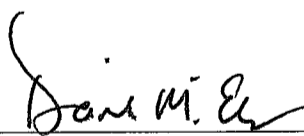

Notary Public

My Commission Expires:

STATE OF AZ)
)ss
COUNTY OF MARICOPA)



The foregoing instrument was acknowledged before me 30th day of AUGUST, 2007 by Linda L. Hurst.


Notary Public

My Commission Expires:



MORTGAGE BANKING • SECURITIES • TITLE • REAL ESTATE • INSURANCE

EXHIBIT "A"

Loan No.: 861005

Borrower: James T. Hurst and Linda L. Hurst, husband and wife, as community property with right of survivorship

Lot 2, of Lot Line Adjustment of the Replat of Lot 2 and 3 Vista Camello, according to the plat of record in the office of the County Recorder of Maricopa County, Arizona, recorded in Book 494 of Maps, Page 44.

PARCEL NO. 2:

An Easement for Pool Equipment and Wall and rights incident thereto as set forth in the Declaration of Covenants, Conditions and Restrictions recorded February 26, 1999 in Document NO. 99-187168.

APN(s): 174-53-039 / Maricopa

Ex. 6

SERVICING AGENT AGREEMENT

Loan No. 861005

August 29, 2007

“Borrower” (individually and collectively):

James T. Hurst and Linda L. Hurst, husband and wife

“Lender”:
Scott M. Coles or Christopher J. Olson, Trustees of the Mortgages Ltd. 401(k)
Plan

“Servicing Agent”: Mortgages Ltd., an Arizona corporation.

In consideration of the reciprocal promises contained herein, Borrower, Lender and Servicing Agent (collectively, the “Parties”) hereby agree to the following.

1. APPOINTMENT AND AUTHORITY OF SERVICING AGENT

Trustor and Beneficiary hereby appoint Mortgages Ltd. to act as the Servicing Agent with regard to the Loan. Servicing Agent is authorized to perform any and all of the following tasks:

- a. Hold the originals of the Promissory Note, Deed of Trust, Fee Schedule and all other documents executed by the Borrower or any other party in connection with the Loan (collectively, the “Loan Documents”).
- b. Service and administer the Loan in any manner provided by the Loan Documents.
- c. Process any and all Loan payments from Borrower or other payor.
- d. Assess and process all fees and charges set forth in the Loan Documents including, but not limited to, administrative fees, notice fees and late charges.
- e. Apply any funds received by Servicing Agent to the fees and costs incurred or assessed by Beneficiary before applying the funds to the amounts owing under the Loan Documents (including notice fees, service fees, administrative fees, inspection fees, appraisal fees, expert fees, attorneys’ fees, litigation costs, forced placed insurance premiums, late charges and guarantor collection expenses (*as described herein*)). Any insurance placed by Servicing Agent may be placed with an affiliate of servicing Agent or a captive insurance company.
- f. Retain deposits received under the Loan Documents as impounds for the payment of the following:
 - (1) Future payments due;
 - (2) Taxes and assessments;
 - (3) Construction;
 - (4) Insurance premiums;
 - (5) Extension fees;
 - (6) Administration fees; **and**
 - (7) Any other expenditure required under the Loan Documents.

(Any impound account may be held in the name of Servicing Agent for the benefit of Lender and others, and Servicing Agent may apply and/or disburse any such deposits in accordance with the Loan Documents).

g. Evaluate, effectuate and process an assumption of the Loan, and assess and receive an assumption fee and/or an interest rate increase.



initials

SERVICING AGENT AGREEMENT

Loan No. 861005

August 29, 2007

Page 2

h. Sign, file and record all documents which are reasonable or desirable to facilitate servicing or the loan, including:

- (1) deeds of release and reconveyance (full and partial);
- (2) endorsements and assignments of Loan Documents (including assignments of all or a portion of the beneficial interest of any deed of trust included in the Loan Documents);
- (3) corrections, amendments, **modifications** and extensions of Loan Documents;
- (4) disclaimers;
- (5) financing statements; and
- (6) assumptions and various certifications.

i. Incur all fees, costs and expenses deemed necessary by Servicing Agent to protect Beneficiary's interests under the Loan Documents;

j. Incur all fees, costs and expenses deemed necessary by Servicing Agent to protect the property securing the Loan (the "Trust Property"), including insurance premiums, receiver fees, property manager fees, maintenance expenses and security expenses.

k. Obtain forced placed insurance on any portion of the Trust Property in the event the Borrower fails to maintain insurance as required by the Loan Documents.

l. Sign, file and record any and all documents reasonable or desirable to protect Lender's interests and/or pursue Lender's remedies upon default, including:

- (1) a statement of breach or non-performance;
- (2) a substitution of trustee;
- (3) a notice of election to foreclose;
- (4) a notice of trustee's sale;
- (5) an affidavit of non-military service;
- (6) a notice of proposed disposition of collateral and various verifications.

m. In the event of default and at Servicing Agent's discretion, commence foreclosure of the Trust Property, initiate a trustee's sale and/or institute any proceeding necessary to collect the sums due under the Loan Documents or to enforce any provision therein, including:

- (1) pursuing an action against any borrower or guarantor of the Loan;
- (2) pursuing injunctive relief, the appointment of a receiver, provisional remedies or a deficiency judgment;
- (3) pursuing claims in bankruptcy court;
- (4) pursuing an appeal;
- (5) collecting rents; and
- (6) taking possession or operating the Trust Property).

n. In the event of default and at Servicing Agent's discretion effect a sale of Lender's interest, in whole or in part, in the Loan Documents at the expense of Trustor which expense shall be secured by the Deed of Trust.

o. Retain attorneys, trustees and other agents necessary to collect the sums due under the Loan Documents, to protect the Trust Property and/or to proceed with foreclosure of the Trust Property, initiate a trustee's sale and/or institute, defend, appear or otherwise participate in any proceeding (legal, administrative or otherwise) that Servicing Agent deems reasonable and desirable.

p. Incur and pay such costs, expenses and fees as Servicing Agent deems appropriate in undertaking and pursuing enforcement of the Loan Documents and/or collection of amounts owed thereunder, including attorney fees, receiver fees, trustee fees, expert fees and any fees, costs and expenses incurred in an effort to collect against any borrower or any guarantor of the Loan.

2. ACCOMMODATION.

Servicing Agent provides its services as an accommodation only, and shall incur no responsibility or liability to any person, including, Borrower and Lender for any act or omission by Servicing Agent or any person or entity active for Servicing Agent.



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SERVICING AGENT AGREEMENT

Loan No. 861005

August 29, 2007

Page 3

3. ASSIGNMENT, RESIGNATION AND TERMINATION.

a. Servicing Agent shall have the right to assign the collection account or resign as Servicing Agent at any time, provided that Servicing Agent notifies Lender and Borrower of such assignment or resignation in writing.

(1) If Servicing Agent assigns the collection account, Servicing Agent will deliver all Loan Documents, directions and account records to assignee, at which time Servicing Agent will have no further duties or liabilities hereunder.

(2) If Servicing Agent resigns, Lender shall have the right to designate a new collection agent and Servicing Agent shall deliver to Lender all Loan Documents, directions and account records to Lender or the newly designated collection agent, at which time Servicing Agent will have no further duties or liabilities hereunder.

b. If that the ownership of the Trust Property becomes vested in the Lender by trustee's sale, judicial foreclosure or otherwise, then this Agreement shall automatically terminate and Servicing Agent will have no further duties or liabilities hereunder.

c. Upon Servicing Agent's assignment or resignation, or termination of this Agreement, Borrower shall immediately reimburse Lender for all fees, costs and expenses incurred hereunder. After such reimbursement and payment, Borrower shall remain obligated to indemnify, in accordance with Section 4 hereof, for liabilities which accrued prior to such resignation or termination.

4. INDEMNITY

a. Lender and Borrower shall immediately indemnify and hold Servicing Agent harmless for, from and against any and all liabilities incurred by Servicing Agent in performing under the terms of this Agreement or otherwise arising, directly or indirectly, from the Loan or Loan Documents, including all attorneys' fees, insurance premiums, expenses, costs, damages and expenses.

b. In the event that Servicing Agent requests that Lender and/or Borrower pay any amount owed hereunder, Lender and/or Borrower shall remit that amount to Servicing Agent within 5 business days of Servicing Agent's request.

5. BORROWER'S OBLIGATIONS

a. **Standard Fees and Costs.** Borrower shall pay to Servicing Agent, for the account of Beneficiary, its current fees and costs, including those items set forth in the Fee Schedule received by Borrower. The Fee Schedule is subject to change without notice as to the amounts and items included therein. Borrower shall pay a servicing set-up fee of **\$1,500.00**, and a monthly servicing fee of **\$30.00**. When the Loan is paid in full, Borrower shall pay a Close Out Fee of **\$1,500.00**, which is in addition to the monthly servicing fee. There will be a **\$30.00** charge to Borrower for each payoff request.

b. **Late Fees and Notices.** In the event that a regular payment is not received by Servicing Agent on or before the fifth calendar day after the due date, a late charge of **35%** of the monthly Principal and Interest payment will be charged and Borrower shall pay that amount to Servicing Agent, for the account of Lender. The parties agree that this late payment charge is intended to compensate Lender for losses incurred as a result of the late payment and that such late payment charge does not constitute and shall not be construed as a penalty. Servicing Agent will charge **\$125.00**, plus postage, for each notice sent regarding late payments, nonpayment of taxes, assessments, insurance premiums or any other matter that affects the Trust Property. Servicing Agent will charge **\$25.00** for each notice sent regarding returned checks, plus any actual charges assessed by the financial institution of the Servicing Agent as a result of each returned check. These notice fees are subject to change at the Servicing Agent's discretion. In the event that the Loan is not paid in full by the maturity date, Borrower acknowledges that a late charge will be assessed, for the account of Lender, in the amount of **3%** of the remaining principal balance of the Loan on the first day after Borrower's failure to pay and on the same day each month thereafter, until the final payment is received by Servicing Agent. All fees and charges are independent of one another and any default interest assessed; thus, a matured loan shall accrue default interest, maturity late fees and any other applicable fees and charges.

c. **Payment Statements.** Servicing Agent, as a convenience only, will provide to Borrower a monthly payment statement. Borrower acknowledges and agrees that it is obligated to make all payments when due under the Loan Documents, whether or not such payment statement is received by Borrower.



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SERVICING AGENT AGREEMENT

Loan No. 861005

August 29, 2007

Page 4

6. PARTIAL AND FINAL PAYMENTS

a. Partial Payments. In the event that Servicing Agent receives and processes a partial payment of any amount due under the Loan Documents, such act shall not constitute full payment, estoppel or a waiver of any right of Lender or Servicing Agent to recover the deficiency or to require future payments to be made in full.

b. Final Payment. In the event that the final sum to pay the principal balance in total is received by Servicing Agent **after 1:00 p.m.**, interest shall be charged through the next normal business day.

7. GENERAL PROVISIONS

a. This Agreement is binding on the Parties and their heirs, personal representatives, successors, permitted assigns, beneficiaries and trustees.

b. This Agreement and the benefits hereunder are **not** assignable or transferable by Borrower. Lender may assign Lender's rights and obligations under this Agreement without prior notice to Borrower. Lender, however, must give Servicing Agent prior written notice. After assignment, Lender shall have no further duties or liabilities to Borrower.

c. This Agreement shall be governed by, construed and enforced in accordance with the laws of the State of Arizona, without regard to the choice of law rules of the State of Arizona. The Parties hereby submit to the exclusive jurisdiction of any Arizona State or Federal Court sitting in the City of Phoenix in any action or proceeding arising out of or relating to this Agreement. The Parties waive the defense of an inconvenient forum.

d. The Parties voluntarily, knowingly, irrevocably and unconditionally waive the right to a jury trial on any contested matters arising from this Agreement or the Loan Documents.

e. This Agreement sets forth the entire agreement and understanding of the Parties with respect to the subject matter hereof and is to be read in consistency and accordance with the other Loan Documents.

f. This Agreement may be amended, modified, superseded, canceled, renewed or extended and the terms and covenants hereof may be waived only by a written instrument signed by all of the parties hereto. The failure of Servicing Agent or Beneficiary at any time or times to require performance of any provision of this Agreement shall in no manner affect the right of Servicing Agent at a later time to enforce the same. No waiver by Beneficiary or Servicing Agent of the breach of any term or covenant contained in this Agreement, whether by conduct or otherwise, in any one or more instances, shall be deemed to be, or construed as, a further or continuing waiver by Servicing Agent or Lender of any such breach, or a waiver of the breach of any other term or covenant contained in this Agreement.

g. If any term or other provision of this Agreement is declared invalid, illegal or incapable of being enforced by any rule of law or public policy, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect.

h. As used in this Agreement, the word "include(s)" means "Include(s), without limitation," and the word "Including" means "including, but without limitation."



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SERVICING AGENT AGREEMENT

Loan No. 861005

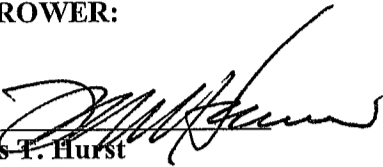
August 29, 2007

Page 5

i. No remedy herein conferred upon or reserved to Servicing Agent is intended to be exclusive of any other remedy herein or by law provided or permitted, but each shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute.

This Agreement is effective on the date set forth on the first page.


BORROWER:


James T. Hurst


Linda L. Hurst

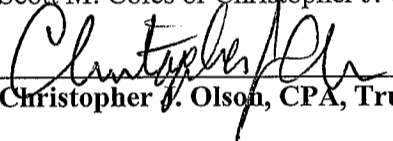
SERVICING AGENT:

MORTGAGES LTD., an Arizona corporation


Todd Brown, Sr. VP of Operations

LENDER:

Scott M. Coles or Christopher J. Olson, Trustees of the Mortgages Ltd. 401(k) Plan


Christopher J. Olson, CPA, Trustee



Ex. 7

PROMISSORY NOTE

Interest Only

Loan No. 854706

November 30, 2006

Loan Amount: \$1,600,000.00

“Maker” (individually and collectively):

43rd Avenue & Olney, LLC, an Arizona limited liability company, as to Parcel 1; SH Land Holdings LLC, an Arizona limited liability company, as to Parcel 2; Power 15 LLC, an Arizona limited liability company, as to Parcel 3; and McLellan 13 LLC, an Arizona limited liability company, as to Parcel 4
P.O. Box 2496
Clearwater, FL 33757

“Holder”:
Scott M. Coles or Christopher J. Olson, CPA, Trustees of the Mortgages Ltd. 401(k) Plan

1. PROMISE TO PAY

a. As consideration for the receipt of a loan and other value, Maker hereby promises to pay the outstanding balance of the Designated Loan Amount \$1,600,000.00 in United States currency (the "Principal"), plus interest, to the order of the Holder, **Scott M. Coles or Christopher J. Olson, CPA, Trustees of the Mortgages Ltd. 401(k) Plan**, or any subsequent holder of this Note. Maker understands and agrees that **Scott M. Coles or Christopher J. Olson, CPA, Trustees of the Mortgages Ltd. 401(k) Plan**, may subsequently transfer this Note, subject to the terms and conditions contained herein. **Scott M. Coles or Christopher J. Olson, CPA, Trustees of the Mortgages Ltd. 401(k) Plan**, or anyone who takes this Note by transfer and who is entitled to receive payments under this Note, is referred to hereinafter as the "Holder."

b. In connection with this Note and on the same date, Maker executed a Deed of Trust securing this Note (the "Deed of Trust") and a Servicing Agent Agreement. The Note, the Deed of Trust, the Servicing Agent Agreement and any other agreement, document or instrument evidencing, governing or securing the payment of the indebtedness evidenced by the Note are collectively referred to herein as the "Loan Documents". Maker understands and agrees that the Servicing Agent Agreement, which is incorporated herein by reference, authorizes the Servicing Agent appointed thereunder to, among other things, act on the Holder's behalf in accordance with this Note.

2. INTEREST

Interest will be charged on that portion of the Principal which has been committed by Holder, beginning, at Holder's discretion, on the Loan Funding Date or the Commitment Termination Date (in the event that the Loan closing was delayed for any reason other than one caused by Holder) continuing until the Principal has been paid in full. The 'Loan Funding Date' is the date upon which Mortgages Ltd. allocates and designates sums sufficient to fund this Loan. The 'Commitment Termination Date' is the date upon which Mortgages Ltd.'s Loan commitment expires. Beginning on the Loan Funding Date or the Commitment Termination Date, as the case may be, and so long as no event of default exists, interest will accrue and be paid at the rate of **13.5%** per annum. In the event of default, Maker agrees to pay the Default Interest Rate as set forth herein.

3. PAYMENTS

a. **Time and Place of Payments.** Maker will pay **interest only** by making monthly payments on the **1st** day of each month beginning **January 1, 2007**. Maker will continue to make monthly payments until Maker has paid all of the Principal, interest and any other charges that Maker may owe under this Note or the other Loan Documents. Monthly payments received by Holder in advance will not be posted to Maker's account greater than 14 calendar days prior to the payment due date.

b. Maker's monthly payments will be applied to the following in such order as Holder, in its sole discretion, may determine

- (i) To the payment of any costs, fees or other charges incurred under this Note and the other Loan Documents;
- (ii) To the payment of accrued interest; **and**
- (iii) To the reduction of the Principal balance.



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PROMISSORY NOTE

Loan No. 854706
November 30, 2006
Page 2

c. All remaining principal, together with accrued unpaid interest and any other amounts due hereunder or under the Loan Documents (collectively, the "Maker's Liabilities") shall be due and payable in full on **June 1, 2008** (the "Maturity Date"), unless Maker's Liabilities become due and payable sooner because of acceleration, in which case Maker's Liabilities shall be due and payable in full on the date of such acceleration. Maker understands that the Maturity Date requires Maker to pay all Principal, interest and all other charges then due.

4. RIGHT TO PREPAY AND PREPAYMENT PREMIUM

a. Maker has the right to make payments of Principal at any time before they are due ("Prepayment") provided that:

- (1) All sums due under the Note are current;
- (2) Prepayment is made on a monthly payment due date;
- (3) Payment of a prepayment premium equal to **5%** of the Principal balance of the Note before reduction, if Prepayment is made before **December 1, 2006**; and
- (4) At the time of making a Prepayment, Maker advises Servicing Agent, in writing that Maker is making a Prepayment.

b. Any payment of Principal only is considered a Prepayment. Holder will use all of Maker's Prepayments to reduce the amount of Principal that Maker owes under this Note. If Maker makes a partial Prepayment, there may be a change in the amount of Maker's monthly payment.

5. LOAN CHARGES

a. **Note Interest Rate.** If Holder charges or if Maker pays any fees, charges or other sums pursuant to this Note or any other Loan Documents which, under the law, may be deemed to be interest, then the interest rate set forth in Paragraph 2 above shall be deemed to be increased to include such additional interest. Therefore, if it is determined that the rate of interest applicable to this Note is greater than the rate of interest stated in Paragraph 2 above, then the actual rate thus determined shall become the agreed upon and contracted rate of interest for this Note.

b. **Interpretation and Remedy.** Notwithstanding any provision herein or in any of the Loan Documents, the total liability for payments in the nature of interest shall not exceed the limits now imposed by the usury laws of Arizona, if any. If a law, which applies to this Note and which sets maximum loan charges, is finally interpreted so that the interest or other loan charges collected or to be collected in connection with this Note exceed the permitted limits, then: (i) loan charges shall be reduced by Holder in an amount sufficient to reduce the loan charges to the permitted limit; and (ii) any sums already collected from Maker which exceeded permitted limits will be refunded to Maker. Holder may choose to make this refund by reducing the Principal Maker owes under this Note or by making a direct payment to Maker. If a refund reduces Principal, then the reduction will be treated as a partial Prepayment and the provisions of Paragraph 4 will not apply.

6. MAKER'S FAILURE TO PAY AS REQUIRED

a. **Late Charge for Overdue Payments.** If Holder has not received the full amount of any of Maker's monthly payments by the close of business on a date which is five (5) calendar days after the date it is due, Maker will pay a late charge to **Holder**. The amount of the late charge will be **35%** of the monthly Principal and Interest payment. In the event that this Note is not paid in full by the Maturity Date, Maker acknowledges that a late charge will be assessed in the amount of **3%** of the remaining Principal balance on the next day following the Maturity Date and on the same day each month thereafter until the Note is paid in full.

b. **Default.** Maker shall be in default of this Note if Maker does any of the following:

- (i) Fails to pay the full amount of each monthly payment on or before the date it is due;
- (ii) Fails to pay all sums due as of the Maturity Date;
- (iii) Fails to pay any and all sums required by any other Loan Documents; or
- (iv) Fails to perform or observe any covenants or obligations set forth herein or in any other Loan Documents.

c. **Cross Default.** In the event that Maker has secured or secures additional loans through Mortgages Ltd. (the "Additional Loans"), regardless as to whether Mortgages Ltd. has assigned its interests in the Additional Loans or this Loan, then a default in any Additional Loan shall constitute a default in this Loan and a default in this Loan shall constitute a default in the Additional Loans.

d. **Acceleration.** If Maker is in default, then Holder may accelerate the Maturity Date and declare that all sums owing under this Note and the other Loan Documents are immediately due and payable, without notice.



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PROMISSORY NOTE

Loan No. 854706
November 30, 2006
Page 3

e. **No Waiver By Holder.** Failure of Holder, for any period of time or on more than one occasion, to exercise its option to accelerate the Maturity Date shall not constitute a waiver of the right to exercise the same at any time during the continued existence of an event of default or any subsequent event of default.

f. **Payment of Holder's Costs and Expenses.** If an event of default occurs, Maker shall pay all costs of enforcement, collection and preparation therefor, whether or not any action or proceeding is commenced in any court and, if commenced, during all appeals, including, but not limited to, attorneys' fees, guarantor collection expenses (as described in the Servicing Agent Agreement), appraisal fees, inspection fees, expert witness fees, foreclosure processing fees, litigation costs and all other related expenses (collectively, "Default Costs"). Maker, at the option of Holder, shall appear and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Holder and shall pay all costs and expenses of Holder, including the cost of evidence of title and attorneys' fees, in any such action or proceeding in which Holder may appear or be named, with interest thereon at the Default Interest Rate from the date incurred or expended until paid in full.

g. **Default Interest.** If Maker is in default, then (in addition to the late charge as stated in Paragraph 6(a) above) the interest rate on the unpaid Principal shall be **increased to 27% per annum** (the "Default Interest Rate") commencing on the date through which interest was last paid, and shall continue, at the option of the Holder, until all payments have been made current, all sums due under this Note and the other Loan Documents have been paid in full and/or all non-monetary defaults under the Loan Documents have been cured to the Holder's satisfaction. Any advances made by Holder, pursuant to the terms of the Loan Documents, and all Default Costs shall accrue interest at the Default Interest Rate. In the event Maker files or is involuntarily placed in bankruptcy, Maker hereby agrees that Holder shall be entitled to interest on all Loan arrearages of whatever nature at the Default Interest Rate.

7. NOTICES

Unless applicable law requires a different method, any notice that must be given to Maker under this Note will be given by mailing it by first class mail or by delivering it to Maker at the address stated above or at a different address if Maker gives Servicing Agent written notice of a different address. Any notice that must be given to Holder shall be given by mailing it by first class mail to the Servicing Agent, at 55 E. Thomas Rd., Phoenix, Arizona 85012, or at a different address if Servicing Agent has given Maker written notice of a different address.

8. OBLIGATIONS OF PERSONS UNDER THIS NOTE

If more than one person signs this Note in his/her individual capacity and/or on behalf of his/her marital community, and not on behalf of a corporate or partnership entity, each person and his/her marital community (if applicable) is fully and personally obligated to keep all of the promises made in this Note, including the promise to pay the full amount owed. Any person who is a guarantor, surety or indorser of this Note is also obligated to perform under the terms of this Note. Any subsequent person who takes over Maker's rights under this Note by whatever means, including the obligations of a guarantor, surety or indorser of this Note, is also bound by all of the promises and liabilities created by this Note and the other Loan Documents. Holder may enforce its rights under this Note against each Maker or successor, jointly and severally. This means that each signer may be required to pay all sums owed under this Note irrespective of the type, value or ownership of the property securing the Note.

9. WAIVERS

Maker, for itself and all endorsers, guarantors and sureties of this Note, and their heirs, successors and assigns and legal representatives, hereby waives presentment for payment, demand, notice of nonpayment, notice of dishonor, protest of any dishonor, notice of protest and protest of this Note, and all other notices in connection with the delivery, acceptance, performance, default or enforcement of the payment of this Note, and agrees that their respective liability shall be unconditional and without regard to the liability of any other party and shall not be in any manner affected by any indulgence, extension of time, renewal, waiver or modification granted or consented to by Holder. Maker, for itself and all endorsers, guarantors and sureties of the Note, and their heirs, legal representatives, successors and assigns, hereby consents to every extension of time, renewal, waiver or modification that may be granted by Holder with respect to the payment or other provisions of this Note, and to the release of any makers, endorsers, guarantors or sureties, and of any collateral given to secure the payment hereof, or any part hereof, with or without substitution, and agrees that additional makers, endorsers, guarantors or sureties may become parties hereto without notice to Maker or to any endorser, guarantor or surety and without affecting the liability of any of them.

10. TIME

Time is of the essence in all aspects of this Note and the Loan Documents.

11. SECURITY

This Note and the other Loan Documents, including, among others, the Deed of Trust, were executed by Maker and, if necessary, various other parties to protect Holder from possible losses which might result if Maker does not perform the obligations set forth in this Note. The Loan Documents describe how, and under what conditions, Maker may be required to make immediate payment in full of all sums Maker owes under this Note. Some of those conditions, but not all, are described as follows:



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PROMISSORY NOTE

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- a. If Maker or another party, such as a third party trustor of the Deed of Trust securing this Note, sells, conveys, transfers, assigns, contracts for sale, leases with option to purchase or further encumbers the property securing the Note (the "Secured Property") or any part thereof, including, but not limited to, any further assignment of the Secured Property's income, wraparound mortgage or purchase contract;
- b. If Maker is a limited liability company and any ownership interest in Maker is sold, conveyed or transferred;
- c. If Maker is a partnership and any general partnership interest in Maker is sold, conveyed or transferred, either voluntarily or involuntarily without the prior written consent of Holder; or
- d. If Maker is a corporation and the controlling interest in Maker is sold, conveyed or transferred.

Upon the occurrence of any of the above or any other triggering events set forth in the Loan Documents, Holder, at its option, shall have the right to accelerate the sums owing under the Note and those sums shall become immediately due and payable to Holder. This provision shall apply to each and every such sale, conveyance, transfer, lease, encumbrance or assignment, regardless as to whether Holder has consented or waived its rights in connection with any such previous sale, conveyance, transfer, lease, encumbrance or assignment by Maker.

12. PROMOTION

Holder shall have the right to release information related to this Note and the Loan Documents ("Promotional Information"), including, but not limited to, photographs of the Secured Property, characteristics of the Secured Property, Loan characteristics, financing terms and aspects of underwriting, for advertising, marketing and other promotional purposes, such as commercials, advertising fliers, trade articles, Internet releases and public presentations. Holder shall not be held liable to Maker for the release of Promotional Information.

13. GENERAL

- a. This Note is binding on Maker and Maker's agents, representatives, successors, assigns, beneficiaries and trustees.
- b. This Note and the benefits hereunder are not assignable or transferable by Maker. However, Holder may assign its rights under this Note without prior notice to Maker.
- c. Maker acknowledges that Mortgages Ltd. is Holder's Servicing Agent.
- d. This Note shall be governed by, construed and enforced in accordance with the laws of the State of Arizona. Maker hereby submits to the jurisdiction of any Arizona State or Federal Court sitting in the City of Phoenix in any action or proceeding arising out of or relating to this Note. Maker hereby waives the defense of an inconvenient forum.
- e. Maker, and Holder by its acceptance of this Note, hereby waive their respective rights to a trial by jury in any action or proceeding based upon, or related to, the subject matter of this Note and the business relationship that it being established. This waiver is knowingly, intentionally, voluntarily and irrevocably made by Maker and by Holder and Maker acknowledges that neither Holder nor any person acting on behalf of Holder has made any representations of fact to include this waiver of trial by jury or has taken any actions which in any way modify or nullify its effect. Maker and Holder acknowledge that this waiver is a material inducement to enter into a business relationship, that Maker and holder have already relied on this waiver in entering into this Note and that each of them will continue to rely on this wavier in their related future dealings.
- f. This Note, along with the other Loan Documents, sets forth the entire agreement and understanding between Maker and Holder, and supersedes all prior agreements, arrangements and understandings, written or oral, between Maker and Holder.
- g. This Note may be amended, modified, superseded, canceled, renewed or extended and the terms or covenants hereof may be waived only by a written instrument executed by Maker, Holder and the Servicing Agent. The failure of Servicing Agent, at any time or times, to require performance of any provision of this Note shall in no manner affect the right of the Holder or Servicing Agent at a later time to enforce the same. No waiver by Holder or Servicing Agent of the breach of any term or covenant contained in this Note, whether by conduct or otherwise, in any one or more instances, shall be deemed to be, or construed as, a further or continuing waiver by Holder or Servicing Agent of any such breach, or a waiver of the breach of any other term or covenant contained in this Note.
- h. If any term or other provision of this Note or any other Loan Document is declared invalid, illegal or incapable of being enforced by any rule of law or public policy, all other conditions and provisions of this Note shall nevertheless remain in full force and effect.



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PROMISSORY NOTE

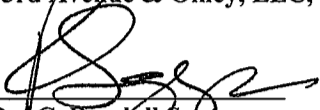
Loan No. 854706
November 30, 2006
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i. In the event Maker successfully abandons the easement from McLellan Blvd, Maker agrees to execute a First Modification to the Deed of Trust in order to add the additional property to the legal description. Maker hereby agrees and understands that any and all title and recording fees associated with the modification will be the sole responsibility of the Maker.

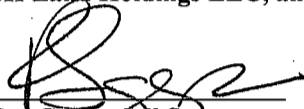
IN WITNESS WHEREOF, this Note has been executed as of the date set forth on the first page.

MAKER:

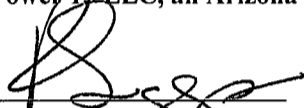
43rd Avenue & Olney, LLC, an Arizona limited liability company


By: C. Randall Suggs
Its: Manager

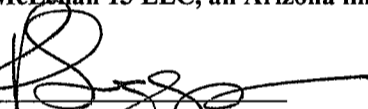
SH Land Holdings LLC, an Arizona limited liability company


By: C. Randall Suggs
Its: Manager

Power 15 LLC, an Arizona limited liability company


By: C. Randall Suggs
Its: Manager

McLellan 13 LLC, an Arizona limited liability company


By: C. Randall Suggs
Its: Manager

STATE OF AZ)
)ss
COUNTY OF MARICOPA)

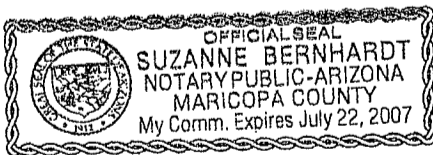
Date of acknowledgement November 30, 2006

Acknowledgement of C. Randall Suggs

This instrument was acknowledged before me this date by the persons above subscribed and if subscribed in a representative capacity, then for the principal named and in the capacity indicated.

Suzanne Bernhardt
Notary Public

My commission expires July 22, 2007



Ex. 8

When recorded return to:

MORTGAGES LTD.

55 E. Thomas Rd.
Phoenix, Arizona 85012

02009420 8 of 10

Magnus Title Agency

OFFICIAL RECORDS OF
MARICOPA COUNTY RECORDER
HELEN PURCELL
20061572832 12/01/2006 01:36
94207111-19-10-8--
ELECTRONIC RECORDING

**DEED OF TRUST, ASSIGNMENT OF RENTS
AND SECURITY AGREEMENT**

Loan No. 854706 November 30, 2006

Secured Loan Amount: \$1,600,000.00

“Trustor” (individually and collectively):

43rd Avenue & Olney, LLC, an Arizona limited liability company, as to Parcel 1; SH Land Holdings LLC, an Arizona limited liability company, as to Parcel 2; Power 15 LLC, an Arizona limited liability company, as to Parcel 3; and McLellan 13 LLC, an Arizona limited liability company, as to Parcel 4
P.O. Box 2496
Clearwater, FL 33757

“Trustee”: Scott M. Coles, a licensed real estate broker
55 E. Thomas Rd.
Phoenix, AZ 85012

“Beneficiary”: Scott M. Coles or Christopher J. Olson, CPA, Trustees of the Mortgages Ltd. 401(k) Plan
55 E. Thomas Rd.
Phoenix, Arizona 85012

This Deed of Trust, Assignment of Rents and Security Agreement (“Deed of Trust”), is made by and among Trustor, Trustee and Beneficiary as of the date written above. In connection with this Deed of Trust and on the same date, Trustor or a third party borrower has executed a Promissory Note (the “Note”), a Servicing Agent Agreement and other related documents to evidence and secure the monetary and non-monetary obligations owed to Beneficiary by Trustor and related third parties. These documents, including this Deed of Trust, and any other agreement, document, or instrument evidencing, governing or securing the payment of the indebtedness evidenced by the Note, are collectively referred to as the “Loan Documents.” Trustor understands and agrees that the Servicing Agent Agreement, which is incorporated herein by reference, authorizes the Servicing Agent appointed thereunder to, among other things, act on the Beneficiary’s behalf in accordance with this Deed of Trust.

1. TRUST PROPERTY

For good and valuable consideration, including the indebtedness referenced herein and the trust created hereby, the receipt and sufficiency of which is hereby acknowledged, Trustor irrevocably grants, transfers, conveys and assigns to Trustee, in trust, with the power of sale, for the benefit and security of Beneficiary, all of Trustor’s present and future estate, right, title and interest, under and subject to the terms and conditions set forth herein, in and to that certain real property located in Maricopa County, Arizona, more particularly described in Exhibit A attached hereto and incorporated herein by this reference (the “Real Property”), together with all of the following:

- a. Buildings, structures, fixtures or other improvements now or hereafter placed on the Real Property (collectively, the “Improvements”);
- b. All existing and future leases, subleases, licenses and other agreements for the use and occupancy of all or any portion of the Real Property;
- c. All rents, issues and profits and income generated by the Real Property (the “Property Income”);
- d. All classes of property now or at any time hereafter attached to or used in any way in connection with the use, operation or occupancy of the Real Property;
- e. All property, rights, permits and privileges now or hereafter owned by Trustor or now or hereafter appurtenant to the Real Property, which entitle Trustor or the Real Property to receive all available utilities for use thereon;



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**DEED OF TRUST
ASSIGNMENT OF RENTS AND SECURITY AGREEMENTS**

Loan No. 854706

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- f. All awards resulting from eminent domain or condemnation in whole or in part, proceeds of insurance required on the Real Property and any other award for damage to or destruction of the Real Property or the Improvements;
- g. Any licenses, contracts, permits and agreements required or used in connection with the ownership, operation or maintenance of the Real Property, and the right to the use of any trade names, trademarks or service marks, now or hereafter associated with operation of any business conducted on the Real Property;
- h. All "Impounds," as defined herein, held by Beneficiary or its Servicing Agent for the benefit of Trustor, including, but not limited to, Impounds for taxes, assessments, insurance, homeowners' dues and construction;
- i. All easements, profits, rights of way and other rights now owned or hereafter assigned to Trustor; and
- j. All proceeds of and all unearned premiums due from all insurance policies covering the Real Property.

All of the foregoing are collectively referred to hereinafter as the "Trust Property."

2. TRUSTOR'S WARRANTIES

Trustor hereby warrants that Trustor has a good, marketable and insurable title to the Trust Property acceptable to Beneficiary and that Trustor holds fee simple title to the Real Property. Trustor forever warrants and shall defend title to the Trust Property for the Beneficiary, its successors and assigns, against all claims whatsoever; subject, however, to the following:

- a. The right, power and authority hereinafter given to and conferred upon Beneficiary to collect and apply such Property Income; and
- b. Any easements and restrictions approved by Beneficiary and listed in the schedule of exceptions to coverage in any title insurance policy insuring Beneficiary's interest in the Trust Property.

3. SECURITY

This Deed of Trust secures the following (the "Obligations"), in such order of priority as Beneficiary may elect:

- a. Strict performance of every obligation of Trustor and the third party borrower, if any, under all Loan Documents;
- b. Payment of all sums due under the Note, which include, but are not limited to, the principal amount of the 'Initial Funding' of **\$1,600,000.00**, interest thereon and all other charges assessed thereunder, such as late charges, notice fees and prepayment premiums;
- c. In the event that this Deed of Trust secures a Note with an Equity-Flex[®] Mortgage Line and "Advances," as defined therein, are made by Beneficiary, then payment of the aggregate amount of all Advances and all Equity-Flex Fees (as defined in said Note);
- d. In the event of default, payment of interest at the "Default Interest Rate," as defined by the Note;
- e. Payment of all sums incurred by Beneficiary or its Servicing Agent, with interest thereon, to protect, preserve, repair or maintain the Trust Property or to cure any senior or junior loans, trust deeds, mortgages or other security instruments, including, without limitation, taxes, assessments, homeowners' dues, ground rents, force placed insurance, attorneys' fees, litigation costs, appraisal fees, inspection fees, project manager fees, receiver fees and other expert or consulting fees;
- f. Payment of all sums incurred by Beneficiary or its Servicing Agent, with interest thereon, in the event of Trustor or the third party borrower's default under the Loan Documents, including, without limitation, attorneys' fees, litigation costs and expenses, appellate costs and expenses, bankruptcy fees, foreclosure fees, trustee fees, receiver fees, expert fees and witness fees;
- g. Payment of all sums incurred by Beneficiary or its Servicing Agent, with interest thereon, in the collection of amounts owed by the guarantor or guarantors of the Note, including, without limitation, attorneys' fees, litigation costs and expenses, appellate costs and expenses, bankruptcy fees, foreclosure fees, trustee fees, receiver fees, expert fees and witness fees;
- h. Strict performance of every obligation of Trustor and the third party borrower, if any, contained in any agreement, document or instrument, hereafter executed by Trustor or the third party borrower, reciting that the obligations thereunder are secured by this Deed of Trust, which includes, but is not limited to, Advance Agreements, forbearance agreements, extension agreements, payment plans and Note modifications;



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**DEED OF TRUST
ASSIGNMENT OF RENTS AND SECURITY AGREEMENTS**

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i. Payment of all other sums, with interest thereon, that hereafter may be loaned to Trustor or the third party borrower, if any, or their successors or assigns, by Beneficiary or its successors or assigns when evidenced by an agreement or promissory note reciting that they are secured by this Deed of Trust, which includes, but is not limited to, Advance Agreements, forbearance agreements, extension agreements, payment plans and Note modifications;

j. Strict compliance with and performance of each and every provision of any declaration of covenants, conditions and restrictions, any maintenance, easement and party wall agreement or any other agreement, document or instrument by which the Trust Property is bound or may be affected; **and**

k. In the event of default, payment of any fees incurred by Beneficiary to Servicing Agent to effect a sale in whole or in part of Beneficiary's interest in the Loan Documents.

4. TRUSTOR'S OBLIGATIONS

a. **Trust Property.** Trustor shall keep the Trust Property in good condition and repair. Trustor shall not to remove or demolish any Improvements on the Real Property. Trustor shall complete or restore promptly and in good and workmanlike manner any Improvement which may be constructed, damaged or destroyed, and pay, when due, all claims for labor performed and materials furnished therefor. Trustor shall comply with all laws affecting the Trust Property or requiring any alterations or Improvements to be made thereon. Trustor shall not (i) commit or permit waste of the Trust Property or (ii) abandon the Trust Property. Trustor shall not initiate or acquiesce in a change in the zoning classification of the Real Property without Beneficiary's prior written consent. Trustor shall not commit, suffer or permit any act to or upon the Trust Property in violation of any law. Trustor shall do all acts which, from the character or use of the Trust Property, may be reasonably necessary.

b. **Appraisal.** In the event that the Loan's principal exceeds \$250,000.00, then Trustor shall obtain, at Trustor's sole cost and expense, a MAI or equivalently certified appraisal of the Trust Property addressed to Beneficiary and prepared by an appraiser approved by Beneficiary. Trustor shall provide Beneficiary a copy of the appraisal and all relevant supporting documents within ninety (90) days of the date of the Loan closing. If the appraisal is not received by Beneficiary within that ninety (90) day period, then the Loan shall be in default and Beneficiary shall be entitled to pursue any and all remedies available under the Loan Documents. In addition, at the request of Beneficiary, Trustor shall provide an updated MAI or equivalently certified appraisal of the Trust Property within thirty (30) days of such request. If such updated appraisal is not received by Beneficiary within that thirty (30) day period, then the Loan shall be in default and Beneficiary shall be entitled to pursue any and all remedies available under the Loan Documents.

c. **Insurance and Casualty.** Trustor shall keep all Improvements now or hereafter erected on the Real Property continuously insured against loss by fire or other hazards in an amount not less than the replacement cost of the Improvements, and shall maintain and evidence liability insurance in the minimum amount of **\$1,000,000** or in such other amount required by Beneficiary. When requested by Beneficiary, Trustor shall provide and maintain insurance policies with annual premiums in amounts required by Beneficiary covering vandalism and malicious mischief, sprinkler leakage, rent abatement, business loss, flood damage and/or all other risks commonly insured against by persons owning like properties in the locality of the Property or commonly required by prudent institutional investors making loans secured by liens against such properties. All insurance policies or certificates shall be held by Beneficiary, shall be in such companies as Beneficiary may approve and shall name the Beneficiary as an additional insured with the proceeds payable first to Beneficiary, as its interest may appear, and then to Trustor. All insurance policies shall provide that Beneficiary is to receive 30 days notice prior to cancellation or non-renewal and shall otherwise be in the form and substance satisfactory to Beneficiary. All renewal policies shall be delivered to Beneficiary 30 days before the expiration of the then existing policies along with satisfactory proof that the premiums for renewal have been paid. The amount collected under any insurance policy may be applied in whole or in part by Beneficiary to any indebtedness hereby secured and in such order as Beneficiary may determine whether or not then due, or, at the option of Beneficiary, the entire amount so collected or any part thereof may be released to Trustor for restoration or repair of the Trust Property upon such terms and conditions as are acceptable to Beneficiary. Such application or release shall not cure or waive any default hereunder or cause discontinuance of any action that may have been or may thereafter be taken by Beneficiary or Trustee because of such default. In the event of loss, Trustor shall give immediate notice to Beneficiary. If Trustor has not given proof of loss, then Beneficiary may make proof of loss at any time. Each insurance company is hereby authorized and directed to make payment for any loss directly to Beneficiary, instead of to Trustor, or to Trustor and Beneficiary jointly. Beneficiary shall not be liable for any insurance, for the collection of any insurance proceeds or for the insolvency of any insurer. Any application of insurance proceeds to the outstanding Loan balance by Beneficiary shall not cure or waive any event of default. In the event of the sale of the Trust Property under the power of sale granted to Trustee, the judicial foreclosure of this Deed of Trust or the takeover of possession by a court appointed receiver or trustee, then all right, title and interest of Trustor to such policies of insurance shall inure to the benefit of and shall pass to the successor title-holder of the Trust Property (or to the receiver, if applicable).



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DEED OF TRUST

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Loan No. 854706

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d. Litigation. If an event of default occurs under the Loan Documents, then Trustor shall pay all costs of enforcement, collection and preparation therefor, whether or not any action or proceeding is commenced in any court through all appeals, which includes, but is not limited to, Servicing Agent administration fees, attorneys' fees, appraisal fees, inspection fees, expert witness fees and foreclosure processing fees. Trustor, at the option of Beneficiary, shall appear and defend any action or proceeding purporting to affect the Trust Property or the rights or powers of Beneficiary and shall pay all costs and expenses of Beneficiary, including, but not limited to, all costs of proving title and attorney's fees, with interest thereon at the Default Interest Rate from the date incurred or expended.

e. Property Payments. Trustor shall pay, when due, and before any interest, collection fees or penalties shall accrue, the following:

- (1) All taxes, assessments, homeowners' dues, owners' association fees, ground rents, and any other charges and obligations which may become a lien or charge against the Trust Property;
- (2) All encumbrances, charges and liens on the Trust Property or any part thereof; **and**
- (3) All costs, fees and expenses incurred under this Deed of Trust and the other Loan Documents, including, but not limited to, all Trustee's fees for the issuance of any deed of partial or full release and partial or full reconveyance and all charges, costs and expenses incurred in the event of default or reinstatement.

f. Right to Cure. Should Trustor fail to make any payment or to do any act as required hereby, then Beneficiary or Trustee, but without obligation to do so and without prior notice or demand upon Trustor and without releasing Trustor from any obligation herein, may take such action in such manner and to such extent as either may deem necessary to protect the Trust Property. Beneficiary or Trustee may enter the Real Property for such purposes, appear in and defend any action or proceeding purporting to affect the Trust Property or the rights or powers of Beneficiary or Trustee and pay, purchase, contest or compromise any encumbrance, charge or lien, which in the judgment of either Beneficiary or Trustee appears to hereto, jeopardize Beneficiary's security hereunder, and, in exercising any such powers, pay necessary expenses, employ counsel and pay attorneys' fees.

g. Expenditures. Trustor shall pay immediately all sums expended by Beneficiary or Trustee pursuant to the provisions of this Deed of Trust or the other Loan Documents, together with interest from date of such expenditure at the Default Interest Rate. Any amount paid by Beneficiary or Trustee to protect the Trust Property, along with interest thereon, shall become a part of the debt secured by this Deed of Trust and a lien on the Trust Property, and shall be immediately due and payable to Beneficiary or Trustee.

h. Impounds. Whenever required by Beneficiary, Trustor shall pay with each monthly installment payment an additional sum equal to 1/12th of the annual real property taxes, special assessments, homeowners' or owners' association dues, ground rents, if any, and insurance premiums next due on the Trust Property ("Impounds"), as may be estimated by Beneficiary, which will be held by Beneficiary in a special account (the "Impound Account"). Impounds shall be held by Beneficiary and may be commingled with other Impounds held by Beneficiary or its Servicing Agent. Any interest on Impounds shall accrue to Beneficiary or its Servicing Agent. Impounds may be used to pay taxes, assessments, homeowners' or owners' association dues, ground rents, if any, and insurance premiums before delinquent or before the insurance expires. If any of the Impounds, in the opinion of Beneficiary, are insufficient to accumulate a fund with which to pay such items, Trustor shall pay Beneficiary upon demand the amount necessary to make up the deficiency. If the Impounds held by Beneficiary exceed the amount necessary, in the opinion of Beneficiary, to pay such items, such excess shall, at Beneficiary's option, be refunded to Trustor or shall be credited on any sums due Beneficiary under this Deed of Trust or the other Loan Documents. If there is a default under this Deed of Trust or the other Loan Documents, Beneficiary may apply, at its discretion, the amount then remaining in the Impound Account to any sums due under this Deed of Trust or the other Loan Documents. Any Impound amount is subject to change in the event that the county tax assessor increases or decreases the valuation of the Trust Property, or in the event that there is any other change of circumstances affecting the Trust Property. Any sums held in any construction loan account shall be considered an "Impound."

i. Financial Statements. Trustor shall furnish in form and substance satisfactory to Beneficiary: (a) within ninety (90) days after the end of each calendar year, a statement of income and expenses, relating to the Trust Property for such calendar year; (b) within ninety (90) days after the end of each calendar year, financial statements for such year from Trustor and all Guarantors of the loan; (c) within thirty (30) days after the end of each calendar year, a rent roll for the Trust Property as of January 1 of the current year; (d) upon the request of Beneficiary, all filed Federal and State income tax returns for Trustor and all Guarantors of the loan; and (e) such other financial information concerning the Trust Property, Trustor, or Guarantor as Beneficiary may reasonably require from time to time. Beneficiary or its designated agent shall have the right to inspect the books and records with respect to the Trust Estate at any time, upon reasonable notice to Trustor.



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**DEED OF TRUST
ASSIGNMENT OF RENTS AND SECURITY AGREEMENTS**

Loan No. 854706

November 30, 2006

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j. Environmental Matters.

(i) Trustor represents and warrants to Beneficiary, to the best of Trustor's knowledge after all appropriate inquiry, and covenants that there are no, nor will there be, for so long as any of the indebtedness secured hereby remains outstanding, any Hazardous Materials (as defined below) generated, released, stored, buried, or deposited over, beneath, in or upon the Real Property or on or beneath the surface of adjacent property, except as such Hazardous Materials may be used, stored or transported in connection with the permitted uses of the Trust Property and then only to the extent permitted by law after obtaining all necessary permits and licenses therefor. "Hazardous Materials" shall mean and include any pollutants, flammables, explosives, petroleum (including crude oil) or any fraction thereof, radioactive materials, hazardous wastes, dangerous or toxic substances or related materials, including, without limitation, substances defined as or included within the definition of toxic or hazardous substances, wastes or materials under any federal, state or local laws, ordinances, regulations or guidelines which relate to pollution, the environment or the protection of public health and safety, or limiting, prohibiting or otherwise regulating the presence, sale, recycling, generation, manufacture, use, transportation, disposal, release, storage, treatment of, or response or exposure to, toxic or hazardous substances, wastes or materials. Such laws, ordinances and regulations are hereinafter collectively referred to as the "Hazardous Materials Laws."

(ii) Trustor shall, and Trustor shall cause all employees, agents, tenants, contractors and subcontractors of Trustor and any other persons from time to time present on or occupying the Trust Property to, keep and maintain the Trust Property in compliance with, and not cause or knowingly permit the Trust Property to be in violation of, any applicable Hazardous Materials Laws. Neither Trustor nor any employees, agents, tenants, contractors or subcontractors of Trustor or any other persons occupying or present upon the Trust Property shall use, generate, manufacture, store or dispose of on, under or about the Real Property, or transport to or from the Real Property any Hazardous Materials, except as such Hazardous Materials may be used, stored or transported in connection with the permitted use of the Trust Property and then only to the extent permitted by law after obtaining all necessary permits and licenses therefor.

(iii) Trustor shall be solely responsible for, and shall indemnify and hold harmless Beneficiary, its directors, officers, employees, agents, successors and assigns for, from and against, any claim, demand, lawsuit, loss, damage, cost, expense or liability directly or indirectly arising out of or attributable to the use, generation, storage, release, threatened release, discharge, disposal or presence of Hazardous Materials on, under or about the Real Property (whether occurring prior to or during the pendency of the indebtedness secured hereby or otherwise and regardless of by whom caused, whether by Trustor or any predecessor in title or any owner of land adjacent to the Real Property or any other third party, or any employee, agent, tenant, contractor or subcontractor of Trustor or any predecessor in title or any such adjacent land owner or any third party) including, without limitation: (i) claims of third parties (including governmental agencies) for injury or death to any person or for damage or destruction of any property; (ii) claims for response costs, clean-up costs, costs and expenses of removal and restoration, including fees of attorneys and experts, and costs of determining the existence of Hazardous Materials and reporting same to any governmental agency; (iii) any and all other claims for expenses or obligations, including attorneys' fees, costs and other expenses; (iv) any and all penalties threatened, sought or imposed on account of a violation of any Hazardous Materials Laws; (v) all fees of any consultants, attorneys and engineering firms retained in connection with monitoring the obligations of Trustor under this Deed of Trust; and (vi) any loss occasioned by diminution in the value of the Trust Property which results from any of the foregoing.

5. EQUITY-FLEX®/ DELAY FLEX® MORTGAGE LINE

a. **Equity-Flex®.** In the event that this Deed of Trust secures a Note with an Equity-Flex® Mortgage Line, the Trustor may use, subject to the conditions set forth in the Note, the existing equity in the Trust Property in order to obtain additional funds beyond the amount of the Initial Funding of \$1,600,000.00 up to the Secured Loan Amount of \$1,600,000.00. This Deed of Trust secures the entire Secured Loan Amount regardless of the amount of the Initial Funding or any subsequent draws ('Advances') on the Loan account. The payoff amount required to release this Deed of Trust shall be based on the actual outstanding balance of the Loan account at the time of payoff.

Notice: In the event Beneficiary consents to alienation, assignment or transfer of the Trust Property or the obligations under this Deed of Trust in accordance with Paragraph 14, all assignees, transferees and junior lien holders are hereby advised that this Deed of Trust provides for adjustable release provisions and fluctuating principal balances at Beneficiary's discretion.

b. **Delay-Flex®.** In the event that this Deed of Trust secures a Note with a Delay-Flex® Mortgage Line, Trustor may, subject to the conditions set forth in the Loan Documents and described herein, obtain the Delay-Flex amount designated as such and in accordance to the portions set-forth in the Delay-Flex Funding Schedule outlined in the Delay-Flex Disbursement Summary executed in connection with this Loan. This Deed of Trust secures the entire Designated Loan Amount regardless of the amount of the Initial Funding or any subsequent fundings on the Loan account. However, the payoff amount required to release the Deed of Trust shall be based on the actual outstanding balance of the Loan account at the time of payoff.

c. **The Funding of each Delay-Flex portion is subject to Beneficiary's discretionary approval and satisfaction of the following conditions:**

- (i) There is no then-existing default under any of the Loan Documents and there exist no facts which, with the giving of notice or passage of time, would constitute a default under any of the Loan Documents;
- (ii) Beneficiary, or its agent, has conducted an inspection of the Trust Property and the present condition of the Trust Property has been approved;



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- (iii) The increased loan amount following the funding of each Delay-Flex portion, if made, will not exceed Beneficiary's lending guidelines for the Trust Property;
- (iv) Beneficiary may further condition any delayed funding on endorsements to the Beneficiary's Title Policy insuring the continued validity and priority of the Deed of Trust, Beneficiary's approval of Trustor's proposed utilization of the Delay-Flex proceeds and any other reasonable assurances or conditions Beneficiary may require or impose;
- (v) Beneficiary shall fund each Delay-Flex portion on a date set by Beneficiary at its sole and absolute discretion, which will occur no earlier than the thirtieth (30th) day prior to the Fund Date set forth in the Delay-Flex Funding Schedule and no later than the thirtieth (30th) consecutive day following the Fund Date set forth in the Delay-Flex Funding Schedule; and
- (vi) **Funding the total Delay-Flex portion of the loan is not to exceed nine (9) months from the date of Loan closing. The Delay-Flex Funding Schedule must be completed by Loan closing and included in the Disbursement Summary. Any modification to the Delay-Flex Funding Schedule requires written approval from Beneficiary or Servicing Agent.**

Notice: In the event Beneficiary consents to alienation, assignment or transfer of the Trust Property or the obligations under this Deed of Trust in accordance with Paragraph 14, all assignees, transferees and junior lien holders are hereby advised that this Deed of Trust provides for adjustable release provisions and fluctuating principal balances at Beneficiary's discretion.

6. CONSTRUCTION MORTGAGE

This Deed of Trust may constitute a "construction mortgage" within the meaning of A.R.S. Section 47-9334 and is entitled to the benefits of A.R.S. Section 47-9334(H). If this Deed of Trust secures a construction loan, the proceeds of the obligations secured by this Deed of Trust are to be used by Trustor for the purpose of acquiring title to the Real Property and funding the acquisition, construction and improvement of the Improvements, or refinancing such secured obligations. If this Deed of Trust secures a construction loan, then notice is hereby given that the proceeds of the Note secured hereby may be collaterally assigned to Beneficiary or its agent pursuant to the terms of the Construction Loan Agreement executed herewith.

7. CONDEMNATION

In the event any portion of the Trust Property is condemned or threatened to be condemned by the governing authority, Beneficiary, without notice, shall have the right to accelerate all sums owed under the Loan Documents, which are secured by this Deed of Trust, and those sums shall become immediately due and payable to Beneficiary irrespective of their maturity date. All awards of damages for any condemnation or taking, for injury to the Trust Property by reason of public use or for damages from private trespass or injury to the Trust Property, are hereby assigned, transferred and conveyed to Beneficiary and shall be paid to Beneficiary as further security for the Loan. Upon receipt of such monies, Beneficiary may hold the same as such further security, or apply or release the same in the same manner and with the same effect as herein provided for the disposition of proceeds of fire or other insurance.

8. BENEFICIARY'S OPTIONS

Without affecting the obligation of Trustor to pay and perform as required herein, without affecting the personal liability of any person for payment of the indebtedness secured hereby, and without affecting the lien or priority of lien hereof on the Trust Property, Beneficiary may, at its option:

- a. Release and reconvey all or any part of the Trust Property;
- b. Consent to the making and/or recording of any map or plat of the Trust Property or any part thereof;
- c. Join in granting any easement on the Trust Property;
- d. Join in or consent to any extension agreement or any agreement subordinating the lien, encumbrance or charge hereof;
- e. Extend the time for payment for all or any part of the indebtedness secured hereby, accept a renewal note therefore, reduce the payments thereon, release any person liable for all or any part thereof or otherwise change the terms of all or any part of the obligation or Note secured hereby; or
- f. Take and hold other security for the payment and performance of the obligation and Note secured hereby, and enforce, exchange, substitute, subordinate, waive or release any such security.

Any of the foregoing actions by Beneficiary or the Trustee at Beneficiary's direction may be taken without the consent of any junior lienholder, and shall not affect the priority of this Deed of Trust over any junior lien.



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9. SECURITY AGREEMENT

This Deed of Trust shall cover, and the Trust Property shall include, all property now or hereafter affixed on, attached to or incorporated upon the Real Property which, to the fullest extent permitted by law, shall be deemed a "fixture." To the extent that the Trust Property consists of rights in action or personal property covered by the Uniform Commercial Code, this Deed of Trust shall also constitute a security agreement, and Trustor hereby grants to Beneficiary, as secured party, a security interest in such property, including all proceeds thereof, for the purpose of securing the obligations herein and the other Loan Documents. In addition, for the purpose of securing the obligations herein and the other Loan Documents, Trustor hereby grants to Beneficiary, as secured party, a security interest in all personal property, if any, described on **Exhibit B** attached hereto. Trustor shall promptly replace any personal property that is consumed or worn out in ordinary usage and such replacement shall be secured hereby. Trustor may sell or dispose of only that part of the personal property that Trustor is obligated to replace, and all proceeds from any such sale or disposition in excess of the amount expended for such replacements shall promptly be paid to Beneficiary to be applied according to the Loan Documents, whether or not then due. Trustor shall immediately notify Beneficiary of any change in the location of Trustor's chief executive office or residence (if Trustor is an individual without an office) in accordance with the terms of this Deed of Trust, and any change in location of the personal property encumbered hereby, except if replaced as permitted herein. All Trustor's covenants contained in this Deed of Trust shall apply to the personal property encumbered hereby whether or not expressly referred to herein. Trustor's covenants and warranties contained in this Paragraph are in addition to, and not in limitation of, those contained in the other provisions of this Deed of Trust. Upon its recording in the real property records, this Deed of Trust shall be effective as a fixture filing. The filing of any other financing statement relating to any other personal property, rights or interests described herein shall not be construed to diminish any of Beneficiary's rights or priorities hereunder. Trustor hereby authorizes and empowers Beneficiary and irrevocably appoints Beneficiary its attorney-in-fact to execute and file, on Trustor's behalf, all financing statements and refilings and continuations thereof as Beneficiary deems necessary or advisable to create, preserve and protect the security interest created hereby.

10. RELEASE AND RECONVEYANCE

a. The release provisions contained in this Deed of Trust are subject to subsequent modification by separate agreements, which include, but are not limited to, Equity-Flex® Advance Agreements and/or upon the subsequent funding of Delay-Flex® Mortgage Line advances.

b. **No release provisions. Intentional.**

c. Upon Trustor's written request to Servicing Agent stating that all sums secured hereby have been paid in full, then Beneficiary will surrender this Deed of Trust and the other Loan Documents to Trustee for cancellation, retention and payment of Trustee's fees, and Trustee shall release and reconvey, without covenant or warranty, express or implied, the Trust Property then held hereunder. The recitals in such reconveyance or any matters or facts shall be conclusive proof of the truthfulness thereof. The grantee in such reconveyance may be described as "the person or persons legally entitled thereto."

11. ASSIGNMENT OF RENTS, LEASES AND PROFITS

To facilitate payment and performance of the obligations under this Deed of Trust and Note, Trustor hereby absolutely transfers and assigns to Beneficiary all right, title and interest of Trustor in and to the following:

a. All existing and future leases, subleases, licenses and other agreements for the use and occupancy of all or a portion of the Trust Property, whether written or oral and whether for a definite term or month-to-month, together with any and all extensions, modifications and renewals thereof (the "Leases"); and

b. All income, receipts, revenues, rents, issues and profits now or hereafter arising from or out of the Leases or from or out of the Trust Property or any part thereof (collectively, the "Rents").

So long as there shall not have occurred an event of default under this Deed of Trust or any of the Loan Documents, Trustor shall have the right to collect all Rents, and shall hold the same, in trust, to be applied first to the payment of all impositions, levies, taxes, assessments and other charges upon the Trust Property, second to maintenance of insurance policies upon the Trust Property required hereby, third to the expenses of the operation of the Trust Property, including maintenance and repairs required hereby, fourth to the payment of that portion of the indebtedness secured hereby then due and payable, and fifth, the balance, if any, to or as directed by Trustor. In furtherance of this assignment and not in lieu hereof, Beneficiary may require a separate assignment of rents and leases and/or separate specific assignments of rents and leases covering one or more of the Leases. In the event of any conflict between the terms of such separate assignment and this Section 11, the terms of such separate assignment shall control. Beneficiary may, at its option, upon default, at any time, without notice, either by person, by agent or by receiver appointed by a court, and without regard to the adequacy of any security for the indebtedness hereby secured or the solvency of the Trustor, collect the Trust Property income by any method authorized by law and apply the same, less costs and expenses of operation and collection, including, without limitation, attorneys' fees, Trustee's fees and Servicing Agent's administrative fees, upon any indebtedness secured hereby, Servicing Agent's administrative fees, upon any indebtedness secured hereby, and in such order as Beneficiary may determine. The entering upon and taking possession of the Trust Property, the collection of Trust Property income and the application thereof shall not cure or waive any default or notice of Trustee's sale or invalidate any act done pursuant to such notice. Beneficiary shall have the right to exercise all its rights as provided by A.R.S. §§ 33-702(B) and 33-807, which may be revised from time to time.



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12. DEFAULT AND REMEDIES

a. Default. Among other things constituting default under the provisions of the Loan Documents, Trustor shall be deemed in default upon the occurrence of any of the following events:

- (1) Trustor fails to make payment of any indebtedness secured hereby in accordance with the Loan Documents;
- (2) Trustor fails to perform any obligation required by and in accordance with the Loan Documents;
- (3) Trustor becomes insolvent;
- (4) Trustor fails to pay Trustor's debts as they mature;
- (5) Trustor admits in writing that Trustor is unable to pay Trustor's debts as they mature;
- (6) Trustor is not paying Trustor's debts as they become due;
- (7) Trustor, any endorser of the Note or any guarantor of the Note files or has filed against them, collectively or individually, any proceeding under the federal bankruptcy laws now or hereafter existing or any similar statute now or hereafter in effect;
- (8) A receiver, trustee, custodian or conservator is appointed to manage over all or any part of the assets of Trustor or the Note's endorser or guarantor; or
- (9) In the event that Trustor has secured or secures additional loans through Mortgages Ltd. (the "Additional Loans"), regardless as to whether Mortgages Ltd. has assigned its interests in the Additional Loans or this Loan, then a default in any Additional Loan shall constitute a default in this Loan and a default in this Loan shall constitute a default in the Additional Loans.

b. Acceleration. Upon the occurrence of any of the foregoing events of default, Beneficiary, without notice, may declare all sums secured hereby immediately due and payable and may apply or cause to be applied amounts in any Impound Account to the obligations secured by this Deed of Trust in any manner that Beneficiary elects.

c. Trustee's Sale. Should Beneficiary elect to have the Trust Property sold by Trustee, Beneficiary shall deliver to Trustee written notice, setting forth the nature of the default, and of the election to cause the Trust Property to be sold. Beneficiary also shall deposit with Trustee this Deed of Trust, the Note and all other Loan Documents evidencing expenditures secured hereby. Trustee shall record and give notice of the Trustee's Sale in the manner required by law, and after the lapse of such time as may then be required by law, Trustee shall sell, in the manner required by law, the Trust Property at public auction, at the time and place fixed by the notice of Trustee's Sale to the highest bidder for cash in lawful money of the United States, payable at the time of sale. Notice to the Trustor shall be given in accordance with the provisions of A.R.S. Sections 33-808 and 33-809. Trustee, at Trustee's discretion, may postpone or continue the sale from time to time by giving notice of postponement or continuance by public declaration at the time and place last appointed for the sale. Trustee shall deliver to the purchaser at the Trustee's Sale a Deed conveying the Trust Property, but without any covenant or warranty, expressed or implied. The recitals in such deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any persons, including Trustor, Trustee or Beneficiary, may purchase the Trust Property at the Trustee's Sale. Beneficiary may bid for and purchase the Trust Property and shall be entitled to apply all or any part of the indebtedness secured hereby as a credit against the purchase price. The purchaser at the Trustee's sale shall be entitled to immediate possession of the Trust Property as against the Trustee or other persons in possession and shall have a right to the summary proceedings to obtain possession provided in Title 12, Chapter 8, Article 4, Arizona Revised Statutes, together with costs and attorneys' fees accrued therefor. After deducting all Trustee's costs, fees and expenses and of this Deed of Trust, including, but not limited to, the costs of evidence of title in connection with the sale, Beneficiary and Trustee's attorneys' fees and the Servicing Agent's administrative fees, Trustee shall apply the sale proceeds to the payment of all sums then secured hereby and all other sums due under the terms hereof, with accrued interest, and then the remainder, if any, to the person or persons legally entitled thereto or as provided in A.R.S. § 33-812.

d. Deficiency Judgment. To the extent permitted by law, Beneficiary shall be entitled to a deficiency judgment against Trustor for any balance remaining due hereunder after a Trustee's sale of the Trust Property.

e. Foreclosure and Other Remedies. In lieu of a Trustee's sale, pursuant to the power of sale conferred hereby, this Deed of Trust may be foreclosed in the same manner provided by law for the foreclosure of mortgages on real property. Beneficiary shall also have the right to exercise any or all remedies available hereunder and at law or in equity, including, but not limited to, all remedies of a secured party under the Uniform Commercial Code with respect to any personal property secured hereby, the appointment of a receiver, provisional remedies and injunctive relief. All Beneficiary's rights and remedies shall be cumulative.

f. Appointment of Receiver or Mortgagee in Possession. If an event of default is continuing or if Beneficiary shall have accelerated the indebtedness secured hereby, Beneficiary, upon application to a court of competent jurisdiction, shall be entitled as a matter of strict right, without notice, and without regard to the occupancy or value of any security for the indebtedness secured hereby or the insolvency of any party bound for its payment, to the appointment, at Beneficiary's option, of itself as mortgagee in possession, or of a receiver to take possession of and to operate the Trust Property, and to collect and apply the Rents. Beneficiary and such receiver and their representatives shall have no liability for any loss, damage, injury, cost or expense resulting from any action or omission which was taken or omitted in good faith.



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13. SUCCESSOR TRUSTEE

Beneficiary may appoint a successor Trustee in the manner prescribed by law. A successor Trustee shall, without conveyance from the predecessor Trustee, succeed to all the predecessor's title, estate, rights, powers and duties. Trustee may resign at any time by complying with applicable law and by mailing or delivering notice thereof to Beneficiary and Trustor, and having so resigned shall be relieved of all liability and responsibility to Trustor, Beneficiary or otherwise hereunder. Any reference to "Trustee" herein shall include all successor trustees. Trustee shall not be liable for any action taken when acting in good faith, or upon any information supplied or direction given by Beneficiary.

14. ALIENATION

The Trust Property and the obligations under this Deed of Trust are not alienable, assignable or transferable by Trustor. Upon the occurrence of any of the following without prior written consent of Beneficiary or its Servicing Agent:

- a. Trustor sells, conveys, transfers, assigns, contracts for sale, leases with option to purchase or further encumbers the Trust Property or any part thereof, including, but not limited to, any further assignment of the Trust Property's income, or a wraparound mortgage or purchase contract;
- b. If Trustor is a corporation and the controlling interest in Trustor is sold, conveyed or transferred;
- c. If Trustor is a limited liability company and any interest in Trustor is sold, conveyed or transferred; or
- d. If Trustor is a partnership and any general partnership interest in Trustor is sold, conveyed or transferred, either voluntarily or involuntarily;

Beneficiary, without notice, shall have the right to accelerate all sums owed under the Loan Documents, which are secured by this Deed of Trust, and those sums shall become immediately due and payable to Beneficiary irrespective of their maturity date. This provision shall apply to each and every such sale, conveyance, transfer, lease, encumbrance or assignment, regardless as to whether Beneficiary has consented or waived its rights in connection with any previous sale, conveyance, transfer, lease, encumbrance or assignment.

15. GENERAL

- a. **Time.** Time is of the essence in all aspects of this Deed of Trust and the other Loan Documents.
- b. **Liability.** This Deed of Trust applies to, inures to the benefit of and binds the Trustor, Trustee and Beneficiary (collectively, the "Parties") and their agents, representatives, heirs, legatees, devisees, successors and assigns. All liability created hereunder shall be joint and several.
- c. **Execution by Third Parties.** Any Trustor signing this Deed of Trust as an accommodation party or surety, or who has otherwise subjected property to this Deed of Trust to secure the debt of another, hereby acknowledges and agrees that Trustor has received good and valuable consideration for that extension of credit and the execution of this Deed of Trust, and hereby waives the benefits of A.R.S. Sections 12-1641 through 12-1644, A.R.S. Sections 12-1566, 33-814, 44-142, 47-3605 and Rule 17(P) of the Arizona Rules of Civil Procedure.
- d. **Assignability.** Beneficiary and Trustee may assign their rights and obligations under this Deed of Trust without prior notice to Trustor. "Beneficiary" shall include the owner and holder of the Note secured hereby, whether or not named as Beneficiary herein.
- e. **Servicing Agent.** Trustor acknowledges that Mortgages Ltd. is Trustor's Servicing Agent and may enforce the terms of this Deed of Trust and the other Loan Documents on behalf of the Beneficiary.
- f. **Severability.** If any term or other provision of this Deed of Trust or any other Loan Document is declared invalid, illegal or incapable of being enforced by any rule of law or public policy, all other conditions and provisions of this Deed of Trust shall nevertheless remain in full force and effect.
- g. **Law.** This Deed of Trust shall be governed by, construed and enforced in accordance with the laws of the State of Arizona. In the event any statute or law referred to herein is subsequently amended or renumbered, the statute as amended or renumbered shall be intended by the Parties to be referred to herein, thereafter, and should said statute or law be repealed, if law permits, that statute or law as it exists on the date hereof is intended to be a part hereof.
- h. **Jurisdiction and Venue.** Trustor hereby submits to the jurisdiction and venue of any Arizona State or Federal Court sitting in the City of Phoenix in any action or proceeding arising out of or relating to this Deed of Trust. Trustor hereby waives the defense of an inconvenient forum.



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i. **Jury Trial Waiver.** Trustor, and Beneficiary, by its acceptance of this Deed of Trust, hereby waive their respective rights to a trial by jury in any action or proceeding based upon, or related to, the subject matter of this Deed of Trust and the business relationship that is being established. This waiver is knowingly, intentionally, voluntarily and irrevocably made by Trustor and Beneficiary, and Trustor acknowledges that neither Beneficiary nor any person acting on behalf of Beneficiary has made any representations of fact to include this waiver of trial by jury or has taken any actions which in any way modify or nullify its effect. Trustor and Beneficiary acknowledge that this waiver is a material inducement to enter into a business relationship, that each of them has already relied on this waiver in entering into this Deed of Trust and that each of them will continue to rely on this waiver in their related future dealings.

j. **Promotion.** Mortgages Ltd. shall have the right to release information related to this Deed of Trust and the other Loan Documents ("Promotional Information"), including, but not limited to, photographs of the Trust Property, characteristics of the Trust Property, Loan characteristics, financing terms and aspects of underwriting, for advertising, marketing and other promotional purposes, such as commercials, advertising fliers, trade articles, Internet releases and public presentations. Mortgages Ltd. shall not be held liable to Trustor for the release of Promotional Information.

k. **Modification.** This Deed of Trust may be amended, modified, superseded, canceled, renewed or extended and the terms or covenants hereof may be waived only by a written instrument executed by all Parties.

l. **Waiver.** The failure of Beneficiary, at any time or times, to require performance of any provision of this Deed of Trust shall in no manner affect the right of Beneficiary at a later time to enforce that provision. Further, if payment of any sum secured hereby is accepted after its due date, Beneficiary does not waive its right either to require prompt payment when due of all other sums or to declare a default for failure to pay as required by the Loan Documents. No waiver by Beneficiary of the breach of any term or covenant contained in this Deed of Trust, whether by conduct or otherwise, in any one or more instances, shall be deemed to be, or construed as, a further or continuing waiver by Beneficiary of any such breach, or a waiver of the breach of any other term or covenant contained in this Deed of Trust.

m. **Waiver of Statute of Limitations.** Trustor hereby waives the right to assert any statute of limitations as a bar to the enforcement of the lien created by any of the Loan Documents or to any action brought to enforce the Note or any other obligations secured by any of the Loan Documents.

n. **Waiver of Homestead and Redemption.** Trustor hereby waives all right of homestead exemption in the Trust Property. Trustor hereby waives all right of redemption on behalf of Trustor and on behalf of all other persons acquiring any interest or title in the Trust Property subsequent to the date of this Deed of Trust, except decree or judgment creditors of Trustor.

o. **In the event Trustor successfully abandons the easement from McLellan Blvd, Trustor agrees to execute a First Modification to the Deed of Trust in order to add the additional property to the legal description. Trustor hereby agrees and understands that any and all title and recording fees associated with the modification will be the sole responsibility of the Trustor.**

IN WITNESS WHEREOF, this Deed of Trust has been executed as of the date set forth on the first page.

SEE ATTACHED SIGNATURE AND NOTARY PAGE



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EXHIBIT "A"

Loan No.: 854706
Borrower: 43rd Avenue & Olney, LLC, an Arizona limited liability company, as to Parcel 1; SH Land Holdings LLC, an Arizona limited liability company, as to Parcel 2; Power 15 LLC, an Arizona limited liability company, as to Parcel 3; and McLellan 13 LLC, an Arizona limited liability company, as to Parcel 4

Parcel 1:

That part of the Southwest quarter of the Northwest quarter of Section 9, Township 1 North, Range 5 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, described as follows:

BEGINNING at a point on the South line of said Southwest quarter of said Northwest quarter, 680.00 feet East of the Southwest corner of said Southwest quarter of the Northwest quarter;

thence North, parallel to the West line of said Southwest quarter of the Northwest quarter, 1181.77 feet to a point on the Southeasterly line of the property which was conveyed to Gail Boyle, et al., by instrument recorded in Docket 3554, Page 285, records of Maricopa County, Arizona, being distant 260.07 feet Southwesterly from the Easterly corner of said property;

thence Northeasterly, along said Southeasterly line, 260.07 feet to a point on the North line of said Southwest quarter of the Northwest quarter;

thence East, along said North line, 240.78 feet to a point which is 132.00 feet West of the Northeast corner of said Southwest quarter of the Northwest quarter;

thence South, parallel to the East line of said Southwest quarter of the Northwest quarter, 1084.00 feet to a point which is 246.00 feet North of the South line of said Southwest quarter of the Northwest quarter;

thence West, parallel to said South line, 173.00 feet;

thence South, 246.00 feet to a point on said South line, which is 271.00 feet East of the point of beginning;

thence West, along South line, 271.00 feet to the POINT OF BEGINNING;

EXCEPT that portion which was conveyed to the City of Mesa in Docket 13148, page 728, records of Maricopa County, Arizona; and

EXCEPT that part of the Southwest quarter of the Northwest quarter of said Section 9, described as follows:

COMMENCING at a point on the South line of said Southwest quarter of the Northwest quarter, 1124.00 feet East of the Southwest corner of said Southwest quarter of the Northwest quarter;

thence North, 246.00 feet to the POINT OF BEGINNING:

thence West, parallel to the South line of the Southwest quarter of said Northwest quarter, 220.00 feet;

thence North, parallel to the West line of the Southwest quarter of said Northwest quarter, 594.00 feet;

thence East, parallel to the South line of said Northwest quarter, 220.00 feet;

thence South, parallel to the West line of the Southwest quarter of said Northwest quarter, 594.00 feet to the POINT OF BEGINNING; and

EXCEPT that part of the Southwest quarter of the Northwest quarter of said Section 9, described as follows:

COMMENCING at a point on the South line of the Southwest quarter of said Northwest quarter, 680.00 feet East of the Southwest corner of said Southwest quarter of the Northwest quarter;

thence North, 1181.77 feet to a point on the Southeasterly line of the property which was conveyed to Gail Boyle, et al., by instrument recorded in Docket 3554, Page 285, records of Maricopa County, Arizona, being distant 260.07 feet, Southwesterly from the Easterly corner of said property;

thence Northeasterly, along said Southeasterly line, 260.07 feet to a point on the North line of said Southwest quarter of the Northwest quarter;

thence East, along said North line 20.78 feet to the POINT OF BEGINNING;

thence East, along said North line, 220.00 feet to a point being 132.00 feet West of the Northeast corner of said Southwest quarter of the Northwest quarter;

thence South, parallel to the East line of said Southwest quarter of the Northwest quarter, 490.00 feet to a point being 840.00 feet North of said South line;

thence West, parallel to said North line, 220.00 feet;

thence North, 490.00 feet to the POINT OF BEGINNING; and

EXCEPT that part of the Southwest quarter of the Northwest quarter of said Section 9, described as follows:

BEGINNING at a point on the South line of said Southwest quarter of the Northwest quarter, which is 840.50 feet East of the Southwest corner of the Southwest quarter of said Northwest quarter;

thence North, parallel to the East line of said Southwest quarter of the Northwest quarter, 351.00 feet;

thence East, parallel to the South line of said Southwest quarter of the Northwest quarter, 63.50 feet;

thence South, parallel to the East line of said Southwest quarter of the Northwest quarter, 105.00 feet;

thence East, parallel to the South line of said Southwest quarter of the Northwest quarter, 47.00 feet;

thence South, parallel to the East line of said Southwest quarter of the Northwest quarter, 246.00 feet to a point on the South line of said Southwest quarter of the Northwest quarter which is 110.50 feet to the point of beginning;

thence West, along said South line, 110.50 feet to the POINT OF BEGINNING; and

EXCEPT that property conveyed to the State of Arizona, by and through its Department of Transportation by instrument recorded in Document No. 96-0061364 and re-recorded in Document No. 96-0432703 records of Maricopa County, Arizona, lying Northerly of that certain line described as follows:

COMMENCING at the West quarter corner of said Section 9;

thence North 00 degrees 27 minutes 25 seconds West, along the West line of said Section 9, 183.37 feet;

thence North 89 degrees 32 minutes 35 seconds east, 55.00 feet to the East right-of-way line of Alma School Road;

thence North 00 degrees 58 minutes 31 seconds East, along said right-of-way line, 92.75 feet to the POINT OF BEGINNING of said line;

thence North 58 degrees 00 minutes 46 seconds East, 575.47 feet;

thence North 52 degrees 06 minutes 57 seconds East, 432.83 feet;

thence North 45 degrees 48 minutes 51 seconds East, 95.00 feet;

thence North 42 degrees 57 minutes 07 seconds East, 200.25 feet to the POINT OF TERMINUS of said line.

Parcel 2:

That part of the Southwest quarter of the Northwest quarter of Section 9, Township 1 North, Range 5 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, described as follows:

BEGINNING at a point on the South line of said Southwest quarter of the Northwest quarter, which is 840.50 feet East of the Southwest corner of the Southwest quarter of said Northwest quarter;

thence North, parallel to the East line of said Southwest quarter of the Northwest quarter, 351.00 feet;

thence East, parallel to the South line of said Southwest quarter of the Northwest quarter, 63.50 feet;

thence South, parallel to the East line of said Southwest quarter of the Northwest quarter, 105.00 feet;

thence East, parallel to the South line of said Southwest quarter of the Northwest quarter, 47.00 feet;

thence South, parallel to the East line of said Southwest quarter of the Northwest quarter, 246.00 feet to a point on the South line of said Southwest quarter of the Northwest quarter which is 110.50 feet to the point of beginning;

thence West, along said South line, 110.50 feet to the POINT OF BEGINNING.

Parcel 3:

That part of the Southwest quarter of the Northwest quarter of Section 9, Township 1 North, Range 5 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, described as follows:

COMMENCING at a point on the South line of said Southwest quarter of the Northwest quarter, 1124.00 feet East of the Southwest corner of said Southwest quarter of the Northwest quarter;

thence North, 246.00 feet to the POINT OF BEGINNING:

thence West, parallel to the South line of the Southwest quarter of said Northwest quarter, 220.00 feet;

thence North, parallel to the West line of the Southwest quarter of said Northwest quarter, 594.00 feet;

thence East, parallel to the South line of said Northwest quarter, 220.00 feet;

thence South, parallel to the West line of the Southwest quarter of said Northwest quarter, 594.00 feet to the POINT OF BEGINNING; and

EXCEPT that property conveyed to the State of Arizona, by and through its Department of Transportation by instrument recorded in Document No. 96-0061364 and re-recorded in Document No. 96-0432703 records of Maricopa County, Arizona, lying Northerly of that certain line described as follows:

COMMENCING at the West quarter corner of said Section 9;

thence North 00 degrees 27 minutes 25 seconds West, along the West line of said Section 9, 183.37 feet;

thence North 89 degrees 32 minutes 35 seconds East, 55.00 feet to the East right-of-way line of Alma School Road;

thence North 00 degrees 58 minutes 31 seconds East, along said right-of-way line, 92.75 feet to the POINT OF BEGINNING of said line;

thence North 58 degrees 00 minutes 46 seconds East, 575.47 feet;

thence North 52 degrees 06 minutes 57 seconds East, 432.83 feet;

thence North 45 degrees 48 minutes 51 seconds East, 95.00 feet;

thence North 42 degrees 57 minutes 07 seconds East, 200.25 feet to the POINT OF TERMINUS of said line.

Parcel 4:

That part of the Southwest quarter of the Northwest quarter of Section 9, Township 1 North, Range 5 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, described as follows:

COMMENCING at a point on the South line of the Southwest quarter of said Northwest quarter, 680.00 feet East of the Southwest corner of said Southwest quarter of the Northwest quarter;

thence North, 1181.77 feet to a point on the Southeasterly line of the property which was conveyed to Gail Boyle, et al., by instrument recorded in Docket 3554, Page 285, records of Maricopa County, Arizona, being distance 260.07 feet, Southwesterly from the Easterly corner of said property;

thence Northeasterly, along said Southeasterly line, 260.07 feet to a point on the North line of said Southwest quarter of the Northwest quarter;

thence East, along said North line 20.78 feet to the POINT OF BEGINNING;

thence East, along said North line, 220.00 feet to a point being 132.00 feet West of the Northeast corner of said Southwest quarter of the Northwest quarter;

thence South, parallel to the East line of said Southwest quarter of the Northwest quarter, 490.00 feet to a point being 840.00 feet North of said South line;

thence West, parallel to said North line, 220.00 feet;

thence North, 490.00 feet to the POINT OF BEGINNING; lying South of the following described line:

Commencing at the West quarter corner of said Section 9;

thence along the West line of said Section 9, North 00 degrees 27 minutes 25 seconds West, 183.37 feet;

thence North 89 degrees 32 minutes 35 seconds East, 55.00 feet to the East right-of-way line of Alma School Road;

thence along said right-of-way line, North 00 degrees 58 minutes 31 seconds East, 92.75 feet to the Point of Beginning of said line;

thence North 58 degrees 00 minutes 46 seconds East, 575.47 feet;

thence North 52 degrees 06 minutes 57 seconds East, 432.83 feet;

thence North 45 degrees 48 minutes 51 seconds East, 95.00 feet;

thence North 42 degrees 57 minutes 07 seconds East, 200.25 feet to the point of terminus of said line.

APNs: 135-07-016A, 135-07-016B, 135-07-003M and 135-07-024

Exhibit "B"

to

Deed of Trust

Borrower Name: 43rd Avenue & Olney, LLC, an Arizona limited liability company, as to Parcel 1; SH Land Holdings LLC, an Arizona limited liability company, as to Parcel 2; Power 15 LLC, an Arizona limited liability company, as to Parcel 3; and McLellan 13 LLC, an Arizona limited liability company, as to Parcel 4

Loan No.: 854706

DESCRIPTION OF PERSONAL PROPERTY

(a) All personal property (including, without limitation, all goods, supplies, equipment, furniture, furnishings, fixtures, machinery, inventory and construction materials) in which Trustor now or hereafter acquires an interest or right, which is now or hereafter located on or affixed to the Real Property or the Improvements, or used or useful in the operation, use, or occupancy thereof or in the construction of any additional improvements thereon, together with any interest of Trustor in and to such personal property which is leased by Trustor or is subject to any superior security interest, and all books, records, leases and other agreements, documents, and instruments of whatever kind or character, relating to the Real Property, the Improvements, or such personal property;

(b) All fees, income, rents, issues, profits, earnings, receipts, royalties, and revenues that may accrue from the personal property described in Paragraph (a) above or any part thereof, or from the Real Property or the Improvements, or that may be received or receivable by Trustor from any hiring, using, letting, leasing, subhiring, subletting, subleasing, occupancy, operation or use thereof.

(c) All of Trustor's present and future rights to receive payments of money, services, or property, including, without limitation, rights to receive capital contributions or subscription payments from the members, partners, shareholders or principals of Trustor, amounts payable on account of the sale of ownership interests in Trustor or the capital stock of Trustor, accounts and other accounts receivable, security deposits, chattel paper, notes, drafts, contract rights, instruments, general intangibles, and principal, interest and payments due on account of goods sold or leased, services rendered, loans made or credit extended, together with title to or interest in all agreements, documents, and instruments, evidencing, securing or guarantying the same;

(d) All other intangible property and rights relating to the Real Property, the Improvements, the personal property described in Paragraph (a) above or the operation, occupancy, or use thereof including, without limitation, all governmental and non-governmental permits, licenses (including Trustor's interest in any liquor license related to business operations conducted on the Real Property), and all approvals relating to construction on or operation, occupancy, or use of the Real Property or the Improvements, all names under or by which the Real Property or the Improvements may at any time be operated or known, all rights to carry on business under any such names, or any variant thereof, all trade names and trademarks relating in any way to the Real Property or the Improvements, and all good will in any way relating to the Real Property or the Improvements;



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(e) Trustor's rights under all insurance policies covering the Real Property, the Improvements or the personal property described in Paragraph (a) above, and any and all proceeds, loss payments, and unearned premiums payable or refundable regarding the same;

(f) All reserves, deferred payments, deposits, impound accounts, refunds, cost savings, and payments of any kind relating to the construction of any improvements on the Real Property;

(g) All water stock or water rights relating to the Real Property;

(h) All architectural, structural, mechanical, and engineering plans and specifications prepared for construction of improvements on the Real Property, or extraction of minerals or gravel from the Real Property, and all studies, data, and drawings relating thereto; and also all contracts and agreements of the Trustor relating to such plans and specifications or to such studies, data, and drawings, for the construction of improvements on or extraction of minerals or gravel from the Real Property;

(i) All proceeds from the sale or other disposition of any of the collateral described above;

(j) All of Trustor's rights in proceeds of the loan made by Beneficiary to Trustor;

(k) All of Trustor's rights to security, cleaning, or other deposits from tenants relating to leases or occupancy agreements for any portion of the Real Property or the Improvements;

(l) All of Trustor's rights in any Impound account held by or on behalf of Beneficiary; and

(m) All wells, well equipment, rights to wells, permits and licenses, water rights and all other related property used in connection with the operation of any well on the Real Property or appurtenant to the Real Property.

All defined terms used in this Exhibit B to Deed of Trust not defined herein shall have the same meaning as ascribed to such term in the Deed of Trust to which this Exhibit B is attached.

Ex. 9

SERVICING AGENT AGREEMENT

Loan No. 854706

November 30, 2006

“Trustor” (individually and collectively):

43rd Avenue & Olney, LLC, an Arizona limited liability company, as to Parcel 1; SH Land Holdings LLC, an Arizona limited liability company, as to Parcel 2; Power 15 LLC, an Arizona limited liability company, as to Parcel 3; and McLellan 13 LLC, an Arizona limited liability company, as to Parcel 4

“Beneficiary”: Scott M. Coles or Christopher J. Olson, CPA, Trustees of the Mortgages Ltd. 401(k) Plan

“Servicing Agent”: Mortgages Ltd., an Arizona corporation.

In consideration of the reciprocal promises contained herein, the Trustor, Beneficiary and Servicing Agent (collectively, the “Parties”) hereby agree to the following.

1. APPOINTMENT AND AUTHORITY OF SERVICING AGENT

Trustor and Beneficiary hereby appoint Mortgages Ltd. to act as the Servicing Agent with regard to the Loan. Servicing Agent is authorized to perform any and all of the following tasks:

- a. Receive and hold the original Promissory Note, Deed of Trust, Fee Schedule and all other documents executed by the Trustor in connection with the Loan (collectively, the “Loan Documents”);
- b. Service and administer the Loan in any manner provided by the Loan Documents;
- c. Receive and process any and all Loan payments from Trustor or other payer (“Trustor payment”);
- d. Assess, receive and process all fees and charges set forth in the Loan Documents including, but not limited to, administrative fees, notice fees and late charges;
- e. Apply any sums received by Servicing Agent to the fees, costs and expenses incurred or assessed by Beneficiary before applying to the balance of the Loan account (these include, but are not limited to, notice fees, service fees, administrative fees, inspection fees, appraisal fees, expert fees, attorneys’ fees, litigation costs, force placed insurance premiums, late charges and guarantor collection expenses (*as described herein*));
- f. Receive and retain deposits under the Loan Documents as impounds for the payment of the following:
 - (1) Future payments due;
 - (2) Taxes and assessments;
 - (3) Construction;
 - (4) Insurance premiums;
 - (5) Extension fees;
 - (6) Administration fees; and
 - (7) Any other expenditure required under the Loan Documents;

(Any impound account may be held in the name of Mortgages Ltd. and the Trustor for the benefit of Beneficiary, and Servicing Agent may apply and/or disburse any such deposits in accordance with the Loan Documents);

- g. Evaluate, effectuate and process an assumption of the Loan, and assess and receive an assumption fee and/or an interest increase, as provided in A.R.S. § 33-806.01 or any successor statute;
- h. Execute, file and record any and all documents which, at Beneficiary’s discretion, are necessary to facilitate Loan servicing, including, but not limited to, deeds of release and reconveyance (full and partial); indorsements and assignments of Loan Documents; corrections, amendments, modifications and extensions of Loan Documents; disclaimers; financing statements; assumptions and various certifications;
- i. Incur all fees, costs and expenses deemed necessary by Servicing Agent to protect Beneficiary’s interests under the Loan Documents;
- j. Incur all fees, costs and expenses deemed necessary by Servicing Agent to protect the property securing the Loan (the “Trust Property”), including, but not limited to, insurance premiums, receiver fees, property manager fees, maintenance expenses and security expenses;
- k. Obtain force placed insurance on any portion of the Trust Property in the event the Trustor fails to maintain insurance as required by the Loan Documents;



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SERVICING AGENT AGREEMENT

Loan No. 854706

November 30, 2006

Page 2

l. Execute, file and record any and all documents Servicing Agent deems necessary to protect Beneficiary's interests and/or pursue Beneficiary's remedies upon default, including, but not limited to, a statement of breach or non-performance, a substitution of trustee, a notice of election to foreclose, a notice of trustee's sale, an affidavit of non-military service, a notice of proposed disposition of collateral and various verifications;

m. In the event of default and at Servicing Agent's discretion, commence foreclosure of the Trust Property, initiate a trustee's sale and/or institute any proceeding necessary to collect the sums due under the Loan Documents or to enforce any provision therein (including, but not limited to, pursuing an action against any borrower or guarantor of the Loan; pursuing injunctive relief, the appointment of a receiver, provisional remedies and a deficiency judgment; pursuing claims in bankruptcy court; pursuing an appeal; collecting rents; and taking possession or operating the Trust Property);

n. In the event of default and at Servicing Agent's discretion effect a sale of Beneficiary's interest, in whole or in part, in the Loan Documents at the expense of Trustor which expense shall be secured by the Deed of Trust.

o. Retain attorneys, trustees and other agents necessary to collect the sums due under the Loan Documents, to protect the Trust Property and/or to proceed with foreclosure of the Trust Property, initiate a trustee's sale and/or institute, defend, appear or otherwise participate in any proceeding (legal, administrative or otherwise) that Servicing Agent deems necessary; **and**

p. Incur and pay such costs, expenses and fees as Servicing Agent deems appropriate in undertaking and pursuing enforcement of the Loan Documents and/or collection of amounts owed thereunder, including, but not limited to, attorney fees, receiver fees, trustee fees, expert fees and any fees, costs and expenses incurred in an effort to collect against a guarantor of the Loan.

2. ACCOMODATION.

Servicing Agent provides its services as an accommodation only, and shall incur no responsibility or liability to any person, including, but not limited to, Trustor, for nonfeasance, misfeasance or malfeasance, nonfeasance and Trustor hereby releases, to the fullest extent permitted under applicable law, Servicing Agent from any and all liability therefor.

3. ASSIGNMENT, RESIGNATION AND TERMINATION.

a. Servicing Agent shall have the right to assign the collection account or resign as Servicing Agent at any time, provided that Servicing Agent notifies Beneficiary and Trustor of such assignment or resignation in writing.

(1) In the event Servicing Agent assigns the collection account, Servicing Agent will deliver all Loan Documents, directions and account records to assignee, at which time Servicing Agent will have no further duties or liabilities hereunder.

(2) In the event Servicing Agent resigns, Beneficiary shall have the right to designate a new collection agent and Servicing Agent shall deliver to Beneficiary all Loan Documents, directions and account records to Beneficiary or the newly designated collection agent, at which time Servicing Agent will have no further duties or liabilities hereunder.

b. In the event that the ownership of the Trust Property becomes vested in the Beneficiary by trustee sale, judicial foreclosure or otherwise, then this Agreement shall automatically terminate and Servicing Agent will have no further duties or liabilities hereunder.

c. Upon Servicing Agent's assignment or resignation, or termination of this Agreement, Trustor shall immediately reimburse Beneficiary for any and all fees, costs and expenses incurred hereunder. After such reimbursement and payment, Trustor shall remain obligated to indemnify, in accordance with paragraph 4 hereof, for liabilities which accrued prior to such resignation or termination.

4. INDEMNITY

a. Trustor shall immediately indemnify and hold Servicing Agent harmless against any and all liabilities incurred by Servicing Agent in performing under the terms of this Agreement or otherwise arising, directly or indirectly, from the Loan or Loan Documents, including, but not limited to, all attorneys' fees, insurance premiums, expenses, costs, damages and expenses.

b. In the event that Servicing Agent requests that Beneficiary and/or Trustor pay any amount owed hereunder, Beneficiary and/or Trustor shall remit that amount to Servicing Agent within 5 business days of Servicing Agent's request.

5. TRUSTOR'S OBLIGATIONS

a. **Standard Fees and Costs.** Trustor shall pay to Servicing Agent, for the account of Beneficiary, its current fees and costs, including, but not limited to, those items set forth in the Fee Schedule received by Trustor. The Fee Schedule is subject to change without notice as to the amounts and items included therein. Trustor shall pay a servicing set-up fee of **\$1,500.00**, and a monthly servicing fee of **\$28.00**. When the Loan is paid in full, Trustor shall pay a Close Out Fee of **\$1,500.00**, which is in addition to the monthly servicing fee. There will be a **\$30.00** charge to Trustor for each payoff request.



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SERVICING AGENT AGREEMENT

Loan No. 854706

November 30, 2006

Page 3

b. **Late Fees and Notices.** In the event that a regular payment is not received by Servicing Agent on or before the fifth calendar day after the due date, a late charge of 35% of the monthly Principal and Interest payment will be charged and Trustor shall pay that amount to Servicing Agent, for the account of Beneficiary. The parties agree that this late payment charge is intended to compensate Beneficiary for losses incurred as a result of the late payment and that such late payment charge does not constitute and shall not be construed as a penalty. Servicing Agent will charge \$125.00, plus postage, for each notice sent regarding late payments, nonpayment of taxes, assessments, insurance premiums or any other matter that affects the Trust Property. Servicing Agent will charge \$325.00 for each notice sent regarding returned checks. These notice fees are subject to change at Beneficiary's discretion. In the event that the Loan is not paid in full by the maturity date, Trustor acknowledges that a late charge will be assessed, for the account of the Beneficiary, in the amount of 3% of the remaining principal balance of the Loan on the first day after the Trustor's failure to pay and on the same day each month thereafter, until the final payment is received by the Servicing Agent. All fees and charges are independent of one another and any default interest assessed; thus, a matured loan shall accrue default interest, maturity late fees and any other applicable fees and charges.

c. **Payment Statements.** Servicing Agent, as a convenience only, will provide to Trustor a monthly payment statement. Trustor acknowledges and agrees that it is obligated to make all payments when due under the Loan Documents, whether or not such payment statement is received by Trustor.

6. PARTIAL AND FINAL PAYMENTS

a. **Partial Payments.** In the event that the Servicing Agent receives and processes a partial payment of any amount due under the Loan Documents, such act shall not constitute full payment, estoppel or a waiver of any right of Beneficiary or Servicing Agent to recover the deficiency or to require future payments to be made in full.

b. **Final Payment.** In the event that the final sum to pay the principal balance in total is received by Servicing Agent after 1:00 p.m., interest shall be charged through the next normal business day.

7. GENERAL PROVISIONS

a. This Agreement is binding on the Parties and their agents, representatives, successors, assigns, beneficiaries and trustees.

b. This Agreement and the benefits hereunder are not assignable or transferable by Trustor. Beneficiary may assign Beneficiary's rights and obligations under this Agreement without prior notice to Trustor. Beneficiary, however, must give Servicing Agent prior written notice. After assignment, Beneficiary shall have no further duties or liabilities to Trustor.

c. This Agreement shall be governed by, construed and enforced in accordance with the laws of the State of Arizona. The Parties hereby submit to the jurisdiction of any Arizona State or Federal Court sitting in the City of Phoenix in any action or proceeding arising out of or relating to this Agreement. The Parties hereby waive the defense of an inconvenient forum.

d. The Parties hereby voluntarily, knowingly, irrevocably and unconditionally waive the right to a jury trial on any and all contested matters arising from this Agreement or the Loan Documents.

e. This Agreement sets forth the entire agreement and understanding of the Parties and is to be read in consistency and accordance with the other Loan Documents.

f. This Agreement may be amended, modified, superseded, canceled, renewed or extended and the terms or covenants hereof may be waived only by a written instrument executed by all of the parties hereto. The failure of Servicing Agent or Beneficiary at any time or times to require performance of any provision of this Agreement shall in no manner affect the right of Servicing Agent or Beneficiary at a later time to enforce the same. No waiver by Beneficiary or Servicing Agent of the breach of any term or covenant contained in this Agreement, whether by conduct or otherwise, in any one or more instances, shall be deemed to be, or construed as, a further or continuing waiver by Servicing Agent or Beneficiary of any such breach, or a waiver of the breach of any other term or covenant contained in this Agreement.

g. If any term or other provision of this Agreement or any other Loan Document is declared invalid, illegal or incapable of being enforced by any rule of law or public policy, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect.

This Agreement is effective on the date set forth on the first page.

SEE ATTACHED SIGNATURE PAGE



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SERVICING AGENT AGREEMENT

Loan No. 854706
November 30, 2006
Page 4


SERVICING AGENT AGREEMENT SIGNATURE PAGE

TRUSTOR:

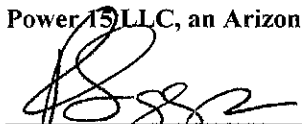
43rd Avenue & Olney, LLC, an Arizona limited liability company


By: C. Randall Suggs
Its: Manager

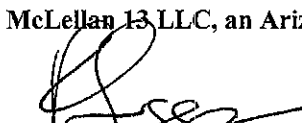
SH Land Holdings LLC, an Arizona limited liability company


By: C. Randall Suggs
Its: Manager

Power 15 LLC, an Arizona limited liability company

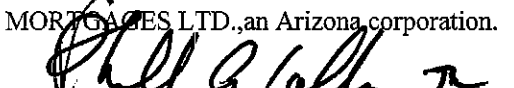

By: C. Randall Suggs
Its: Manager

McLellan 13 LLC, an Arizona limited liability company


By: C. Randall Suggs
Its: Manager

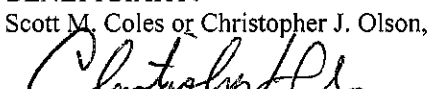
SERVICING AGENT:

MORTGAGES LTD., an Arizona corporation.


Phillip A. Solbomi, Jr., Senior Vice President

BENEFICIARY:

Scott M. Coles or Christopher J. Olson, CPA, Trustee of the Mortgages Ltd. 401(k) Plan


Christopher J. Olson, Trustee



Ex. 10

PROMISSORY NOTE

Interest Only

Loan No. 852806

September 5, 2006

Loan Amount: \$1,500,000.00

"Maker" (individually and collectively):

**Bisontown L.L.C., an Arizona limited liability company and Gary A. Martinson, a married man, as a sole and separate individual
16927 E. Saguaro Blvd.
Fountain Hills, AZ 85268**

"Holder": **Scott M. Coles or Christopher J. Olson, CPA, Trustees of the Mortgages Ltd. Defined Benefit Plan**

1. PROMISE TO PAY

a. As consideration for the receipt of a loan and other value, Maker hereby promises to pay the outstanding balance of the Designated Loan Amount **\$1,500,000.00** in United States currency (the "Principal"), plus interest, to the order of the Holder, **Scott M. Coles or Christopher J. Olson, CPA, Trustees of the Mortgages Ltd. Defined Benefit Plan**, or any subsequent holder of this Note. Maker understands and agrees that **Scott M. Coles or Christopher J. Olson, CPA, Trustees of the Mortgages Ltd. Defined Benefit Plan**, may subsequently transfer this Note, subject to the terms and conditions contained herein. **Scott M. Coles or Christopher J. Olson, CPA, Trustees of the Mortgages Ltd. Defined Benefit Plan**, or anyone who takes this Note by transfer and who is entitled to receive payments under this Note, is referred to hereinafter as the "Holder."

b. In connection with this Note and on the same date, Maker executed a Deed of Trust securing this Note (the "Deed of Trust") and a Servicing Agent Agreement. The Note, the Deed of Trust, the Servicing Agent Agreement and any other agreement, document or instrument evidencing, governing or securing the payment of the indebtedness evidenced by the Note are collectively referred to herein as the "Loan Documents". Maker understands and agrees that the Servicing Agent Agreement, which is incorporated herein by reference, authorizes the Servicing Agent appointed thereunder to, among other things, act on the Holder's behalf in accordance with this Note.

2. INTEREST

Interest will be charged on that portion of the Principal which has been committed by Holder, beginning, at Holder's discretion, on the Loan Funding Date or the Commitment Termination Date (in the event that the Loan closing was delayed for any reason other than one caused by Holder) continuing until the Principal has been paid in full. The 'Loan Funding Date' is the date upon which Mortgages Ltd. allocates and designates sums sufficient to fund this Loan. The 'Commitment Termination Date' is the date upon which Mortgages Ltd.'s Loan commitment expires. Beginning on the Loan Funding Date or the Commitment Termination Date, as the case may be, and so long as no event of default exists, interest will accrue and be paid at the rate of **13.5%** per annum. In the event of default, Maker agrees to pay the Default Interest Rate as set forth herein.

3. PAYMENTS

a. **Time and Place of Payments.** Maker will pay **interest only** by making monthly payments on the **8th** day of each month beginning **October 8, 2006**. Maker will continue to make monthly payments until Maker has paid all of the Principal, interest and any other charges that Maker may owe under this Note or the other Loan Documents. Monthly payments received by Holder in advance will not be posted to Maker's account greater than 14 calendar days prior to the payment due date.

b. Maker's monthly payments will be applied to the following in such order as Holder, in its sole discretion, may determine

- (i) To the payment of any costs, fees or other charges incurred under this Note and the other Loan Documents;
- (ii) To the payment of accrued interest; **and**
- (iii) To the reduction of the Principal balance.

c. All remaining principal, together with accrued unpaid interest and any other amounts due hereunder or under the Loan Documents (collectively, the "Maker's Liabilities") shall be due and payable in full on **March 8, 2008** (the "Maturity Date"), unless Maker's Liabilities become due and payable sooner because of acceleration, in which case Maker's Liabilities shall be due and payable in full on the date of such acceleration. Maker understands that the Maturity Date requires Maker to pay all Principal, interest and all other charges then due.



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PROMISSORY NOTE

Loan No. 852806
September 5, 2006
Page 2

4. RIGHT TO PREPAY AND PREPAYMENT PREMIUM

a. Maker has the right to make payments of Principal at any time before they are due ("Prepayment") provided that:

(1) All sums due under the Note are current;

(2) Prepayment is made on a monthly payment due date;

(3) Payment of a prepayment premium equal to **5%** of the Principal balance of the Note before reduction, if Prepayment is made before **September 8, 2006**; and

(4) At the time of making a Prepayment, Maker advises Servicing Agent, in writing that Maker is making a Prepayment.

b. Any payment of Principal only is considered a Prepayment. Holder will use all of Maker's Prepayments to reduce the amount of Principal that Maker owes under this Note. If Maker makes a partial Prepayment, there may be a change in the amount of Maker's monthly payment.

5. LOAN CHARGES

a. **Note Interest Rate.** If Holder charges or if Maker pays any fees, charges or other sums pursuant to this Note or any other Loan Documents which, under the law, may be deemed to be interest, then the interest rate set forth in Paragraph 2 above shall be deemed to be increased to include such additional interest. Therefore, if it is determined that the rate of interest applicable to this Note is greater than the rate of interest stated in Paragraph 2 above, then the actual rate thus determined shall become the agreed upon and contracted rate of interest for this Note.

b. **Interpretation and Remedy.** Notwithstanding any provision herein or in any of the Loan Documents, the total liability for payments in the nature of interest shall not exceed the limits now imposed by the usury laws of Arizona, if any. If a law, which applies to this Note and which sets maximum loan charges, is finally interpreted so that the interest or other loan charges collected or to be collected in connection with this Note exceed the permitted limits, then: (i) loan charges shall be reduced by Holder in an amount sufficient to reduce the loan charges to the permitted limit; and (ii) any sums already collected from Maker which exceeded permitted limits will be refunded to Maker. Holder may choose to make this refund by reducing the Principal Maker owes under this Note or by making a direct payment to Maker. If a refund reduces Principal, then the reduction will be treated as a partial Prepayment and the provisions of Paragraph 4 will not apply.

6. MAKER'S FAILURE TO PAY AS REQUIRED

a. **Late Charge for Overdue Payments.** If Holder has not received the full amount of any of Maker's monthly payments by the close of business on a date which is five (5) calendar days after the date it is due, Maker will pay a late charge to Holder. The amount of the late charge will be **35%** of the monthly Principal and Interest payment. In the event that this Note is not paid in full by the Maturity Date, Maker acknowledges that a late charge will be assessed in the amount of **3%** of the remaining Principal balance on the next day following the Maturity Date and on the same day each month thereafter until the Note is paid in full.

b. **Default.** Maker shall be in default of this Note if Maker does any of the following:

(i) Fails to pay the full amount of each monthly payment on or before the date it is due;

(ii) Fails to pay all sums due as of the Maturity Date;

(iii) Fails to pay any and all sums required by any other Loan Documents; or

(iv) Fails to perform or observe any covenants or obligations set forth herein or in any other Loan Documents.

c. **Cross Default.** In the event that Maker has secured or secures additional loans through Mortgages Ltd. (the "Additional Loans"), regardless as to whether Mortgages Ltd. has assigned its interests in the Additional Loans or this Loan, then a default in any Additional Loan shall constitute a default in this Loan and a default in this Loan shall constitute a default in the Additional Loans.

d. **Acceleration.** If Maker is in default, then Holder may accelerate the Maturity Date and declare that all sums owing under this Note and the other Loan Documents are immediately due and payable, without notice.

e. **No Waiver By Holder.** Failure of Holder, for any period of time or on more that one occasion, to exercise its option to accelerate the Maturity Date shall not constitute a waiver of the right to exercise the same at any time during the continued existence of an event of default or any subsequent event of default.



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f. **Payment of Holder's Costs and Expenses.** If an event of default occurs, Maker shall pay all costs of enforcement, collection and preparation therefor, whether or not any action or proceeding is commenced in any court and, if commenced, during all appeals, including, but not limited to, attorneys' fees, guarantor collection expenses (as described in the Servicing Agent Agreement), appraisal fees, inspection fees, expert witness fees, foreclosure processing fees, litigation costs and all other related expenses (collectively, "Default Costs"). Maker, at the option of Holder, shall appear and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Holder and shall pay all costs and expenses of Holder, including the cost of evidence of title and attorneys' fees, in any such action or proceeding in which Holder may appear or be named, with interest thereon at the Default Interest Rate from the date incurred or expended until paid in full.

g. **Default Interest.** If Maker is in default, then (in addition to the late charge as stated in Paragraph 6(a) above) the interest rate on the unpaid Principal shall be **increased to 27% per annum** (the "Default Interest Rate") commencing on the date through which interest was last paid, and shall continue, at the option of the Holder, until all payments have been made current, all sums due under this Note and the other Loan Documents have been paid in full and/or all non-monetary defaults under the Loan Documents have been cured to the Holder's satisfaction. Any advances made by Holder, pursuant to the terms of the Loan Documents, and all Default Costs shall accrue interest at the Default Interest Rate. In the event Maker files or is involuntarily placed in bankruptcy, Maker hereby agrees that Holder shall be entitled to interest on all Loan arrearages of whatever nature at the Default Interest Rate.

7. NOTICES

Unless applicable law requires a different method, any notice that must be given to Maker under this Note will be given by mailing it by first class mail or by delivering it to Maker at the address stated above or at a different address if Maker gives Servicing Agent written notice of a different address. Any notice that must be given to Holder shall be given by mailing it by first class mail to the Servicing Agent, at 55 E. Thomas Rd., Phoenix, Arizona 85012, or at a different address if Servicing Agent has given Maker written notice of a different address.

8. OBLIGATIONS OF PERSONS UNDER THIS NOTE

If more than one person signs this Note in his/her individual capacity and/or on behalf of his/her marital community, and not on behalf of a corporate or partnership entity, each person and his/her marital community (if applicable) is fully and personally obligated to keep all of the promises made in this Note, including the promise to pay the full amount owed. Any person who is a guarantor, surety or indorser of this Note is also obligated to perform under the terms of this Note. Any subsequent person who takes over Maker's rights under this Note by whatever means, including the obligations of a guarantor, surety or indorser of this Note, is also bound by all of the promises and liabilities created by this Note and the other Loan Documents. Holder may enforce its rights under this Note against each Maker or successor, jointly and severally. This means that each signer may be required to pay all sums owed under this Note irrespective of the type, value or ownership of the property securing the Note.

9. WAIVERS

Maker, for itself and all endorsers, guarantors and sureties of this Note, and their heirs, successors and assigns and legal representatives, hereby waives presentment for payment, demand, notice of nonpayment, notice of dishonor, protest of any dishonor, notice of protest and protest of this Note, and all other notices in connection with the delivery, acceptance, performance, default or enforcement of the payment of this Note, and agrees that their respective liability shall be unconditional and without regard to the liability of any other party and shall not be in any manner affected by any indulgence, extension of time, renewal, waiver or modification granted or consented to by Holder. Maker, for itself and all endorsers, guarantors and sureties of the Note, and their heirs, legal representatives, successors and assigns, hereby consents to every extension of time, renewal, waiver or modification that may be granted by Holder with respect to the payment or other provisions of this Note, and to the release of any makers, endorsers, guarantors or sureties, and of any collateral given to secure the payment hereof, or any part hereof, with or without substitution, and agrees that additional makers, endorsers, guarantors or sureties may become parties hereto without notice to Maker or to any endorser, guarantor or surety and without affecting the liability of any of them.

10. TIME

Time is of the essence in all aspects of this Note and the Loan Documents.

11. SECURITY

This Note and the other Loan Documents, including, among others, the Deed of Trust, were executed by Maker and, if necessary, various other parties to protect Holder from possible losses which might result if Maker does not perform the obligations set forth in this Note. The Loan Documents describe how, and under what conditions, Maker may be required to make immediate payment in full of all sums Maker owes under this Note. Some of those conditions, but not all, are described as follows:

a. If Maker or another party, such as a third party trustor of the Deed of Trust securing this Note, sells, conveys, transfers, assigns, contracts for sale, leases with option to purchase or further encumbers the property securing the Note (the "Secured Property") or any part thereof, including, but not limited to, any further assignment of the Secured Property's income, wraparound mortgage or purchase contract;



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- b. If Maker is a limited liability company and any ownership interest in Maker is sold, conveyed or transferred;
- c. If Maker is a partnership and any general partnership interest in Maker is sold, conveyed or transferred, either voluntarily or involuntarily without the prior written consent of Holder; or
- d. If Maker is a corporation and the controlling interest in Maker is sold, conveyed or transferred.

Upon the occurrence of any of the above or any other triggering events set forth in the Loan Documents, Holder, at its option, shall have the right to accelerate the sums owing under the Note and those sums shall become immediately due and payable to Holder. This provision shall apply to each and every such sale, conveyance, transfer, lease, encumbrance or assignment, regardless as to whether Holder has consented or waived its rights in connection with any such previous sale, conveyance, transfer, lease, encumbrance or assignment by Maker.

12. PROMOTION

Holder shall have the right to release information related to this Note and the Loan Documents ("Promotional Information"), including, but not limited to, photographs of the Secured Property, characteristics of the Secured Property, Loan characteristics, financing terms and aspects of underwriting, for advertising, marketing and other promotional purposes, such as commercials, advertising fliers, trade articles, Internet releases and public presentations. Holder shall not be held liable to Maker for the release of Promotional Information.

13. GENERAL

- a. This Note is binding on Maker and Maker's agents, representatives, successors, assigns, beneficiaries and trustees.
- b. This Note and the benefits hereunder are not assignable or transferable by Maker. However, Holder may assign its rights under this Note without prior notice to Maker.
- c. Maker acknowledges that Mortgages Ltd. is Holder's Servicing Agent.
- d. This Note shall be governed by, construed and enforced in accordance with the laws of the State of Arizona. Maker hereby submits to the jurisdiction of any Arizona State or Federal Court sitting in the City of Phoenix in any action or proceeding arising out of or relating to this Note. Maker hereby waives the defense of an inconvenient forum.
- e. Maker, and Holder by its acceptance of this Note, hereby waive their respective rights to a trial by jury in any action or proceeding based upon, or related to, the subject matter of this Note and the business relationship that it being established. This waiver is knowingly, intentionally, voluntarily and irrevocably made by Maker and by Holder and Maker acknowledges that neither Holder nor any person acting on behalf of Holder has made any representations of fact to include this waiver of trial by jury or has taken any actions which in any way modify or nullify its effect. Maker and Holder acknowledge that this waiver is a material inducement to enter into a business relationship, that Maker and holder have already relied on this waiver in entering into this Note and that each of them will continue to rely on this wavier in their related future dealings.
- f. This Note, along with the other Loan Documents, sets forth the entire agreement and understanding between Maker and Holder, and supersedes all prior agreements, arrangements and understandings, written or oral, between Maker and Holder.
- g. This Note may be amended, modified, superseded, canceled, renewed or extended and the terms or covenants hereof may be waived only by a written instrument executed by Maker, Holder and the Servicing Agent. The failure of Servicing Agent, at any time or times, to require performance of any provision of this Note shall in no manner affect the right of the Holder or Servicing Agent at a later time to enforce the same. No waiver by Holder or Servicing Agent of the breach of any term or covenant contained in this Note, whether by conduct or otherwise, in any one or more instances, shall be deemed to be, or construed as, a further or continuing waiver by Holder or Servicing Agent of any such breach, or a waiver of the breach of any other term or covenant contained in this Note.
- h. If any term or other provision of this Note or any other Loan Document is declared invalid, illegal or incapable of being enforced by any rule of law or public policy, all other conditions and provisions of this Note shall nevertheless remain in full force and effect.

IN WITNESS WHEREOF, this Note has been executed as of the date set forth on the first page.

SEE ATTACHED SIGNATURE AND NOTARY PAGE

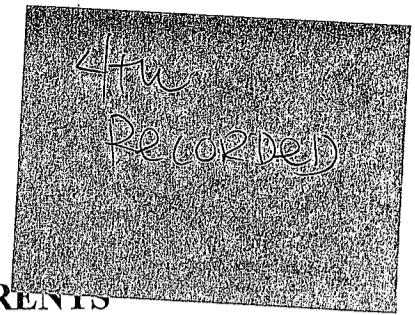


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Ex. 11

When recorded return to:

MORTGAGES LTD.
55 E. Thomas Rd.
Phoenix, Arizona 85012



**DEED OF TRUST, ASSIGNMENT OF RENTS
AND SECURITY AGREEMENT**

Loan No. 852806

September 5, 2006

Secured Loan Amount: \$1,500,000.00

“Trustor” (individually and collectively):

Bisontown L.L.C., an Arizona limited liability company, as to Parcel A and Gary A. Martinson, a married man as his sole and separate property, as to Parcel B
16927 E. Saguro Blvd.
Fountain Hills, AZ 85268

“Trustee”:

Scott M. Coles, a licensed real estate broker
55 E. Thomas Rd.
Phoenix, AZ 85012

“Beneficiary”:

Scott M. Coles or Christopher J. Olson, CPA, Trustees of the Mortgages Ltd. Defined Benefit Plan
55 E. Thomas Rd.
Phoenix, Arizona 85012

This Deed of Trust, Assignment of Rents and Security Agreement (“Deed of Trust”), is made by and among Trustor, Trustee and Beneficiary as of the date written above. In connection with this Deed of Trust and on the same date, Trustor or a third party borrower has executed a Promissory Note (the “Note”), a Servicing Agent Agreement and other related documents to evidence and secure the monetary and non-monetary obligations owed to Beneficiary by Trustor and related third parties. These documents, including this Deed of Trust, and any other agreement, document, or instrument evidencing, governing or securing the payment of the indebtedness evidenced by the Note, are collectively referred to as the “Loan Documents.” Trustor understands and agrees that the Servicing Agent Agreement, which is incorporated herein by reference, authorizes the Servicing Agent appointed thereunder to, among other things, act on the Beneficiary’s behalf in accordance with this Deed of Trust.

1. TRUST PROPERTY

For good and valuable consideration, including the indebtedness referenced herein and the trust created hereby, the receipt and sufficiency of which is hereby acknowledged, Trustor irrevocably grants, transfers, conveys and assigns to Trustee, in trust, with the power of sale, for the benefit and security of Beneficiary, all of Trustor’s present and future estate, right, title and interest, under and subject to the terms and conditions set forth herein, in and to that certain real property located in **Navajo County**, Arizona, more particularly described in **Exhibit A** attached hereto and incorporated herein by this reference (the “Real Property”), together with all of the following:

- a. Buildings, structures, fixtures or other improvements now or hereafter placed on the Real Property (collectively, the “Improvements”);
- b. All existing and future leases, subleases, licenses and other agreements for the use and occupancy of all or any portion of the Real Property;
- c. All rents, issues and profits and income generated by the Real Property (the “Property Income”);
- d. All classes of property now or at any time hereafter attached to or used in any way in connection with the use, operation or occupancy of the Real Property;
- e. All property, rights, permits and privileges now or hereafter owned by Trustor or now or hereafter appurtenant to the Real Property, which entitle Trustor or the Real Property to receive all available utilities for use thereon;



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f. All awards resulting from eminent domain or condemnation in whole or in part, proceeds of insurance required on the Real Property and any other award for damage to or destruction of the Real Property or the Improvements;

g. Any licenses, contracts, permits and agreements required or used in connection with the ownership, operation or maintenance of the Real Property, and the right to the use of any trade names, trademarks or service marks, now or hereafter associated with operation of any business conducted on the Real Property;

h. All "Impounds," as defined herein, held by Beneficiary or its Servicing Agent for the benefit of Trustor, including, but not limited to, Impounds for taxes, assessments, insurance, homeowners' dues and construction;

i. All easements, profits, rights of way and other rights now owned or hereafter assigned to Trustor; and

j. All proceeds of and all unearned premiums due from all insurance policies covering the Real Property.

All of the foregoing are collectively referred to hereinafter as the "Trust Property."

2. TRUSTOR'S WARRANTIES

Trustor hereby warrants that Trustor has a good, marketable and insurable title to the Trust Property acceptable to Beneficiary and that Trustor holds fee simple title to the Real Property. Trustor forever warrants and shall defend title to the Trust Property for the Beneficiary, its successors and assigns, against all claims whatsoever; subject, however, to the following:

a. The right, power and authority hereinafter given to and conferred upon Beneficiary to collect and apply such Property Income; and

b. Any easements and restrictions approved by Beneficiary and listed in the schedule of exceptions to coverage in any title insurance policy insuring Beneficiary's interest in the Trust Property.

3. SECURITY

This Deed of Trust secures the following (the "Obligations"), in such order of priority as Beneficiary may elect:

a. Strict performance of every obligation of Trustor and the third party borrower, if any, under all Loan Documents;

b. Payment of all sums due under the Note, which include, but are not limited to, the principal amount of the 'Initial Funding' of \$1,500,000.00, interest thereon and all other charges assessed thereunder, such as late charges, notice fees and prepayment premiums;

c. In the event that this Deed of Trust secures a Note with an Equity-Flex[®] Mortgage Line and "Advances," as defined therein, are made by Beneficiary, then payment of the aggregate amount of all Advances and all Equity-Flex Fees (as defined in said Note);

d. In the event of default, payment of interest at the "Default Interest Rate," as defined by the Note;

e. Payment of all sums incurred by Beneficiary or its Servicing Agent, with interest thereon, to protect, preserve, repair or maintain the Trust Property or to cure any senior or junior loans, trust deeds, mortgages or other security instruments, including, without limitation, taxes, assessments, homeowners' dues, ground rents, force placed insurance, attorneys' fees, litigation costs, appraisal fees, inspection fees, project manager fees, receiver fees and other expert or consulting fees;

f. Payment of all sums incurred by Beneficiary or its Servicing Agent, with interest thereon, in the event of Trustor or the third party borrower's default under the Loan Documents, including, without limitation, attorneys' fees, litigation costs and expenses, appellate costs and expenses, bankruptcy fees, foreclosure fees, trustee fees, receiver fees, expert fees and witness fees;

g. Payment of all sums incurred by Beneficiary or its Servicing Agent, with interest thereon, in the collection of amounts owed by the guarantor or guarantors of the Note, including, without limitation, attorneys' fees, litigation costs and expenses, appellate costs and expenses, bankruptcy fees, foreclosure fees, trustee fees, receiver fees, expert fees and witness fees;

h. Strict performance of every obligation of Trustor and the third party borrower, if any, contained in any agreement, document or instrument, hereafter executed by Trustor or the third party borrower, reciting that the obligations thereunder are secured by this Deed of Trust, which includes, but is not limited to, Advance Agreements, forbearance agreements, extension agreements, payment plans and Note modifications;



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i. Payment of all other sums, with interest thereon, that hereafter may be loaned to Trustor or the third party borrower, if any, or their successors or assigns, by Beneficiary or its successors or assigns when evidenced by an agreement or promissory note reciting that they are secured by this Deed of Trust, which includes, but is not limited to, Advance Agreements, forbearance agreements, extension agreements, payment plans and Note modifications;

j. Strict compliance with and performance of each and every provision of any declaration of covenants, conditions and restrictions, any maintenance, easement and party wall agreement or any other agreement, document or instrument by which the Trust Property is bound or may be affected; and

k. In the event of default, payment of any fees incurred by Beneficiary to Servicing Agent to effect a sale in whole or in part of Beneficiary's interest in the Loan Documents.

4. TRUSTOR'S OBLIGATIONS

a. **Trust Property.** Trustor shall keep the Trust Property in good condition and repair. Trustor shall not to remove or demolish any Improvements on the Real Property. Trustor shall complete or restore promptly and in good and workmanlike manner any Improvement which may be constructed, damaged or destroyed, and pay, when due, all claims for labor performed and materials furnished therefor. Trustor shall comply with all laws affecting the Trust Property or requiring any alterations or Improvements to be made thereon. Trustor shall not (i) commit or permit waste of the Trust Property or (ii) abandon the Trust Property. Trustor shall not initiate or acquiesce in a change in the zoning classification of the Real Property without Beneficiary's prior written consent. Trustor shall not commit, suffer or permit any act to or upon the Trust Property in violation of any law. Trustor shall do all acts which, from the character or use of the Trust Property, may be reasonably necessary.

b. **Appraisal.** In the event that the Loan's principal exceeds \$250,000.00, then Trustor shall obtain, at Trustor's sole cost and expense, a MAI or equivalently certified appraisal of the Trust Property addressed to Beneficiary and prepared by an appraiser approved by Beneficiary. Trustor shall provide Beneficiary a copy of the appraisal and all relevant supporting documents within ninety (90) days of the date of the Loan closing. If the appraisal is not received by Beneficiary within that ninety (90) day period, then the Loan shall be in default and Beneficiary shall be entitled to pursue any and all remedies available under the Loan Documents. In addition, at the request of Beneficiary, Trustor shall provide an updated MAI or equivalently certified appraisal of the Trust Property within thirty (30) days of such request. If such updated appraisal is not received by Beneficiary within that thirty (30) day period, then the Loan shall be in default and Beneficiary shall be entitled to pursue any and all remedies available under the Loan Documents.

c. **Insurance and Casualty.** Trustor shall keep all Improvements now or hereafter erected on the Real Property continuously insured against loss by fire or other hazards in an amount not less than the replacement cost of the Improvements, and shall maintain and evidence liability insurance in the minimum amount of **\$1,000,000** or in such other amount required by Beneficiary. When requested by Beneficiary, Trustor shall provide and maintain insurance policies with annual premiums in amounts required by Beneficiary covering vandalism and malicious mischief, sprinkler leakage, rent abatement, business loss, flood damage and/or all other risks commonly insured against by persons owning like properties in the locality of the Property or commonly required by prudent institutional investors making loans secured by liens against such properties. All insurance policies or certificates shall be held by Beneficiary, shall be in such companies as Beneficiary may approve and shall name the Beneficiary as an additional insured with the proceeds payable first to Beneficiary, as its interest may appear, and then to Trustor. All insurance policies shall provide that Beneficiary is to receive 30 days notice prior to cancellation or non-renewal and shall otherwise be in the form and substance satisfactory to Beneficiary. All renewal policies shall be delivered to Beneficiary 30 days before the expiration of the then existing policies along with satisfactory proof that the premiums for renewal have been paid. The amount collected under any insurance policy may be applied in whole or in part by Beneficiary to any indebtedness hereby secured and in such order as Beneficiary may determine whether or not then due, or, at the option of Beneficiary, the entire amount so collected or any part thereof may be released to Trustor for restoration or repair of the Trust Property upon such terms and conditions as are acceptable to Beneficiary. Such application or release shall not cure or waive any default hereunder or cause discontinuance of any action that may have been or may thereafter be taken by Beneficiary or Trustee because of such default. In the event of loss, Trustor shall give immediate notice to Beneficiary. If Trustor has not given proof of loss, then Beneficiary may make proof of loss at any time. Each insurance company is hereby authorized and directed to make payment for any loss directly to Beneficiary, instead of to Trustor, or to Trustor and Beneficiary jointly. Beneficiary shall not be liable for any insurance, for the collection of any insurance proceeds or for the insolvency of any insurer. Any application of insurance proceeds to the outstanding Loan balance by Beneficiary shall not cure or waive any event of default. In the event of the sale of the Trust Property under the power of sale granted to Trustee, the judicial foreclosure of this Deed of Trust or the takeover of possession by a court appointed receiver or trustee, then all right, title and interest of Trustor to such policies of insurance shall inure to the benefit of and shall pass to the successor title-holder of the Trust Property (or to the receiver, if applicable).

d. **Litigation.** If an event of default occurs under the Loan Documents, then Trustor shall pay all costs of enforcement, collection and preparation therefor, whether or not any action or proceeding is commenced in any court through all appeals, which includes, but is not limited to, Servicing Agent administration fees, attorneys' fees, appraisal fees, inspection fees, expert witness fees and foreclosure processing fees. Trustor, at the option of Beneficiary, shall appear and defend any action or proceeding purporting to affect the Trust Property or the rights or powers of Beneficiary and shall pay all costs and expenses of Beneficiary, including, but not limited to, all costs of proving title and attorney's fees, with interest thereon at the Default Interest Rate from the date incurred or expended.



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e. **Property Payments.** Trustor shall pay, when due, and before any interest, collection fees or penalties shall accrue, the following:

- (1) All taxes, assessments, homeowners' dues, owners' association fees, ground rents, and any other charges and obligations which may become a lien or charge against the Trust Property;
- (2) All encumbrances, charges and liens on the Trust Property or any part thereof; and
- (3) All costs, fees and expenses incurred under this Deed of Trust and the other Loan Documents, including, but not limited to, all Trustee's fees for the issuance of any deed of partial or full release and partial or full reconveyance and all charges, costs and expenses incurred in the event of default or reinstatement.

f. **Right to Cure.** Should Trustor fail to make any payment or to do any act as required hereby, then Beneficiary or Trustee, but without obligation to do so and without prior notice or demand upon Trustor and without releasing Trustor from any obligation herein, may take such action in such manner and to such extent as either may deem necessary to protect the Trust Property. Beneficiary or Trustee may enter the Real Property for such purposes, appear in and defend any action or proceeding purporting to affect the Trust Property or the rights or powers of Beneficiary or Trustee and pay, purchase, contest or compromise any encumbrance, charge or lien, which in the judgment of either Beneficiary or Trustee appears to hereto jeopardize Beneficiary's security hereunder, and, in exercising any such powers, pay necessary expenses, employ counsel and pay attorneys' fees.

g. **Expenditures.** Trustor shall pay immediately all sums expended by Beneficiary or Trustee pursuant to the provisions of this Deed of Trust or the other Loan Documents, together with interest from date of such expenditure at the Default Interest Rate. Any amount paid by Beneficiary or Trustee to protect the Trust Property, along with interest thereon, shall become a part of the debt secured by this Deed of Trust and a lien on the Trust Property, and shall be immediately due and payable to Beneficiary or Trustee.

h. **Impounds.** Whenever required by Beneficiary, Trustor shall pay with each monthly installment payment an additional sum equal to 1/12th of the annual real property taxes, special assessments, homeowners' or owners' association dues, ground rents, if any, and insurance premiums next due on the Trust Property ("Impounds"), as may be estimated by Beneficiary, which will be held by Beneficiary in a special account (the "Impound Account"). Impounds shall be held by Beneficiary and may be commingled with other Impounds held by Beneficiary or its Servicing Agent. Any interest on Impounds shall accrue to Beneficiary or its Servicing Agent. Impounds may be used to pay taxes, assessments, homeowners' or owners' association dues, ground rents, if any, and insurance premiums before delinquent or before the insurance expires. If any of the Impounds, in the opinion of Beneficiary, are insufficient to accumulate a fund with which to pay such items, Trustor shall pay Beneficiary upon demand the amount necessary to make up the deficiency. If the Impounds held by Beneficiary exceed the amount necessary, in the opinion of Beneficiary, to pay such items, such excess shall, at Beneficiary's option, be refunded to Trustor or shall be credited on any sums due Beneficiary under this Deed of Trust or the other Loan Documents. If there is a default under this Deed of Trust or the other Loan Documents, Beneficiary may apply, at its discretion, the amount then remaining in the Impound Account to any sums due under this Deed of Trust or the other Loan Documents. Any Impound amount is subject to change in the event that the county tax assessor increases or decreases the valuation of the Trust Property, or in the event that there is any other change of circumstances affecting the Trust Property. Any sums held in any construction loan account shall be considered an "Impound."

i. **Financial Statements.** Trustor shall furnish in form and substance satisfactory to Beneficiary: (a) within ninety (90) days after the end of each calendar year, a statement of income and expenses, relating to the Trust Property for such calendar year; (b) within ninety (90) days after the end of each calendar year, financial statements for such year from Trustor and all Guarantors of the loan; (c) within thirty (30) days after the end of each calendar year, a rent roll for the Trust Property as of January 1 of the current year; (d) upon the request of Beneficiary, all filed Federal and State income tax returns for Trustor and all Guarantors of the loan; and (e) such other financial information concerning the Trust Property, Trustor, or Guarantor as Beneficiary may reasonably require from time to time. Beneficiary or its designated agent shall have the right to inspect the books and records with respect to the Trust Estate at any time, upon reasonable notice to Trustor.

j. **Environmental Matters.**

(i) Trustor represents and warrants to Beneficiary, to the best of Trustor's knowledge after all appropriate inquiry, and covenants that there are no, nor will there be, for so long as any of the indebtedness secured hereby remains outstanding, any Hazardous Materials (as defined below) generated, released, stored, buried, or deposited over, beneath, in or upon the Real Property or on or beneath the surface of adjacent property, except as such Hazardous Materials may be used, stored or transported in connection with the permitted uses of the Trust Property and then only to the extent permitted by law after obtaining all necessary permits and licenses therefor. "Hazardous Materials" shall mean and include any pollutants, flammables, explosives, petroleum (including crude oil) or any fraction thereof, radioactive materials, hazardous wastes, dangerous or toxic substances or related materials, including, without limitation, substances defined as or included within the definition of toxic or hazardous substances, wastes or materials under any federal, state or local laws, ordinances, regulations or guidelines which relate to pollution, the environment or the protection of public health and safety, or limiting, prohibiting or otherwise regulating the presence, sale, recycling, generation, manufacture, use, transportation, disposal, release, storage, treatment of, or response or exposure to, toxic or hazardous substances, wastes or materials. Such laws, ordinances and regulations are hereinafter collectively referred to as the "Hazardous Materials Laws."



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(ii) Trustor shall, and Trustor shall cause all employees, agents, tenants, contractors and subcontractors of Trustor and any other persons from time to time present on or occupying the Trust Property to, keep and maintain the Trust Property in compliance with, and not cause or knowingly permit the Trust Property to be in violation of, any applicable Hazardous Materials Laws. Neither Trustor nor any employees, agents, tenants, contractors or subcontractors of Trustor or any other persons occupying or present upon the Trust Property shall use, generate, manufacture, store or dispose of on, under or about the Real Property, or transport to or from the Real Property any Hazardous Materials, except as such Hazardous Materials may be used, stored or transported in connection with the permitted use of the Trust Property and then only to the extent permitted by law after obtaining all necessary permits and licenses therefor.

(iii) Trustor shall be solely responsible for, and shall indemnify and hold harmless Beneficiary, its directors, officers, employees, agents, successors and assigns for, from and against, any claim, demand, lawsuit, loss, damage, cost, expense or liability directly or indirectly arising out of or attributable to the use, generation, storage, release, threatened release, discharge, disposal or presence of Hazardous Materials on, under or about the Real Property (whether occurring prior to or during the pendency of the indebtedness secured hereby or otherwise and regardless of by whom caused, whether by Trustor or any predecessor in title or any owner of land adjacent to the Real Property or any other third party, or any employee, agent, tenant, contractor or subcontractor of Trustor or any predecessor in title or any such adjacent land owner or any third party) including, without limitation: (i) claims of third parties (including governmental agencies) for injury or death to any person or for damage or destruction of any property; (ii) claims for response costs, clean-up costs, costs and expenses of removal and restoration, including fees of attorneys and experts, and costs of determining the existence of Hazardous Materials and reporting same to any governmental agency; (iii) any and all other claims for expenses or obligations, including attorneys' fees, costs and other expenses; (iv) any and all penalties threatened, sought or imposed on account of a violation of any Hazardous Materials Laws; (v) all fees of any consultants, attorneys and engineering firms retained in connection with monitoring the obligations of Trustor under this Deed of Trust; and (vi) any loss occasioned by diminution in the value of the Trust Property which results from any of the foregoing.

5. EQUITY-FLEX®/ DELAY FLEX® MORTGAGE LINE

a. **Equity-Flex®.** In the event that this Deed of Trust secures a Note with an Equity-Flex® Mortgage Line, the Trustor may use, subject to the conditions set forth in the Note, the existing equity in the Trust Property in order to obtain additional funds beyond the amount of the Initial Funding of \$1,500,000.00 up to the Secured Loan Amount of \$1,500,000.00. This Deed of Trust secures the entire Secured Loan Amount regardless of the amount of the Initial Funding or any subsequent draws ('Advances') on the Loan account. The payoff amount required to release this Deed of Trust shall be based on the actual outstanding balance of the Loan account at the time of payoff.

Notice: In the event Beneficiary consents to alienation, assignment or transfer of the Trust Property or the obligations under this Deed of Trust in accordance with Paragraph 14, all assignees, transferees and junior lien holders are hereby advised that this Deed of Trust provides for adjustable release provisions and fluctuating principal balances at Beneficiary's discretion.

b. **Delay-Flex®.** In the event that this Deed of Trust secures a Note with a Delay-Flex® Mortgage Line, Trustor may, subject to the conditions set forth in the Loan Documents and described herein, obtain the Delay-Flex amount designated as such and in accordance to the portions set-forth in the Delay-Flex Funding Schedule outlined in the Delay-Flex Disbursement Summary executed in connection with this Loan. This Deed of Trust secures the entire Designated Loan Amount regardless of the amount of the Initial Funding or any subsequent fundings on the Loan account. However, the payoff amount required to release the Deed of Trust shall be based on the actual outstanding balance of the Loan account at the time of payoff.

c. **The Funding of each Delay-Flex portion is subject to Beneficiary's discretionary approval and satisfaction of the following conditions:**

- (i) There is no then-existing default under any of the Loan Documents and there exist no facts which, with the giving of notice or passage of time, would constitute a default under any of the Loan Documents;
- (ii) Beneficiary, or its agent, has conducted an inspection of the Trust Property and the present condition of the Trust Property has been approved;
- (iii) The increased loan amount following the funding of each Delay-Flex portion, if made, will not exceed Beneficiary's lending guidelines for the Trust Property;
- (iv) Beneficiary may further condition any delayed funding on endorsements to the Beneficiary's Title Policy insuring the continued validity and priority of the Deed of Trust, Beneficiary's approval of Trustor's proposed utilization of the Delay-Flex proceeds and any other reasonable assurances or conditions Beneficiary may require or impose;
- (v) Beneficiary shall fund each Delay-Flex portion on a date set by Beneficiary at its sole and absolute discretion, which will occur no earlier than the thirtieth (30th) day prior to the Fund Date set forth in the Delay-Flex Funding Schedule and no later than the thirtieth (30th) consecutive day following the Fund Date set forth in the Delay-Flex Funding Schedule; and
- (vi) **Funding the total Delay-Flex portion of the loan is not to exceed nine (9) months from the date of Loan closing. The Delay-Flex Funding Schedule must be completed by Loan closing and included in the Disbursement Summary. Any modification to the Delay-Flex Funding Schedule requires written approval from Beneficiary or Servicing Agent.**



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Notice: In the event Beneficiary consents to alienation, assignment or transfer of the Trust Property or the obligations under this Deed of Trust in accordance with Paragraph 14, all assignees, transferees and junior lien holders are hereby advised that this Deed of Trust provides for adjustable release provisions and fluctuating principal balances at Beneficiary's discretion.

6. CONSTRUCTION MORTGAGE

This Deed of Trust may constitute a "construction mortgage" within the meaning of A.R.S. Section 47-9334 and is entitled to the benefits of A.R.S. Section 47-9334(H). If this Deed of Trust secures a construction loan, the proceeds of the obligations secured by this Deed of Trust are to be used by Trustor for the purpose of acquiring title to the Real Property and funding the acquisition, construction and improvement of the Improvements, or refinancing such secured obligations. If this Deed of Trust secures a construction loan, then notice is hereby given that the proceeds of the Note secured hereby may be collaterally assigned to Beneficiary or its agent pursuant to the terms of the Construction Loan Agreement executed herewith.

7. CONDEMNATION

In the event any portion of the Trust Property is condemned or threatened to be condemned by the governing authority, Beneficiary, without notice, shall have the right to accelerate all sums owed under the Loan Documents, which are secured by this Deed of Trust, and those sums shall become immediately due and payable to Beneficiary irrespective of their maturity date. All awards of damages for any condemnation or taking, for injury to the Trust Property by reason of public use or for damages from private trespass or injury to the Trust Property, are hereby assigned, transferred and conveyed to Beneficiary and shall be paid to Beneficiary as further security for the Loan. Upon receipt of such monies, Beneficiary may hold the same as such further security, or apply or release the same in the same manner and with the same effect as herein provided for the disposition of proceeds of fire or other insurance.

8. BENEFICIARY'S OPTIONS

Without affecting the obligation of Trustor to pay and perform as required herein, without affecting the personal liability of any person for payment of the indebtedness secured hereby, and without affecting the lien or priority of lien hereof on the Trust Property, Beneficiary may, at its option:

- a. Release and reconvey all or any part of the Trust Property;
- b. Consent to the making and/or recording of any map or plat of the Trust Property or any part thereof;
- c. Join in granting any easement on the Trust Property;
- d. Join in or consent to any extension agreement or any agreement subordinating the lien, encumbrance or charge hereof;
- e. Extend the time for payment for all or any part of the indebtedness secured hereby, accept a renewal note therefore, reduce the payments thereon, release any person liable for all or any part thereof or otherwise change the terms of all or any part of the obligation or Note secured hereby; or
- f. Take and hold other security for the payment and performance of the obligation and Note secured hereby, and enforce, exchange, substitute, subordinate, waive or release any such security.

Any of the foregoing actions by Beneficiary or the Trustee at Beneficiary's direction may be taken without the consent of any junior lienholder, and shall not affect the priority of this Deed of Trust over any junior lien.

9. SECURITY AGREEMENT

This Deed of Trust shall cover, and the Trust Property shall include, all property now or hereafter affixed on, attached to or incorporated upon the Real Property which, to the fullest extent permitted by law, shall be deemed a "fixture." To the extent that the Trust Property consists of rights in action or personal property covered by the Uniform Commercial Code, this Deed of Trust shall also constitute a security agreement, and Trustor hereby grants to Beneficiary, as secured party, a security interest in such property, including all proceeds thereof, for the purpose of securing the obligations herein and the other Loan Documents. In addition, for the purpose of securing the obligations herein and the other Loan Documents, Trustor hereby grants to Beneficiary, as secured party, a security interest in all personal property, if any, described on **Exhibit B** attached hereto. Trustor shall promptly replace any personal property that is consumed or worn out in ordinary usage and such replacement shall be secured hereby. Trustor may sell or dispose of only that part of the personal property that Trustor is obligated to replace, and all proceeds from any such sale or disposition in excess of the amount expended for such replacements shall promptly be paid to Beneficiary to be applied according to the Loan Documents, whether or not then due. Trustor shall immediately notify Beneficiary of any change in the location of Trustor's chief executive office or residence (if Trustor is an individual without an office) in accordance with the terms of this Deed of Trust, and any change in location of the personal property encumbered hereby, except if replaced as permitted herein. All Trustor's covenants contained in this Deed of Trust shall apply to the personal property encumbered hereby whether or not expressly referred to herein. Trustor's covenants and warranties contained in this Paragraph are in addition to, and not in limitation of, those contained in the other provisions of this Deed of Trust. Upon its recording in the real property records, this Deed of Trust shall be effective as a fixture filing. The filing of any other financing statement relating to any other personal property, rights or interests described herein shall not be construed to diminish any of Beneficiary's rights or priorities hereunder. Trustor hereby authorizes and empowers Beneficiary and irrevocably appoints Beneficiary its attorney-in-fact to execute and file, on Trustor's behalf, all financing statements and refilings and continuations thereof as Beneficiary deems necessary or advisable to create, preserve and protect the security interest created hereby.



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10. RELEASE AND RECONVEYANCE

a. The release provisions contained in this Deed of Trust are subject to subsequent modification by separate agreements, which include, but are not limited to, Equity-Flex® Advance Agreements and/or upon the subsequent funding of Delay-Flex® Mortgage Line advances.

b. There are no partial release provisions (intentional).

b. Upon Trustor's written request to Servicing Agent stating that all sums secured hereby have been paid in full, then Beneficiary will surrender this Deed of Trust and the other Loan Documents to Trustee for cancellation, retention and payment of Trustee's fees, and Trustee shall release and reconvey, without covenant or warranty, express or implied, the Trust Property then held hereunder. The recitals in such reconveyance or any matters or facts shall be conclusive proof of the truthfulness thereof. The grantee in such reconveyance may be described as "the person or persons legally entitled thereto."

11. ASSIGNMENT OF RENTS, LEASES AND PROFITS

To facilitate payment and performance of the obligations under this Deed of Trust and Note, Trustor hereby absolutely transfers and assigns to Beneficiary all right, title and interest of Trustor in and to the following:

a. All existing and future leases, subleases, licenses and other agreements for the use and occupancy of all or a portion of the Trust Property, whether written or oral and whether for a definite term or month-to-month, together with any and all extensions, modifications and renewals thereof (the "Leases"); and

b. All income, receipts, revenues, rents, issues and profits now or hereafter arising from or out of the Leases or from or out of the Trust Property or any part thereof (collectively, the "Rents").

So long as there shall not have occurred an event of default under this Deed of Trust or any of the Loan Documents, Trustor shall have the right to collect all Rents, and shall hold the same, in trust, to be applied first to the payment of all impositions, levies, taxes, assessments and other charges upon the Trust Property, second to maintenance of insurance policies upon the Trust Property required hereby, third to the expenses of the operation of the Trust Property, including maintenance and repairs required hereby, fourth to the payment of that portion of the indebtedness secured hereby then due and payable, and fifth, the balance, if any, to or as directed by Trustor. In furtherance of this assignment and not in lieu hereof, Beneficiary may require a separate assignment of rents and leases and/or separate specific assignments of rents and leases covering one or more of the Leases. In the event of any conflict between the terms of such separate assignment and this Section 11, the terms of such separate assignment shall control. Beneficiary may, at its option, upon default, at any time, without notice, either by person, by agent or by receiver appointed by a court, and without regard to the adequacy of any security for the indebtedness hereby secured or the solvency of the Trustor, collect the Trust Property income by any method authorized by law and apply the same, less costs and expenses of operation and collection, including, without limitation, attorneys' fees, Trustee's fees and Servicing Agent's administrative fees, upon any indebtedness secured hereby, Servicing Agent's administrative fees, upon any indebtedness secured hereby, and in such order as Beneficiary may determine. The entering upon and taking possession of the Trust Property, the collection of Trust Property income and the application thereof shall not cure or waive any default or notice of Trustee's sale or invalidate any act done pursuant to such notice. Beneficiary shall have the right to exercise all its rights as provided by A.R.S. §§ 33-702(B) and 33-807, which may be revised from time to time.

12. DEFAULT AND REMEDIES

a. **Default.** Among other things constituting default under the provisions of the Loan Documents, Trustor shall be deemed in default upon the occurrence of any of the following events:

- (1) Trustor fails to make payment of any indebtedness secured hereby in accordance with the Loan Documents;
- (2) Trustor fails to perform any obligation required by and in accordance with the Loan Documents;
- (3) Trustor becomes insolvent;
- (4) Trustor fails to pay Trustor's debts as they mature;
- (5) Trustor admits in writing that Trustor is unable to pay Trustor's debts as they mature;
- (6) Trustor is not paying Trustor's debts as they become due;
- (7) Trustor, any endorser of the Note or any guarantor of the Note files or has filed against them, collectively or individually, any proceeding under the federal bankruptcy laws now or hereafter existing or any similar statute now or hereafter in effect;
- (8) A receiver, trustee, custodian or conservator is appointed to manage over all or any part of the assets of Trustor or the Note's endorser or guarantor; or
- (9) In the event that Trustor has secured or secures additional loans through Mortgages Ltd. (the "Additional Loans"), regardless as to whether Mortgages Ltd. has assigned its interests in the Additional Loans or this Loan, then a default in any Additional Loan shall constitute a default in this Loan and a default in this Loan shall constitute a default in the Additional Loans.



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b. **Acceleration.** Upon the occurrence of any of the foregoing events of default, Beneficiary, without notice, may declare all sums secured hereby immediately due and payable and may apply or cause to be applied amounts in any Impound Account to the obligations secured by this Deed of Trust in any manner that Beneficiary elects.

c. **Trustee's Sale.** Should Beneficiary elect to have the Trust Property sold by Trustee, Beneficiary shall deliver to Trustee written notice, setting forth the nature of the default, and of the election to cause the Trust Property to be sold. Beneficiary also shall deposit with Trustee this Deed of Trust, the Note and all other Loan Documents evidencing expenditures secured hereby. Trustee shall record and give notice of the Trustee's Sale in the manner required by law, and after the lapse of such time as may then be required by law, Trustee shall sell, in the manner required by law, the Trust Property at public auction, at the time and place fixed by the notice of Trustee's Sale to the highest bidder for cash in lawful money of the United States, payable at the time of sale. Notice to the Trustor shall be given in accordance with the provisions of A.R.S. Sections 33-808 and 33-809. Trustee, at Trustee's discretion, may postpone or continue the sale from time to time by giving notice of postponement or continuance by public declaration at the time and place last appointed for the sale. Trustee shall deliver to the purchaser at the Trustee's Sale a Deed conveying the Trust Property, but without any covenant or warranty, expressed or implied. The recitals in such deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any persons, including Trustor, Trustee or Beneficiary, may purchase the Trust Property at the Trustee's Sale. Beneficiary may bid for and purchase the Trust Property and shall be entitled to apply all or any part of the indebtedness secured hereby as a credit against the purchase price. The purchaser at the Trustee's sale shall be entitled to immediate possession of the Trust Property as against the Trustee or other persons in possession and shall have a right to the summary proceedings to obtain possession provided in Title 12, Chapter 8, Article 4, Arizona Revised Statutes, together with costs and attorneys' fees accrued therefor. After deducting all Trustee's costs, fees and expenses and of this Deed of Trust, including, but not limited to, the costs of evidence of title in connection with the sale, Beneficiary and Trustee's attorneys' fees and the Servicing Agent's administrative fees, Trustee shall apply the sale proceeds to the payment of all sums then secured hereby and all other sums due under the terms hereof, with accrued interest, and then the remainder, if any, to the person or persons legally entitled thereto or as provided in A.R.S. § 33-812.

d. **Deficiency Judgment.** To the extent permitted by law, Beneficiary shall be entitled to a deficiency judgment against Trustor for any balance remaining due hereunder after a Trustee's sale of the Trust Property.

e. **Foreclosure and Other Remedies.** In lieu of a Trustee's sale, pursuant to the power of sale conferred hereby, this Deed of Trust may be foreclosed in the same manner provided by law for the foreclosure of mortgages on real property. Beneficiary shall also have the right to exercise any or all remedies available hereunder and at law or in equity, including, but not limited to, all remedies of a secured party under the Uniform Commercial Code with respect to any personal property secured hereby, the appointment of a receiver, provisional remedies and injunctive relief. All Beneficiary's rights and remedies shall be cumulative.

f. **Appointment of Receiver or Mortgagee in Possession.** If an event of default is continuing or if Beneficiary shall have accelerated the indebtedness secured hereby, Beneficiary, upon application to a court of competent jurisdiction, shall be entitled as a matter of strict right, without notice, and without regard to the occupancy or value of any security for the indebtedness secured hereby or the insolvency of any party bound for its payment, to the appointment, at Beneficiary's option, of itself as mortgagee in possession, or of a receiver to take possession of and to operate the Trust Property, and to collect and apply the Rents. Beneficiary and such receiver and their representatives shall have no liability for any loss, damage, injury, cost or expense resulting from any action or omission which was taken or omitted in good faith.

13. SUCCESSOR TRUSTEE

Beneficiary may appoint a successor Trustee in the manner prescribed by law. A successor Trustee shall, without conveyance from the predecessor Trustee, succeed to all the predecessor's title, estate, rights, powers and duties. Trustee may resign at any time by complying with applicable law and by mailing or delivering notice thereof to Beneficiary and Trustor, and having so resigned shall be relieved of all liability and responsibility to Trustor, Beneficiary or otherwise hereunder. Any reference to "Trustee" herein shall include all successor trustees. Trustee shall not be liable for any action taken when acting in good faith, or upon any information supplied or direction given by Beneficiary.

14. ALIENATION

The Trust Property and the obligations under this Deed of Trust are not alienable, assignable or transferable by Trustor. Upon the occurrence any of the following without prior written consent of Beneficiary or its Servicing Agent:

a. Trustor sells, conveys, transfers, assigns, contracts for sale, leases with option to purchase or further encumbers the Trust Property or any part thereof, including, but not limited to, any further assignment of the Trust Property's income, or a wraparound mortgage or purchase contract;

b. If Trustor is a corporation and the controlling interest in Trustor is sold, conveyed or transferred;

c. If Trustor is a limited liability company and any interest in Trustor is sold, conveyed or transferred; or



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d. If Trustor is a partnership and any general partnership interest in Trustor is sold, conveyed or transferred, either voluntarily or involuntarily;

Beneficiary, without notice, shall have the right to accelerate all sums owed under the Loan Documents, which are secured by this Deed of Trust, and those sums shall become immediately due and payable to Beneficiary irrespective of their maturity date. This provision shall apply to each and every such sale, conveyance, transfer, lease, encumbrance or assignment, regardless as to whether Beneficiary has consented or waived its rights in connection with any previous sale, conveyance, transfer, lease, encumbrance or assignment.

15. GENERAL

a. **Time.** Time is of the essence in all aspects of this Deed of Trust and the other Loan Documents.

b. **Liability.** This Deed of Trust applies to, inures to the benefit of and binds the Trustor, Trustee and Beneficiary (collectively, the "Parties") and their agents, representatives, heirs, legatees, devisees, successors and assigns. All liability created hereunder shall be joint and several.

c. **Execution by Third Parties.** Any Trustor signing this Deed of Trust as an accommodation party or surety, or who has otherwise subjected property to this Deed of Trust to secure the debt of another, hereby acknowledges and agrees that Trustor has received good and valuable consideration for that extension of credit and the execution of this Deed of Trust, and hereby waives the benefits of A.R.S Sections 12-1641 through 12-1644. A.R.S. Sections 12-1566, 33-814, 44-142, 47-3605 and Rule 17(P) of the Arizona Rules of Civil Procedure.

d. **Assignability.** Beneficiary and Trustee may assign their rights and obligations under this Deed of Trust without prior notice to Trustor. "Beneficiary" shall include the owner and holder of the Note secured hereby, whether or not named as Beneficiary herein.

e. **Servicing Agent.** Trustor acknowledges that Mortgages Ltd. is Trustor's Servicing Agent and may enforce the terms of this Deed of Trust and the other Loan Documents on behalf of the Beneficiary.

f. **Severability.** If any term or other provision of this Deed of Trust or any other Loan Document is declared invalid, illegal or incapable of being enforced by any rule of law or public policy, all other conditions and provisions of this Deed of Trust shall nevertheless remain in full force and effect.

g. **Law.** This Deed of Trust shall be governed by, construed and enforced in accordance with the laws of the State of Arizona. In the event any statute or law referred to herein is subsequently amended or renumbered, the statute as amended or renumbered shall be intended by the Parties to be referred to herein, thereafter, and should said statute or law be repealed, if law permits, that statute or law as it exists on the date hereof is intended to be a part hereof.

h. **Jurisdiction and Venue.** Trustor hereby submits to the jurisdiction and venue of any Arizona State or Federal Court sitting in the City of Phoenix in any action or proceeding arising out of or relating to this Deed of Trust. Trustor hereby waives the defense of an inconvenient forum.

i. **Jury Trial Waiver.** Trustor, and Beneficiary, by its acceptance of this Deed of Trust, hereby waive their respective rights to a trial by jury in any action or proceeding based upon, or related to, the subject matter of this Deed of Trust and the business relationship that is being established. This waiver is knowingly, intentionally, voluntarily and irrevocably made by Trustor and Beneficiary, and Trustor acknowledges that neither Beneficiary nor any person acting on behalf of Beneficiary has made any representations of fact to include this waiver of trial by jury or has taken any actions which in any way modify or nullify its effect. Trustor and Beneficiary acknowledge that this waiver is a material inducement to enter into a business relationship, that each of them has already relied on this waiver in entering into this Deed of Trust and that each of them will continue to rely on this waiver in their related future dealings.

j. **Promotion.** Mortgages Ltd. shall have the right to release information related to this Deed of Trust and the other Loan Documents ("Promotional Information"), including, but not limited to, photographs of the Trust Property, characteristics of the Trust Property, Loan characteristics, financing terms and aspects of underwriting, for advertising, marketing and other promotional purposes, such as commercials, advertising fliers, trade articles, Internet releases and public presentations. Mortgages Ltd. shall not be held liable to Trustor for the release of Promotional Information.

k. **Modification.** This Deed of Trust may be amended, modified, superseded, canceled, renewed or extended and the terms or covenants hereof may be waived only by a written instrument executed by all Parties.

l. **Waiver.** The failure of Beneficiary, at any time or times, to require performance of any provision of this Deed of Trust shall in no manner affect the right of Beneficiary at a later time to enforce that provision. Further, if payment of any sum secured hereby is accepted after its due date, Beneficiary does not waive its right either to require prompt payment when due of all other sums or to declare a default for failure to pay as required by the Loan Documents. No waiver by Beneficiary of the breach of any term or covenant contained in this Deed of Trust, whether by conduct or otherwise, in any one or more instances, shall be deemed to be, or construed as, a further or continuing waiver by Beneficiary of any such breach, or a waiver of the breach of any other term or covenant contained in this Deed of Trust.



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m. Waiver of Statute of Limitations. Trustor hereby waives the right to assert any statute of limitations as a bar to the enforcement of the lien created by any of the Loan Documents or to any action brought to enforce the Note or any other obligations secured by any of the Loan Documents.

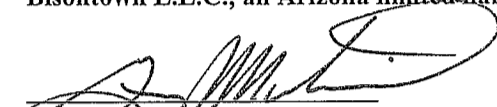
n. Waiver of Homestead and Redemption. Trustor hereby waives all right of homestead exemption in the Trust Property. Trustor hereby waives all right of redemption on behalf of Trustor and on behalf of all other persons acquiring any interest or title in the Trust Property subsequent to the date of this Deed of Trust, except decree or judgment creditors of Trustor.

IN WITNESS WHEREOF, this Deed of Trust has been executed as of the date set forth on the first page.

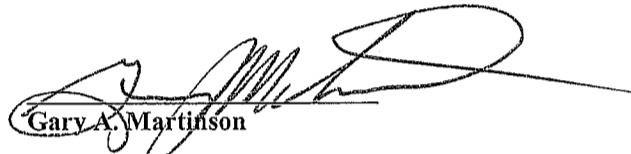
TRUSTOR:

As to Parcel A:

Bisontown L.L.C., an Arizona limited liability company


By: Gary A. Martinson
Its: Member/Manager

As to Parcel B:


Gary A. Martinson

STATE OF AZ)
)ss
COUNTY OF MARICOPA)

Date of acknowledgement 09/05/06

Acknowledgement of Gary A. Martinson

This instrument was acknowledged before me this date by the persons above subscribed and if subscribed in a representative capacity, then for the principal named and in the capacity indicated.


Nechelle Wimmer
Notary Public

My commission expires 01/30/08



EXHIBIT "A"

Loan No.: 852806
Borrower: Bisontown L.L.C., an Arizona limited liability company, as to Parcel A and Gary A. Martinson, a married man as his sole and separate property, as to Parcel B

Parcel A:

Parcels C4, F, G, and H, Bison Ranch, according to Book 22 of Plats, page 3, records of Navajo County, Arizona;

EXCEPT all minerals, gases and other inanimate substances underlying or appurtenant to the property including without limitation, oil, gas and gaseous substances (whether hydrocarbon or otherwise and including without limitation geothermal steam), sulphur, gravel, clay, granite, coal, sandstone, limestone or other stone, copper, iron, gold, silver or other metallic ore, substances of any kind, bauxite, fossils or fertilizers of any name or description and uranium, thorium and other fissionable materials as reserved in Deed recorded in Docket 702, page 179, re-recorded 707, page 53 and thereafter modified in Docket 759, page 816, records of Navajo County, Arizona.

Parcel B:

Parcel C-1, Bison Ranch, according to Book 22 of Plats, page 3, records of Navajo County, Arizona;

EXCEPT all minerals, gases and other inanimate substances underlying or appurtenant to the property including without limitation, oil, gas and gaseous substances (whether hydrocarbon or otherwise and including without limitation geothermal steam), sulphur, gravel, clay, granite, coal, sandstone, limestone or other stone, copper, iron, gold, silver or other metallic ore, substances of any kind, bauxite, fossils or fertilizers of any name or description and uranium, thorium and other fissionable materials as reserved in Deed recorded in Docket 702, page 179, re-recorded 707, page 53 and thereafter modified in Docket 759, page 816, records of Navajo County, Arizona.

APN(s): Parcel A: 206-49-979,206-49-980, 206-49-981, & 206-49-982 and Parcel B: a portion of 206-49-984/ Navajo

Exhibit "B"

to

Deed of Trust

Borrower Name: Bisontown L.L.C., an Arizona limited liability company, as to Parcel A and Gary A. Martinson, a married man as his sole and separate property, as to Parcel B

Loan No.: 852806

DESCRIPTION OF PERSONAL PROPERTY

(a) All personal property (including, without limitation, all goods, supplies, equipment, furniture, furnishings, fixtures, machinery, inventory and construction materials) in which Trustor now or hereafter acquires an interest or right, which is now or hereafter located on or affixed to the Real Property or the Improvements, or used or useful in the operation, use, or occupancy thereof or in the construction of any additional improvements thereon, together with any interest of Trustor in and to such personal property which is leased by Trustor or is subject to any superior security interest, and all books, records, leases and other agreements, documents, and instruments of whatever kind or character, relating to the Real Property, the Improvements, or such personal property;

(b) All fees, income, rents, issues, profits, earnings, receipts, royalties, and revenues that may accrue from the personal property described in Paragraph (a) above or any part thereof, or from the Real Property or the Improvements, or that may be received or receivable by Trustor from any hiring, using, letting, leasing, subhiring, subletting, subleasing, occupancy, operation or use thereof.

(c) All of Trustor's present and future rights to receive payments of money, services, or property, including, without limitation, rights to receive capital contributions or subscription payments from the members, partners, shareholders or principals of Trustor, amounts payable on account of the sale of ownership interests in Trustor or the capital stock of Trustor, accounts and other accounts receivable, security deposits, chattel paper, notes, drafts, contract rights, instruments, general intangibles, and principal, interest and payments due on account of goods sold or leased, services rendered, loans made or credit extended, together with title to or interest in all agreements, documents, and instruments, evidencing, securing or guarantying the same;

(d) All other intangible property and rights relating to the Real Property, the Improvements, the personal property described in Paragraph (a) above or the operation, occupancy, or use thereof including, without limitation, all governmental and non-governmental permits, licenses (including Trustor's interest in any liquor license related to business operations conducted on the Real Property), and all approvals relating to construction on or operation, occupancy, or use of the Real Property or the Improvements, all names under or by which the Real Property or the Improvements may at any time be operated or known, all rights to carry on business under any such names, or any variant thereof, all trade names and trademarks relating in any way to the Real Property or the Improvements, and all good will in any way relating to the Real Property or the Improvements;

(e) Trustor's rights under all insurance policies covering the Real Property, the Improvements or the personal property described in Paragraph (a) above, and any and all proceeds, loss payments, and unearned premiums payable or refundable regarding the same;



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(f) All reserves, deferred payments, deposits, impound accounts, refunds, cost savings, and payments of any kind relating to the construction of any improvements on the Real Property;

(g) All water stock or water rights relating to the Real Property;

(h) All architectural, structural, mechanical, and engineering plans and specifications prepared for construction of improvements on the Real Property, or extraction of minerals or gravel from the Real Property, and all studies, data, and drawings relating thereto; and also all contracts and agreements of the Trustor relating to such plans and specifications or to such studies, data, and drawings, for the construction of improvements on or extraction of minerals or gravel from the Real Property;

(i) All proceeds from the sale or other disposition of any of the collateral described above;

(j) All of Trustor's rights in proceeds of the loan made by Beneficiary to Trustor;

(k) All of Trustor's rights to security, cleaning, or other deposits from tenants relating to leases or occupancy agreements for any portion of the Real Property or the Improvements;

(l) All of Trustor's rights in any Impound account held by or on behalf of Beneficiary; and

(m) All wells, well equipment, rights to wells, permits and licenses, water rights and all other related property used in connection with the operation of any well on the Real Property or appurtenant to the Real Property.

All defined terms used in this Exhibit B to Deed of Trust not defined herein shall have the same meaning as ascribed to such term in the Deed of Trust to which this Exhibit B is attached.

Ex. 12

SERVICING AGENT AGREEMENT

Loan No. 852806

September 5, 2006

“Trustor” (individually and collectively):

Bisontown L.L.C., an Arizona limited liability company and Gary A. Martinson, a married man, as a sole and separate individual

“Beneficiary”: **Scott M. Coles or Christopher J. Olson, CPA, Trustees of the Mortgages Ltd. Defined Benefit Plan**

“Servicing Agent”: **Mortgages Ltd., an Arizona corporation.**

In consideration of the reciprocal promises contained herein, the Trustor, Beneficiary and Servicing Agent (collectively, the “Parties”) hereby agree to the following.

1. APPOINTMENT AND AUTHORITY OF SERVICING AGENT

Trustor and Beneficiary hereby appoint Mortgages Ltd. to act as the Servicing Agent with regard to the Loan. Servicing Agent is authorized to perform any and all of the following tasks:

- a. Receive and hold the original Promissory Note, Deed of Trust, Fee Schedule and all other documents executed by the Trustor in connection with the Loan (collectively, the “Loan Documents”);
 - b. Service and administer the Loan in any manner provided by the Loan Documents;
 - c. Receive and process any and all Loan payments from Trustor or other payer (“Trustor payment”);
 - d. Assess, receive and process all fees and charges set forth in the Loan Documents including, but not limited to, administrative fees, notice fees and late charges;
 - e. Apply any sums received by Servicing Agent to the fees, costs and expenses incurred or assessed by Beneficiary before applying to the balance of the Loan account (these include, but are not limited to, notice fees, service fees, administrative fees, inspection fees, appraisal fees, expert fees, attorneys’ fees, litigation costs, force placed insurance premiums, late charges and guarantor collection expenses (*as described herein*));
 - f. Receive and retain deposits under the Loan Documents as impounds for the payment of the following:
 - (1) Future payments due;
 - (2) Taxes and assessments;
 - (3) Construction;
 - (4) Insurance premiums;
 - (5) Extension fees;
 - (6) Administration fees; **and**
 - (7) Any other expenditure required under the Loan Documents;
- (Any impound account may be held in the name of Mortgages Ltd. and the Trustor for the benefit of Beneficiary, and Servicing Agent may apply and/or disburse any such deposits in accordance with the Loan Documents);
- g. Evaluate, effectuate and process an assumption of the Loan, and assess and receive an assumption fee and/or an interest increase, as provided in A.R.S. § 33-806.01 or any successor statute;
 - h. Execute, file and record any and all documents which, at Beneficiary’s discretion, are necessary to facilitate Loan servicing, including, but not limited to, deeds of release and reconveyance (full and partial); indorsements and assignments of Loan Documents; corrections, amendments, modifications and extensions of Loan Documents; disclaimers; financing statements; assumptions and various certifications;
 - i. Incur all fees, costs and expenses deemed necessary by Servicing Agent to protect Beneficiary’s interests under the Loan Documents;
 - j. Incur all fees, costs and expenses deemed necessary by Servicing Agent to protect the property securing the Loan (the “Trust Property”), including, but not limited to, insurance premiums, receiver fees, property manager fees, maintenance expenses and security expenses;
 - k. Obtain force placed insurance on any portion of the Trust Property in the event the Trustor fails to maintain insurance as required by the Loan Documents;



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SERVICING AGENT AGREEMENT

Loan No. 852806

September 5, 2006

Page 2

l. Execute, file and record any and all documents Servicing Agent deems necessary to protect Beneficiary's interests and/or pursue Beneficiary's remedies upon default, including, but not limited to, a statement of breach or non-performance, a substitution of trustee, a notice of election to foreclose, a notice of trustee's sale, an affidavit of non-military service, a notice of proposed disposition of collateral and various verifications;

m. In the event of default and at Servicing Agent's discretion, commence foreclosure of the Trust Property, initiate a trustee's sale and/or institute any proceeding necessary to collect the sums due under the Loan Documents or to enforce any provision therein (including, but not limited to, pursuing an action against any borrower or guarantor of the Loan; pursuing injunctive relief, the appointment of a receiver, provisional remedies and a deficiency judgment; pursuing claims in bankruptcy court; pursuing an appeal; collecting rents; and taking possession or operating the Trust Property);

n. In the event of default and at Servicing Agent's discretion effect a sale of Beneficiary's interest, in whole or in part, in the Loan Documents at the expense of Trustor which expense shall be secured by the Deed of Trust.

o. Retain attorneys, trustees and other agents necessary to collect the sums due under the Loan Documents, to protect the Trust Property and/or to proceed with foreclosure of the Trust Property, initiate a trustee's sale and/or institute, defend, appear or otherwise participate in any proceeding (legal, administrative or otherwise) that Servicing Agent deems necessary; **and**

p. Incur and pay such costs, expenses and fees as Servicing Agent deems appropriate in undertaking and pursuing enforcement of the Loan Documents and/or collection of amounts owed thereunder, including, but not limited to, attorney fees, receiver fees, trustee fees, expert fees and any fees, costs and expenses incurred in an effort to collect against a guarantor of the Loan.

2. ACCOMODATION.

Servicing Agent provides its services as an accommodation only, and shall incur no responsibility or liability to any person, including, but not limited to, Trustor, for nonfeasance, misfeasance or malfeasance, nonfeasance and Trustor hereby releases, to the fullest extent permitted under applicable law, Servicing Agent from any and all liability therefor.

3. ASSIGNMENT, RESIGNATION AND TERMINATION.

a. Servicing Agent shall have the right to assign the collection account or resign as Servicing Agent at any time, provided that Servicing Agent notifies Beneficiary and Trustor of such assignment or resignation in writing.

(1) In the event Servicing Agent assigns the collection account, Servicing Agent will deliver all Loan Documents, directions and account records to assignee, at which time Servicing Agent will have no further duties or liabilities hereunder.

(2) In the event Servicing Agent resigns, Beneficiary shall have the right to designate a new collection agent and Servicing Agent shall deliver to Beneficiary all Loan Documents, directions and account records to Beneficiary or the newly designated collection agent, at which time Servicing Agent will have no further duties or liabilities hereunder.

b. In the event that the ownership of the Trust Property becomes vested in the Beneficiary by trustee sale, judicial foreclosure or otherwise, then this Agreement shall automatically terminate and Servicing Agent will have no further duties or liabilities hereunder.

c. Upon Servicing Agent's assignment or resignation, or termination of this Agreement, Trustor shall immediately reimburse Beneficiary for any and all fees, costs and expenses incurred hereunder. After such reimbursement and payment, Trustor shall remain obligated to indemnify, in accordance with paragraph 4 hereof, for liabilities which accrued prior to such resignation or termination.

4. INDEMNITY

a. Trustor shall immediately indemnify and hold Servicing Agent harmless against any and all liabilities incurred by Servicing Agent in performing under the terms of this Agreement or otherwise arising, directly or indirectly, from the Loan or Loan Documents, including, but not limited to, all attorneys' fees, insurance premiums, expenses, costs, damages and expenses.

b. In the event that Servicing Agent requests that Beneficiary and/or Trustor pay any amount owed hereunder, Beneficiary and/or Trustor shall remit that amount to Servicing Agent within 5 business days of Servicing Agent's request.

5. TRUSTOR'S OBLIGATIONS

a. Standard Fees and Costs. Trustor shall pay to Servicing Agent, for the account of Beneficiary, its current fees and costs, including, but not limited to, those items set forth in the Fee Schedule received by Trustor. The Fee Schedule is subject to change without notice as to the amounts and items included therein. Trustor shall pay a servicing set-up fee of **\$750.00**, and a monthly servicing fee of **\$28.00**. When the Loan is paid in full, Trustor shall pay a Close Out Fee of **\$750.00**, which is in addition to the monthly servicing fee. There will be a **\$30.00** charge to Trustor for each payoff request.



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SERVICING AGENT AGREEMENT

Loan No. 852806

September 5, 2006

Page 3

b. **Late Fees and Notices.** In the event that a regular payment is not received by Servicing Agent on or before the fifth calendar day after the due date, a late charge of 35% of the monthly Principal and Interest payment will be charged and Trustor shall pay that amount to Servicing Agent, for the account of Beneficiary. The parties agree that this late payment charge is intended to compensate Beneficiary for losses incurred as a result of the late payment and that such late payment charge does not constitute and shall not be construed as a penalty. Servicing Agent will charge \$125.00, plus postage, for each notice sent regarding late payments, nonpayment of taxes, assessments, insurance premiums or any other matter that affects the Trust Property. Servicing Agent will charge \$325.00 for each notice sent regarding returned checks. These notice fees are subject to change at Beneficiary's discretion. In the event that the Loan is not paid in full by the maturity date, Trustor acknowledges that a late charge will be assessed, for the account of the Beneficiary, in the amount of 3% of the remaining principal balance of the Loan on the first day after the Trustor's failure to pay and on the same day each month thereafter, until the final payment is received by the Servicing Agent. All fees and charges are independent of one another and any default interest assessed; thus, a matured loan shall accrue default interest, maturity late fees and any other applicable fees and charges.

c. **Payment Statements.** Servicing Agent, as a convenience only, will provide to Trustor a monthly payment statement. Trustor acknowledges and agrees that it is obligated to make all payments when due under the Loan Documents, whether or not such payment statement is received by Trustor.

6. PARTIAL AND FINAL PAYMENTS

a. **Partial Payments.** In the event that the Servicing Agent receives and processes a partial payment of any amount due under the Loan Documents, such act shall not constitute full payment, estoppel or a waiver of any right of Beneficiary or Servicing Agent to recover the deficiency or to require future payments to be made in full.

b. **Final Payment.** In the event that the final sum to pay the principal balance in total is received by Servicing Agent after 1:00 p.m., interest shall be charged through the next normal business day.

7. GENERAL PROVISIONS

a. This Agreement is binding on the Parties and their agents, representatives, successors, assigns, beneficiaries and trustees.

b. This Agreement and the benefits hereunder are not assignable or transferable by Trustor. Beneficiary may assign Beneficiary's rights and obligations under this Agreement without prior notice to Trustor. Beneficiary, however, must give Servicing Agent prior written notice. After assignment, Beneficiary shall have no further duties or liabilities to Trustor.

c. This Agreement shall be governed by, construed and enforced in accordance with the laws of the State of Arizona. The Parties hereby submit to the jurisdiction of any Arizona State or Federal Court sitting in the City of Phoenix in any action or proceeding arising out of or relating to this Agreement. The Parties hereby waive the defense of an inconvenient forum.

d. The Parties hereby voluntarily, knowingly, irrevocably and unconditionally waive the right to a jury trial on any and all contested matters arising from this Agreement or the Loan Documents.

e. This Agreement sets forth the entire agreement and understanding of the Parties and is to be read in consistency and accordance with the other Loan Documents.

f. This Agreement may be amended, modified, superseded, canceled, renewed or extended and the terms or covenants hereof may be waived only by a written instrument executed by all of the parties hereto. The failure of Servicing Agent or Beneficiary at any time or times to require performance of any provision of this Agreement shall in no manner affect the right of Servicing Agent or Beneficiary at a later time to enforce the same. No waiver by Beneficiary or Servicing Agent of the breach of any term or covenant contained in this Agreement, whether by conduct or otherwise, in any one or more instances, shall be deemed to be, or construed as, a further or continuing waiver by Servicing Agent or Beneficiary of any such breach, or a waiver of the breach of any other term or covenant contained in this Agreement.

g. If any term or other provision of this Agreement or any other Loan Document is declared invalid, illegal or incapable of being enforced by any rule of law or public policy, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect.

This Agreement is effective on the date set forth on the first page.

SEE ATTACHED SIGNATURE PAGE



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SERVICING AGENT AGREEMENT

Loan No. 852806

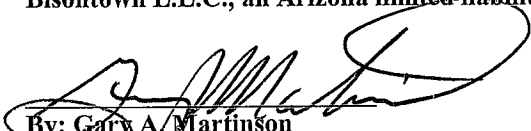
September 5, 2006

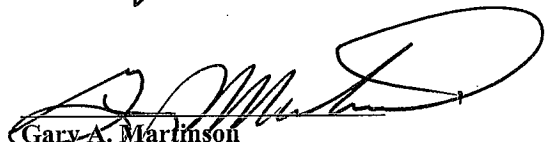
Page 4

SERVICING AGENT AGREEMENT SIGNATURE PAGE

TRUSTOR:

Bisontown L.L.C., an Arizona limited-liability company


By: Gary A. Martinson
Its: Member/Manager


Gary A. Martinson

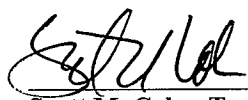
SERVICING AGENT:

MORTGAGES LTD., an Arizona corporation.


Phillip A. Sollomi, Jr., Senior Vice President

BENEFICIARY:

Scott M. Coles or Christopher J. Olson, CPA, Trustees of the Mortgages Ltd. Defined Benefit Plan



Scott M. Coles, Trustee



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Ex. 13

PROMISSORY NOTE
Interest Only/Commercial

Loan No. 861405 October 12, 2007

Loan Amount: \$3,139,308.71

“Maker” (individually and collectively):

CDIG, L.L.C., an Arizona limited liability company, JW Maricopa Holdings, LLC, an Arizona limited liability company and TCB Property Management, L.L.C., an Arizona limited liability company
9 Spur Circle
Scottsdale, AZ 85251

“Holder”: **Scott M. Coles or Christopher J. Olson, CPA, Trustees of the Mortgages Ltd. 401(k) Plan**

1. PROMISE TO PAY

a. As consideration for the receipt of a loan and other value, Maker hereby promises to pay the outstanding balance of the Designated Loan Amount **\$3,139,308.71** in United States currency (the "Principal"), plus interest, to the order of the Holder, **Scott M. Coles or Christopher J. Olson, CPA, Trustees of the Mortgages Ltd. 401(k) Plan**, or any subsequent holder of this Promissory Note (this "Note"). Maker understands and agrees that **Scott M. Coles or Christopher J. Olson, CPA, Trustees of the Mortgages Ltd. 401(k) Plan**, may subsequently transfer this Note, subject to the terms and conditions contained herein. **Scott M. Coles or Christopher J. Olson, CPA, Trustees of the Mortgages Ltd. 401(k) Plan**, or anyone who takes this Note by transfer and who is entitled to receive payments under this Note, is referred to hereinafter as the "Holder."

b. In connection with this Note and on the same date, Maker or a third party trustor executed a Deed of Trust, Assignment of Rents and Leases, Security Agreement and Fixture Filing (the "Deed of Trust") securing this Note (the "Deed of Trust") and a Servicing Agent Agreement. This Note, the Deed of Trust, the Servicing Agent Agreement and any other agreement, document or instrument evidencing, governing or securing the payment of the indebtedness evidenced by the Note are collectively referred to herein as the "Loan Documents". Maker understands and agrees that the Servicing Agent Agreement, which is incorporated herein by reference, authorizes the Servicing Agent appointed thereunder to, among other things, act on the Holder's behalf in accordance with this Note.

2. INTEREST

Interest will be charged on that portion of the Principal which has been committed by Holder, beginning, at Holder's discretion, on the Loan Funding Date or the Commitment Termination Date (in the event that the Loan closing was delayed for any reason other than one caused by Holder) continuing until the Principal has been paid in full. The 'Loan Funding Date' is the date upon which Lender allocates and designates sums sufficient to fund this Loan. The 'Commitment Termination Date' is the date upon which Lender's Loan commitment expires. Beginning on the Loan Funding Date or the Commitment Termination Date, as the case may be, and so long as no event of default exists, interest will accrue and be paid at the rate of **14.5%** per annum. In the event of default, Maker agrees to pay the Default Interest Rate as set forth herein.

3. PAYMENTS

a. **Time of Payments.** Maker will pay **interest only** by making monthly payments on the **1st** day of each month beginning **November 1, 2007**. Maker will continue to make monthly payments until Maker has paid all of the Principal, interest and any other charges that Maker may owe under this Note or the other Loan Documents. Monthly payments received by Holder in advance will not be posted to Maker's account greater than 14 calendar days prior to the payment due date.



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PROMISSORY NOTE

Loan No. 861405

October 12, 2007

Page 2

b. Maker's monthly payments will be applied to the following in such order as Holder, in its sole discretion, may determine

- (i) To the payment of any costs, fees or other charges incurred under this Note and the other Loan Documents;
- (ii) To the payment of accrued interest; and
- (iii) To the reduction of the Principal balance.

c. All remaining Principal, together with accrued unpaid interest and any other amounts due hereunder or under the Loan Documents (collectively, the "Maker's Liabilities") shall be due and payable in full on **April 3, 2008** (the "Maturity Date"), unless Maker's Liabilities become due and payable sooner because of acceleration, in which case Maker's Liabilities shall be due and payable in full on the date of such acceleration. Maker understands that the Maturity Date requires Maker to pay all Principal, interest and all other charges then due.

d. **Place of Payments.** Maker will make all monthly payments to Servicing Agent at 55 E. Thomas Road, Phoenix, Arizona 85012, or at a different address if Servicing Agent has given Maker written notice of a different address.

4. RIGHT TO PREPAY AND PREPAYMENT PREMIUM

a. Maker has the right to make payments of Principal at any time before they are due ("Prepayment") provided that:

- (1) All sums due under the Note are current;
- (2) Prepayment is made on a monthly payment due date;
- (3) Payment of a prepayment premium equal to 5% of the Principal balance of the Note before reduction, if Prepayment is made before **October 3, 2007**; and
- (4) At the time of making a Prepayment, Maker advises Servicing Agent, in writing that Maker is making a Prepayment.

b. Any payment of Principal only is considered a Prepayment. Holder will use all of Maker's Prepayments to reduce the amount of Principal that Maker owes under this Note. If Maker makes a partial Prepayment, there may be a change in the amount of Maker's monthly payment.

5. LOAN CHARGES

a. **Note Interest Rate.** If Holder charges or if Maker pays any fees, charges or other sums pursuant to this Note or any other Loan Documents which, under the law, may be deemed to be interest, then the interest rate set forth in Section 2 above shall be deemed to be increased to include such additional interest. Therefore, if it is determined that the rate of interest applicable to this Note is greater than the rate of interest stated in Section 2 above, then the actual rate thus determined shall become the agreed upon and contracted rate of interest for this Note.

b. **Interpretation and Remedy.** Notwithstanding any provision herein or in any of the Loan Documents, the total liability for payments in the nature of interest shall not exceed the limits now imposed by the usury laws of Arizona, if any. If a law, which applies to this Note and which sets maximum loan charges, is finally interpreted so that the interest or other loan charges collected or to be collected in connection with this Note exceed the permitted limits, then: (i) loan charges shall be reduced by Holder in an amount sufficient to reduce the loan charges to the permitted limit; and (ii) any sums already collected from Maker which exceeded permitted limits will be refunded to Maker. Holder may choose to make this refund by reducing the Principal Maker owes under this Note or by making a direct payment to Maker. If a refund reduces Principal, then the reduction will be treated as a partial Prepayment and the provisions of 4 will not apply.



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PROMISSORY NOTE

Loan No. 861405

October 12, 2007

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b. Maker's monthly payments will be applied to the following in such order as Holder, in its sole discretion, may determine

- (i) To the payment of any costs, fees or other charges incurred under this Note and the other Loan Documents;
- (ii) To the payment of accrued interest; and
- (iii) To the reduction of the Principal balance.

c. All remaining Principal, together with accrued unpaid interest and any other amounts due hereunder or under the Loan Documents (collectively, the "Maker's Liabilities") shall be due and payable in full on April 3, 2008 (the "Maturity Date"), unless Maker's Liabilities become due and payable sooner because of acceleration, in which case Maker's Liabilities shall be due and payable in full on the date of such acceleration. Maker understands that the Maturity Date requires Maker to pay all Principal, interest and all other charges then due.

d. **Place of Payments.** Maker will make all monthly payments to Servicing Agent at 55 E. Thomas Road, Phoenix, Arizona 85012, or at a different address if Servicing Agent has given Maker written notice of a different address.

4. RIGHT TO PREPAY AND PREPAYMENT PREMIUM

a. Maker has the right to make payments of Principal at any time before they are due ("Prepayment") provided that:

- (1) All sums due under the Note are current;
- (2) Prepayment is made on a monthly payment due date;
- (3) Payment of a prepayment premium equal to 5% of the Principal balance of the Note before reduction, if Prepayment is made before **October 3, 2007**; and
- (4) At the time of making a Prepayment, Maker advises Servicing Agent, in writing that Maker is making a Prepayment.

b. Any payment of Principal only is considered a Prepayment. Holder will use all of Maker's Prepayments to reduce the amount of Principal that Maker owes under this Note. If Maker makes a partial Prepayment, there may be a change in the amount of Maker's monthly payment.

5. LOAN CHARGES

a. **Note Interest Rate.** If Holder charges or if Maker pays any fees, charges or other sums pursuant to this Note or any other Loan Documents which, under the law, may be deemed to be interest, then the interest rate set forth in Section 2 above shall be deemed to be increased to include such additional interest. Therefore, if it is determined that the rate of interest applicable to this Note is greater than the rate of interest stated in Section 2 above, then the actual rate thus determined shall become the agreed upon and contracted rate of interest for this Note.

b. **Interpretation and Remedy.** Notwithstanding any provision herein or in any of the Loan Documents, the total liability for payments in the nature of interest shall not exceed the limits now imposed by the usury laws of Arizona, if any. If a law, which applies to this Note and which sets maximum loan charges, is finally interpreted so that the interest or other loan charges collected or to be collected in connection with this Note exceed the permitted limits, then: (i) loan charges shall be reduced by Holder in an amount sufficient to reduce the loan charges to the permitted limit; and (ii) any sums already collected from Maker which exceeded permitted limits will be refunded to Maker. Holder may choose to make this refund by reducing the Principal Maker owes under this Note or by making a direct payment to Maker. If a refund reduces Principal, then the reduction will be treated as a partial Prepayment and the provisions of 4 will not apply.



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MLPLAN-003290

6. **MAKER'S FAILURE TO PAY AS REQUIRED**

a. **Late Charge for Overdue Payments.** If Holder has not received the full amount of any of Maker's monthly payments by the close of business on a date which is five (5) calendar days after the date it is due, Maker will pay a late charge to Holder. The amount of the late charge will be 35% of the monthly Principal and interest payment. In the event that this Note is not paid in full by the Maturity Date, Maker acknowledges that a late charge will be assessed in the amount of 3% of the remaining Principal balance on the next day following the Maturity Date and on the same day each month thereafter until the Note is paid in full.

b. **Default.** A default under this Note if exists if any of the following occurs:

- (i) Maker Fails to pay the full amount of each monthly payment on or before the date it is due;
- (ii) Maker Fails to pay all sums due as of the Maturity Date;
- (iii) Maker Fails to pay all sums required by any other Loan Documents;
- (iv) Maker Fails to perform or observe any covenants or obligations set forth herein or in any other Loan Documents; or
- (v) Any default exists under and of the other Loan Documents.

c. **Cross Default.** In the event that Chuck Sorensen has secured or secures additional loans through Mortgages Ltd. personally or through any entity in which he possesses an ownership interest (the "Additional Loans" including but not limited to Loan Nos. 832705, and 861105), regardless as to whether Mortgages Ltd. has assigned its interests in the Additional Loans or this Loan, then a default in any Additional Loan shall constitute a default in this Loan and a default in this Loan shall constitute a default in the Additional Loans only as to the interest of Chuck Sorensen as an individual and/or member of the borrowing entity to the extent of his ownership.

d. **Acceleration.** If a default exists, then Holder may accelerate the Maturity Date and declare that all sums owing under this Note and the other Loan Documents are immediately due and payable, without notice.

e. **No Waiver By Holder.** Failure of Holder, for any period of time or on more that one occasion, to exercise its option to accelerate the Maturity Date shall not constitute a waiver of the right to exercise the same at any time during the continued existence of an event of default or any subsequent event of default.

f. **Payment of Holder's Costs and Expenses.** If an event of default occurs, Maker shall pay all costs of enforcement, collection and preparation therefor, whether or not any action or proceeding is commenced in any court and, if commenced, during all appeals, including attorneys' fees, guarantor collection expenses (as described in the Servicing Agent Agreement), appraisal fees, inspection fees, expert witness fees, foreclosure processing fees, litigation costs and all other related expenses (collectively, "Default Costs"). Maker, at the option of Holder, shall appear and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Holder and shall pay all costs and expenses of Holder, including the cost of evidence of title and attorneys' fees, in any such action or proceeding in which Holder may appear or be named, with interest thereon at the Default Interest Rate from the date incurred or expended until paid in full.

g. **Default Interest.** If a default exists, then (in addition to the late charge as stated in Section 6(a) above) the interest rate on the unpaid Principal shall be increased to 27% per annum (the "Default Interest Rate") commencing on the date through which interest was last paid, and shall continue, at the option of the Holder, until all payments have been made current, all sums due under this Note and the other Loan Documents have been paid in full and/or all non-monetary defaults under the Loan Documents have been cured to the Holder's satisfaction. Any advances made by Holder, pursuant to the terms of the Loan Documents, and all Default Costs shall accrue interest at the Default Interest Rate. In the event Maker files or is involuntarily placed in bankruptcy, Maker hereby agrees that Holder shall be entitled to interest on all Loan arrearages of whatever nature at the Default Interest Rate.




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PROMISSORY NOTE

Loan No. 861405

October 12, 2007

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7. NOTICES

Unless applicable law requires a different method, any notice that must be given to Maker under this Note will be given by mailing it by first class mail or by delivering it to Maker at the address stated above or at a different address if Maker gives Servicing Agent written notice of a different address. Any notice that must be given to Holder shall be given by mailing it by first class mail to Servicing Agent, at 55 E. Thomas Road, Phoenix, Arizona 85012, or at a different address if Servicing Agent has given Maker written notice of a different address.

8. OBLIGATIONS OF PERSONS UNDER THIS NOTE

Any person who is a guarantor, surety or indorser of this Note is also obligated to perform under the terms of this Note. Any subsequent person who takes over Maker's rights under this Note by whatever means, including the obligations of a guarantor, surety or indorser of this Note, is also bound by all of the promises and liabilities created by this Note and the other Loan Documents. Holder may enforce its rights under this Note against each Maker or successor, jointly and severally. This means that each signer may be required to pay all sums owed under this Note irrespective of the type, value or ownership of the property securing the Note.

9. WAIVERS

Maker, for itself and all endorsers, guarantors and sureties of this Note, and their heirs, personal representatives, successors, assigns, beneficiaries and trustees, hereby waives presentment for payment, demand, notice of nonpayment, notice of dishonor, protest of any dishonor, notice of protest and protest of this Note, and all other notices in connection with the delivery, acceptance, performance, default or enforcement of the payment of this Note, and agrees that their respective liability shall be unconditional and without regard to the liability of any other party and shall not be in any manner affected by any indulgence, extension of time, renewal, waiver or modification granted or consented to by Holder. Maker, for itself and all endorsers, guarantors and sureties of the Note, and their heirs, personal representatives, successors, assigns, beneficiaries and trustees, hereby consents to every extension of time, renewal, waiver or modification that may be granted by Holder with respect to the payment or other provisions of this Note, and to the release of any makers, endorsers, guarantors or sureties, and of any collateral given to secure the payment hereof, or any part hereof, with or without substitution, and agrees that additional makers, endorsers, guarantors or sureties may become parties hereto without notice to Maker or to any endorser, guarantor or surety and without affecting the liability of any of them.

10. SECURITY

This Note and the other Loan Documents, including, among others, the Deed of Trust, were executed by Maker and, if necessary, various other parties to protect Holder from possible losses which might result if Maker does not perform the obligations set forth in this Note. The Loan Documents describe how, and under what conditions, Maker may be required to make immediate payment in full of all sums Maker owes under this Note. Some of those conditions, but not all, are described as follows:

- a. If Maker or another party, such as a third party trustor of the Deed of Trust securing this Note, sells, conveys, transfers, assigns, contracts for sale, leases with option to purchase or further encumbers the property securing the Note (the "Secured Property") or any part thereof, including, but not limited to, any further assignment of the Secured Property's income, wraparound mortgage or purchase contract;
- b. If Maker is a limited liability company and any ownership interest in Maker is sold, conveyed or transferred;
- c. If Maker is a partnership and any general partnership interest in Maker is sold, conveyed or transferred, either voluntarily or involuntarily without the prior written consent of Holder; or
- d. If Maker is a corporation and the controlling interest in Maker is sold, conveyed or transferred.

Upon the occurrence of any of the above or any other triggering events set forth in the Loan Documents, Holder, at its option, shall have the right to accelerate the sums owing under the Note and those sums shall become immediately due and payable to Holder. This provision shall apply to each and every such sale, conveyance, transfer, lease, encumbrance or assignment, regardless as to whether Holder has consented or waived its rights in connection with any such previous sale, conveyance, transfer, lease, encumbrance or assignment by Maker.



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initials

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PROMISSORY NOTE

Loan No. 861405

October 12, 2007

Page 4

8. OBLIGATIONS OF PERSONS UNDER THIS NOTE

Any person who is a guarantor, surety or indorser of this Note is also obligated to perform under the terms of this Note. Any subsequent person who takes over Maker's rights under this Note by whatever means, including the obligations of a guarantor, surety or indorser of this Note, is also bound by all of the promises and liabilities created by this Note and the other Loan Documents. Holder may enforce its rights under this Note against each Maker or successor, jointly and severally. This means that each signer may be required to pay all sums owed under this Note irrespective of the type, value or ownership of the property securing the Note.

9. WAIVERS

Maker, for itself and all endorsers, guarantors and sureties of this Note, and their heirs, personal representatives, successors, assigns, beneficiaries and trustees, hereby waives presentment for payment, demand, notice of nonpayment, notice of dishonor, protest of any dishonor, notice of protest and protest of this Note, and all other notices in connection with the delivery, acceptance, performance, default or enforcement of the payment of this Note, and agrees that their respective liability shall be unconditional and without regard to the liability of any other party and shall not be in any manner affected by any indulgence, extension of time, renewal, waiver or modification granted or consented to by Holder. Maker, for itself and all endorsers, guarantors and sureties of the Note, and their heirs, personal representatives, successors, assigns, beneficiaries and trustees, hereby consents to every extension of time, renewal, waiver or modification that may be granted by Holder with respect to the payment or other provisions of this Note, and to the release of any makers, endorsers, guarantors or sureties, and of any collateral given to secure the payment hereof, or any part hereof, with or without substitution, and agrees that additional makers, endorsers, guarantors or sureties may become parties hereto without notice to Maker or to any endorser, guarantor or surety and without affecting the liability of any of them.

10. SECURITY

This Note and the other Loan Documents, including, among others, the Deed of Trust, were executed by Maker and, if necessary, various other parties to protect Holder from possible losses which might result if Maker does not perform the obligations set forth in this Note. The Loan Documents describe how, and under what conditions, Maker may be required to make immediate payment in full of all sums Maker owes under this Note. Some of those conditions, but not all, are described as follows:

- a. If Maker or another party, such as a third party trustor of the Deed of Trust securing this Note, sells, conveys, transfers, assigns, contracts for sale, leases with option to purchase or further encumbers the property securing the Note (the "Secured Property") or any part thereof, including, but not limited to, any further assignment of the Secured Property's income, wraparound mortgage or purchase contract;
- b. If Maker is a limited liability company and any ownership interest in Maker is sold, conveyed or transferred;
- c. If Maker is a partnership and any general partnership interest in Maker is sold, conveyed or transferred, either voluntarily or involuntarily without the prior written consent of Holder; or
- d. If Maker is a corporation and the controlling interest in Maker is sold, conveyed or transferred.

Upon the occurrence of any of the above or any other triggering events set forth in the Loan Documents, Holder, at its option, shall have the right to accelerate the sums owing under the Note and those sums shall become immediately due and payable to Holder. This provision shall apply to each and every such sale, conveyance, transfer, lease, encumbrance or assignment, regardless as to whether Holder has consented or waived its rights in connection with any such previous sale, conveyance, transfer, lease, encumbrance or assignment by Maker.

11. TIME

Time is of the essence in all aspects of this Note and the Loan Documents.

12. GENERAL

- a. This Note is binding on Maker and Maker's heirs, personal representatives, successors, permitted assigns, beneficiaries and trustees.



MORTGAGES LIMITED - 2754 - 2754 - 2754 - 2754

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JW
initials

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PROMISSORY NOTE

Loan No. 861405

October 12, 2007

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11. TIME

Time is of the essence in all aspects of this Note and the Loan Documents.

12. GENERAL

a. This Note is binding on Maker and Maker's heirs, personal representatives, successors, permitted assigns, beneficiaries and trustees.

b. This Note and the benefits hereunder are not assignable or transferable by Maker. However, Holder may assign its rights under this Note and the other Loan Documents without prior notice to Maker.

c. Maker acknowledges that Mortgages Ltd. is Holder's Servicing Agent.

d. This Note shall be governed by, construed and enforced in accordance with the laws of the State of Arizona, without regard to the choice of law rules of the State of Arizona. Maker hereby submits to the jurisdiction of any Arizona State or Federal Court sitting in the City of Phoenix in any action or proceeding arising out of or relating to this Note. Maker hereby waives the defense of an inconvenient forum.

e. Maker, and Holder by its acceptance of this Note, hereby waive their respective rights to a trial by jury in any action or proceeding based upon, or related to, the subject matter of this Note and the business relationship that it being established. This waiver is knowingly, intentionally, voluntarily and irrevocably made by Maker and by Holder and Maker acknowledges that neither Holder nor any person acting on behalf of Holder has made any representations of fact to include this waiver of trial by jury or has taken any actions which in any way modify or nullify its effect. Maker and Holder acknowledge that this waiver is a material inducement to enter into a business relationship, that Maker and holder have already relied on this waiver in entering into this Note and that each of them will continue to rely on this waiver in their related future dealings.

f. This Note, together with the other Loan Documents, sets forth the entire agreement and understanding between Maker and Holder, and supersedes all prior agreements, arrangements and understandings, written or oral, between Maker and Holder.

g. This Note may be amended, modified, superseded, canceled, renewed or extended and the terms or covenants hereof may be waived only by a written instrument executed by Maker, Holder. The failure of Servicing Agent, at any time or times, to require performance of any provision of this Note shall in no manner affect the right of the Holder or Servicing Agent at a later time to enforce the same. No waiver by Holder or Servicing Agent of the breach of any term or covenant contained in this Note, whether by conduct or otherwise, in any one or more instances, shall be deemed to be, or construed as, a further or continuing waiver by Holder or Servicing Agent of any such breach, or a waiver of the breach of any other term or covenant contained in this Note.

h. If any term or other provision of this Note or any other Loan Document is declared invalid, illegal or incapable of being enforced by any rule of law or public policy, all other conditions and provisions of this Note shall nevertheless remain in full force and effect.

i. Notwithstanding any provision contained in this Note or any of the other Loan Documents to the contrary, including, without limitation, Maker's right to obtain advances or disbursements under the Loan, Holder may, in Holder's sole and absolute discretion, exercise Holder's rights and enforce Holder's remedies under and pursuant to Title 33, Chapter 7, Article 9 of Arizona Revised Statutes (including, without limitation, A.R.S. Section 33-1058), without any liability to Maker and without releasing Maker from any of Maker's obligations, duties and liabilities under the Loan Documents.

j. As used in this Note, the word "include(s)" means "include(s), without limitation," and the word "including" means "including, without limitation."

SEE ATTACHED COUNTERPART SIGNATURE AND NOTARY PAGE



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initials

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PROMISSORY NOTE

Loan No. 861405

October 12, 2007

Page 5

b. This Note and the benefits hereunder are not assignable or transferable by Maker. However, Holder may assign its rights under this Note and the other Loan Documents without prior notice to Maker.

c. Maker acknowledges that Mortgages Ltd. is Holder's Servicing Agent.

d. This Note shall be governed by, construed and enforced in accordance with the laws of the State of Arizona, without regard to the choice of law rules of the State of Arizona. Maker hereby submits to the jurisdiction of any Arizona State or Federal Court sitting in the City of Phoenix in any action or proceeding arising out of or relating to this Note. Maker hereby waives the defense of an inconvenient forum.

e. Maker, and Holder by its acceptance of this Note, hereby waive their respective rights to a trial by jury in any action or proceeding based upon, or related to, the subject matter of this Note and the business relationship that it being established. This waiver is knowingly, intentionally, voluntarily and irrevocably made by Maker and by Holder and Maker acknowledges that neither Holder nor any person acting on behalf of Holder has made any representations of fact to include this waiver of trial by jury or has taken any actions which in any way modify or nullify its effect. Maker and Holder acknowledge that this waiver is a material inducement to enter into a business relationship, that Maker and holder have already relied on this waiver in entering into this Note and that each of them will continue to rely on this waiver in their related future dealings.

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j. As used in this Note, the word "include(s)" means "include(s), without limitation," and the word "including" means "including, without limitation."

SEE ATTACHED COUNTERPART SIGNATURE AND NOTARY PAGE



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Jw

initials

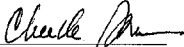
MLPLAN-003296

PROMISSORY NOTE COUNTERPART SIGNATURE AND NOTARY PAGE


IN WITNESS WHEREOF, this Note has been executed as of the date set forth on the first page.

MAKER:

CDIG, L.L.C., an Arizona limited liability company


By: Chuck Sorensen
Its: Manager

TCB Property Management, L.L.C., an Arizona limited liability company


By: Michael G. Berkner
Its: Manager

STATE OF AZ)
)ss
COUNTY OF MARICOPA)

The foregoing instrument was acknowledged before me this 19th day of October, 2007 by **Chuck Sorensen** of **CDIG, L.L.C., an Arizona limited liability company on behalf of the limited liability company**

My Commission Expires  Suzanne Bernhardt
Notary Public

STATE OF AZ)
)ss
COUNTY OF MARICOPA)

The foregoing instrument was acknowledged before me this 12th day of October, 2007 by **Michael G. Berkner** of **TCB Property Management, L.L.C., an Arizona limited liability company on behalf of the limited liability company**

My Commission Expires  Suzanne Bernhardt
Notary Public

SEE ATTACHED COUNTERPART SIGNATURE AND NOTARY PAGE



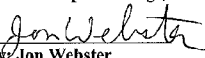
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PROMISSORY NOTE
Loan No. 861405
October 12, 2007
Page 7

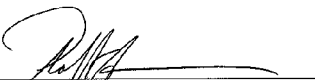
PROMISSORY NOTE COUNTERPART SIGNATURE AND NOTARY PAGE

JW Maricopa Holdings, LLC, an Arizona limited liability company

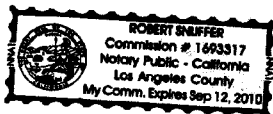

By: Jon Webster
Its: Manager

STATE OF AZ)
)ss
COUNTY OF MARICOPA)

The forgoing instrument was acknowledged before me this _____ day of October, 2007 by Jon Webster of JW Maricopa Holdings, LLC, an Arizona limited liability company on behalf of the limited liability company


Notary Public

My Commission Expires: 9/12/2010



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MLPLAN-003298

PROMISSORY NOTE INDORSEMENT

Loan No. 861405 Effective Date: October 12, 2007

"Indorser" (individually and collectively):

Scott M. Coles or Christopher J. Olson, CPA, Trustees of the Mortgages Ltd. 401(k) Plan as to an undivided 27.844% interest

"New Holder" (individually and collectively):

AJ Chandler 25 Acres, L.L.C., an Arizona limited liability company as to an undivided 15.927% interest; at the Interest Accrual Rate of 12.00%
Scott M. Coles, Trustee of The Rittenhouse Family Trust Agreement dated July 9, 1992, and any amendments thereto as to an undivided 2.176% interest; at the Interest Accrual Rate of 9.50%
Litchfield Road Associates Ltd., an Arizona limited partnership as to an undivided 6.371% interest; at the Interest Accrual Rate of 11.50%
Emma Lou, L.L.C., an Arizona limited liability company as to an undivided 0.820% interest; at the Interest Accrual Rate of 11.00%
Michael J. Wick, Trustee of the Wick Development, Inc. Charitable Remainder Trust dated January 30, 1998, and any amendments thereto as to an undivided 2.550% interest; at the Interest Accrual Rate of 11.00%

For good and valuable consideration, Indorser hereby transfers to New Holder so much of Indorser's rights and interests as consist of the right to receive the undivided percentage set forth above of the principal payments and of interest thereon at the Interest Accrual Rate set forth above (reserving however to the Indorser any and all fees and other charges) in that certain Promissory Note in the principal amount of \$3,139,308.71 (the 'Note'), dated October 12, 2007, and executed by CDIG, L.L.C., an Arizona limited liability company, JW Maricopa Holdings, LLC, an Arizona limited liability company and TCB Property Management, L.L.C., an Arizona limited liability company, as Maker, in connection with Loan No. 861405 obtained through Scott M. Coles or Christopher J. Olson, CPA, Trustees of the Mortgages Ltd. 401(k) Plan, as Holder. The Note is secured by a Deed of Trust.

By this indorsement, the Note shall hereby be payable to the order of New Holder without recourse. Hereafter, New Holder has complete and absolute authority to exercise all rights and pursue all interests formerly vested in the Indorser under the Note, which includes, but is not limited to, the right to receive payments and the right to enforce Maker's obligations thereunder. This Indorsement shall be attached to the original Note.

IN WITNESS WHEREOF, this Indorsement is effective as of the date set forth above.

INDORSER:

[Signature]
Scott M. Coles, Trustee

STATE OF ARIZONA)
)ss
COUNTY OF MARICOPA)

Date of acknowledgement 10-19-07

Acknowledgement of Scott M. Coles

This instrument was acknowledged before me this date by the persons above subscribed and if subscribed in a representative capacity, then for the principal named and in the capacity indicated.

[Signature]
Notary Public

My commission expires 07-22-2011



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MLPLAN-003299

Ex. 14

Title Security Agency
of Pinal County, L.L.C.

0000289

When recorded return to:

MORTGAGES LTD.
55 E. Thomas Rd.
Phoenix, Arizona 85012



**OFFICIAL RECORDS OF
PINAL COUNTY RECORDER
LAURA DEAN-LYTLE**

DATE/TIME: 10/16/07 1534
FEE: \$33.00
PAGES: 18
FEE NUMBER: 2007-116165

**DEED OF TRUST, ASSIGNMENT OF RENTS AND LEASES,
SECURITY AGREEMENT AND FIXTURE FILING**

Loan No. 861405 October 12, 2007

Secured Loan Amount: \$3,139,308.71

"Trustor" (individually and collectively):

CDIG, L.L.C., an Arizona limited liability company, as to an undivided 51.2% interest, JW Maricopa Holdings, LLC, an Arizona limited liability company, as to an undivided 41.4% interest and TCB Property Management, L.L.C., an Arizona limited liability company, as to an undivided 7.4% interest
9 Spur Circle
Scottsdale, AZ 85251

"Trustee": **Scott M. Coles**, a licensed real estate broker
55 E. Thomas Rd.
Phoenix, AZ 85012

"Beneficiary": **Scott M. Coles or Christopher J. Olson, CPA, Trustees of the Mortgages Ltd. 401(k) Plan**
55 E. Thomas Rd.
Phoenix, Arizona 85012

This Deed of Trust, Assignment of Rents, Leases, Security Agreement, and Fixture Filing (this "Deed of Trust"), is executed by Trustor in favor of Trustee for the benefit of Beneficiary as of the date written above. In connection with this Deed of Trust and on the same date, Trustor or a third party borrower has executed a Promissory Note (the "Note"), a Servicing Agent Agreement and other related documents to evidence and secure the monetary and non-monetary obligations owed to Beneficiary by Trustor and related third parties. These documents, including this Deed of Trust, and any other agreement, document, or instrument evidencing, governing or securing the payment of the indebtedness evidenced by the Note, are collectively referred to as the "Loan Documents." Trustor understands and agrees that Servicing Agent Agreement, which is incorporated herein by reference, authorizes Servicing Agent appointed thereunder to, among other things, act on the Beneficiary's behalf in accordance with this Deed of Trust.

1. TRUST PROPERTY

For good and valuable consideration, including the indebtedness referenced herein and the trust created hereby, the receipt and sufficiency of which is hereby acknowledged, Trustor irrevocably grants, transfers, conveys and assigns to Trustee, in trust, with the power of sale, for the benefit and security of Beneficiary, all of Trustor's present and future estate, right, title and interest, under and subject to the terms and conditions set forth herein, in and to that certain real property located in **Pinal County**, Arizona, more particularly described in **Exhibit A** attached hereto and incorporated herein by this reference (the "Real Property"), together with all of the following:

- a. Buildings, structures, fixtures or other improvements now or hereafter placed on the Real Property (collectively, the "Improvements");
- b. All existing and future leases, subleases, licenses and other agreements for the use and occupancy of all or any portion of the Real Property;
- c. All rents, issues and profits and income generated by the Real Property (the "Property Income");



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MLPLAN-003245

- d. All classes of property now or at any time hereafter attached to or used in any way in connection with the use, operation or occupancy of the Real Property;
- e. All property, rights, permits and privileges now or hereafter owned by Trustor or now or hereafter appurtenant to the Real Property, which entitle Trustor or the Real Property to receive all available utilities for use thereon;
- f. All awards resulting from eminent domain or condemnation in whole or in part, proceeds of insurance required on the Real Property and any other award for damage to or destruction of the Real Property or the Improvements;
- g. Any licenses, contracts, permits and agreements required or used in connection with the ownership, operation or maintenance of the Real Property, and the right to the use of any trade names, trademarks or service marks, now or hereafter associated with operation of any business conducted on the Real Property;
- h. All "Impounds," as defined herein, held by Beneficiary or its Servicing Agent for the benefit of Trustor, including, but not limited to, Impounds for taxes, assessments, insurance, homeowners' dues and construction;
- i. All easements, profits, rights of way and other rights now owned or hereafter assigned to Trustor; and
- j. All proceeds of the foregoing, including all proceeds of and all unearned premiums due from all insurance policies covering the Real Property.

All of the foregoing are collectively referred to hereinafter as the "Trust Property."

2. TRUSTOR'S REPRESENTATIONS AND WARRANTIES

Trustor hereby represents and warrants that Trustor has a good, marketable and insurable title to the Trust Property acceptable to Beneficiary and that Trustor holds fee simple title to the Real Property. Trustor forever warrants and shall defend title to the Trust Property for the Beneficiary, its successors and assigns, against all claims whatsoever; subject, however, to the following:

- a. The right, power and authority hereinafter given to and conferred upon Beneficiary to collect and apply such Property Income; and
- b. Any easements and restrictions approved by Beneficiary and listed in the schedule of exceptions to coverage in any title insurance policy insuring Beneficiary's interest in the Trust Property.

3. SECURITY

This Deed of Trust secures the following (the "Obligations"), in such order of priority as Beneficiary may elect:

- a. Strict performance of every obligation of Trustor and the third party borrower, if any, under all Loan Documents;
- b. Payment of all sums due under the Note including the principal amount of the 'Initial Funding' of \$3,139,308.71, interest thereon and all other charges assessed thereunder, such as late charges, notice fees and prepayment premiums;
- c. In the event that this Deed of Trust secures a Note with an Equity-Flex[®] Mortgage Line and "Advances," as defined therein, are made by Beneficiary, then payment of the aggregate amount of all Advances and all Equity-Flex Fees (as defined in said Note);
- d. In the event of default, payment of interest at the "Default Interest Rate," as defined by the Note;



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MLPLAN-003246

**DEED OF TRUST, ASSIGNMENT OF RENTS AND LEASES,
SECURITY AGREEMENT AND FIXTURE FILING**

Loan No. 861405

October 12, 2007

Page 3

e. Payment of all sums incurred by Beneficiary or its Servicing Agent, with interest thereon, to protect, preserve, repair or maintain the Trust Property or to cure any senior or junior loans, trust deeds, mortgages or other security instruments, including taxes, assessments, homeowners' dues, ground rents, force placed insurance, attorneys' fees, litigation costs, appraisal fees, inspection fees, project manager fees, receiver fees and other expert or consulting fees;

f. Payment of all sums incurred by Beneficiary or its Servicing Agent, with interest thereon, in the event of Trustor or the third party borrower's default under the Loan Documents, including, without limitation, attorneys' fees, litigation costs and expenses, appellate costs and expenses, bankruptcy fees, foreclosure fees, trustee fees, receiver fees, expert fees and witness fees;

g. Payment of all sums incurred by Beneficiary or its Servicing Agent, with interest thereon, in the collection of amounts owed by any guarantor of the Note, including attorneys' fees, litigation costs and expenses, appellate costs and expenses, bankruptcy fees, foreclosure fees, trustee fees, receiver fees, expert fees and witness fees;

h. Strict performance of every obligation of Trustor and the third party borrower, if any, contained in any agreement, document or instrument, hereafter executed by Trustor or the third party borrower, reciting that the obligations thereunder are secured by this Deed of Trust, which includes Advance Agreements, forbearance agreements, extension agreements, payment plans and Note modifications;

i. Payment of all other sums, with interest thereon, that hereafter may be loaned to Trustor or the third party borrower, if any, or their successors or assigns, by Beneficiary or its successors or assigns when evidenced by an agreement or promissory note reciting that they are secured by this Deed of Trust, which includes, but is not limited to, Advance Agreements, forbearance agreements, extension agreements, payment plans and Note modifications;

j. Strict compliance with and performance of each and every provision of any declaration of covenants, conditions and restrictions, any maintenance, easement and party wall agreement or any other agreement, document or instrument by which the Trust Property is bound or may be affected; and

k. In the event of default, payment of any fees incurred by Beneficiary to Servicing Agent to effect a sale in whole or in part of Beneficiary's interest in the Loan Documents.

4. TRUSTOR'S OBLIGATIONS

a. **Trust Property.** Trustor shall keep the Trust Property in good condition and repair. Trustor shall not to remove or demolish any Improvements on the Real Property. Trustor shall complete or restore promptly and in good and workmanlike manner any Improvement which may be constructed, damaged or destroyed, and pay, when due, all claims for labor performed and materials furnished therefor. Trustor shall comply with all laws affecting the Trust Property or requiring any alterations or Improvements to be made thereon. Trustor shall not (i) commit or permit waste of the Trust Property or (ii) abandon the Trust Property. Trustor shall not initiate or acquiesce in a change in the zoning classification of the Real Property without Beneficiary's prior written consent. Trustor shall not commit, suffer or permit any act to or upon the Trust Property in violation of any law. Trustor shall do all acts which, from the character or use of the Trust Property, may be reasonably necessary.

b. **Appraisal.** If the Loan's principal exceeds \$250,000.00, then Trustor shall obtain, at Trustor's sole cost and expense, a MAI or equivalently certified appraisal of the Trust Property addressed to Beneficiary and prepared by an appraiser approved by Beneficiary. Trustor shall provide Beneficiary a copy of the appraisal and all relevant supporting documents within 90 days of the date of the Loan closing. If the appraisal is not received by Beneficiary within that 90 day period, then the Loan shall be in default and Beneficiary shall be entitled to pursue any and all remedies available under the Loan Documents. In addition, at the request of Beneficiary, Trustor shall provide an updated MAI or equivalently certified appraisal of the Trust Property within 30 days of such request. If such updated appraisal is not received by Beneficiary within that 30 day period, then the Loan shall be in default and Beneficiary shall be entitled to pursue any and all remedies available under the Loan Documents.



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initials

MLPLAN-003247

**DEED OF TRUST, ASSIGNMENT OF RENTS AND LEASES,
SECURITY AGREEMENT AND FIXTURE FILING**

Loan No. 861405

October 12, 2007

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c. Insurance and Casualty. Trustor shall keep all Improvements now or hereafter erected on the Real Property continuously insured against loss by fire or other hazards in an amount not less than the replacement cost of the Improvements, and shall maintain and evidence liability insurance in the minimum amount of \$1,000,000 or in such other amount required by Beneficiary. When requested by Beneficiary, Trustor shall provide and maintain insurance policies with annual premiums in amounts required by Beneficiary covering vandalism and malicious mischief, sprinkler leakage, rent abatement, business loss, flood damage and/or all other risks commonly insured against by persons owning like properties in the locality of the Property or commonly required by prudent institutional investors making loans secured by liens against such properties. All insurance policies or certificates shall be held by Beneficiary, shall be in such companies as Beneficiary may approve and shall name the Beneficiary as an additional insured with the proceeds payable first to Beneficiary, as its interest may appear, and then to Trustor. All insurance policies shall provide that Beneficiary is to receive 30 days notice prior to cancellation or non-renewal and shall otherwise be in the form and substance satisfactory to Beneficiary. All renewal policies shall be delivered to Beneficiary 30 days before the expiration of the then existing policies together with satisfactory proof that the premiums for renewal have been paid. The amount collected under any insurance policy may be applied in whole or in part by Beneficiary to any indebtedness hereby secured and in such order as Beneficiary may determine whether or not then due, or, at the option of Beneficiary, the entire amount so collected or any part thereof may be released to Trustor for restoration or repair of the Trust Property upon such terms and conditions as are acceptable to Beneficiary. Such application or release shall not cure or waive any default hereunder or cause discontinuance of any action that may have been or may thereafter be taken by Beneficiary or Trustee because of such default. In the event of loss, Trustor shall give immediate notice to Beneficiary. If Trustor has not given proof of loss, then Beneficiary may make proof of loss at any time. Each insurance company is hereby authorized and directed to make payment for any loss directly to Beneficiary, instead of to Trustor, or to Trustor and Beneficiary jointly. Beneficiary shall not be liable for any insurance, for the collection of any insurance proceeds or for the insolvency of any insurer. Any application of insurance proceeds to the outstanding Loan balance by Beneficiary shall not cure or waive any event of default. In the event of the sale of the Trust Property under the power of sale granted to Trustee, the judicial foreclosure of this Deed of Trust or the takeover of possession by a court appointed receiver or trustee, then all right, title and interest of Trustor to such policies of insurance shall inure to the benefit of and shall pass to the successor title-holder of the Trust Property (or to the receiver, if applicable).

d. Litigation. If an event of default occurs under the Loan Documents, Trustor shall pay all costs of enforcement, collection and preparation therefor, whether or not any action or proceeding is commenced in any court through all appeals, which includes Servicing Agent administration fees, attorneys' fees, appraisal fees, inspection fees, expert witness fees and foreclosure processing fees. Trustor, at the option of Beneficiary, shall appear and defend any action or proceeding purporting to affect the Trust Property or the rights or powers of Beneficiary and shall pay all costs and expenses of Beneficiary, including all costs of proving title and attorney's fees, with interest thereon at the Default Interest Rate from the date incurred or expended.

e. Property Payments. Trustor shall pay, when due, and before any interest, collection fees or penalties shall accrue, the following:

- (1) All taxes, assessments, homeowners' dues, owners' association fees, ground rents, and any other charges and obligations which may become a lien or charge against the Trust Property;
- (2) All encumbrances, charges and liens on the Trust Property or any part thereof; and
- (3) All costs, fees and expenses incurred under this Deed of Trust and the other Loan Documents, including all Trustee's fees for the issuance of any deed of partial or full release and partial or full reconveyance and all charges, costs and expenses incurred in the event of default or reinstatement.

f. Right to Cure. If Trustor fails to make any payment or to do any act as required hereby, Beneficiary or Trustee, but without obligation to do so and without prior notice or demand upon Trustor and without releasing Trustor from any obligation herein, may take such action in such manner and to such extent as either may deem necessary to protect the Trust Property. Beneficiary or Trustee may enter the Real Property for such purposes, appear in and defend any action or proceeding purporting to affect the Trust Property or the rights or powers of Beneficiary or Trustee and pay, purchase, contest or compromise any encumbrance, charge or lien, which in the judgment of either Beneficiary or Trustee appears to jeopardize Beneficiary's security hereunder, and, in exercising any such powers, pay necessary expenses, employ counsel and pay attorneys' fees.



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g. **Expenditures.** Trustor shall pay immediately all sums expended by Beneficiary or Trustee pursuant to the provisions of this Deed of Trust or the other Loan Documents, together with interest from date of such expenditure at the Default Interest Rate. Any amount paid by Beneficiary or Trustee to protect the Trust Property, together with interest thereon, shall become a part of the indebtedness secured by this Deed of Trust and a lien on the Trust Property, and shall be immediately due and payable to Beneficiary or Trustee.

h. **Impounds.** Whenever required by Beneficiary, Trustor shall pay with each monthly installment payment an additional sum equal to 1/12th of the annual real property taxes, special assessments, homeowners' or owners' association dues, ground rents, if any, and insurance premiums next due on the Trust Property ("Impounds"), as may be estimated by Beneficiary, which will be held by Beneficiary in a special account (the "Impound Account"). Impounds may be commingled with other Impounds held by Beneficiary or its Servicing Agent. Any interest on Impounds shall accrue to Beneficiary or its Servicing Agent. Impounds may be used to pay taxes, assessments, homeowners' or owners' association dues, ground rents, if any, and insurance premiums before delinquent or before the insurance expires. If any of the Impounds, in the opinion of Beneficiary, are insufficient to accumulate a fund with which to pay such items, Trustor shall pay Beneficiary upon demand the amount necessary to make up the deficiency. If the Impounds held by Beneficiary exceed the amount necessary, in the opinion of Beneficiary, to pay such items, such excess shall, at Beneficiary's option, be refunded to Trustor or shall be credited on any sums due Beneficiary under this Deed of Trust or the other Loan Documents. If there is a default under this Deed of Trust or the other Loan Documents, Beneficiary may apply, at its discretion, the amount then remaining in the Impound Account to any sums due under this Deed of Trust or the other Loan Documents. Any Impound amount is subject to change in the event that the county tax assessor increases or decreases the valuation of the Trust Property, or in the event that there is any other change of circumstances affecting the Trust Property. Any sums held in any construction loan account shall be considered an "Impound."

i. **Financial Statements.** Trustor shall provide in form and substance satisfactory to Beneficiary: (a) within 90 days after the end of each calendar year, a statement of income and expenses, relating to the Trust Property for such calendar year; (b) within 90 days after the end of each calendar year, financial statements for such year from Trustor and any Guarantor of the Loan; (c) within 30 days after the end of each calendar year, a rent roll for the Trust Property as of January 1 of the current year; (d) upon the request of Beneficiary, all filed Federal and State income tax returns for Trustor and any Guarantor of the Loan; and (e) such other financial information concerning the Trust Property, Trustor, or any Guarantor as Beneficiary may reasonably require from time to time. Beneficiary or its designated agent shall have the right to inspect the books and records with respect to the Trust Property at any time, upon reasonable notice to Trustor.

j. **Environmental Matters.**

(i) Trustor represents and warrants to Beneficiary, to the best of Trustor's knowledge after all appropriate inquiry, and covenants that there are no, nor will there be, for so long as any of the indebtedness secured hereby remains outstanding, any Hazardous Materials (as defined below) generated, released, stored, buried, or deposited over, beneath, in or upon the Real Property or on or beneath the surface of adjacent property, except as such Hazardous Materials may be used, stored or transported in connection with the permitted uses of the Trust Property and then only in de minimus quantities and only to the extent permitted by law after obtaining all necessary permits and licenses therefor. "Hazardous Materials" shall mean and include any pollutants, flammables, explosives, petroleum (including crude oil) or any fraction thereof, radioactive materials, hazardous wastes, dangerous or toxic substances or related materials, including substances defined as or included within the definition of toxic or hazardous substances, wastes or materials under any federal, state or local laws, ordinances, regulations or guidelines which relate to pollution, the environment or the protection of public health and safety, or limiting, prohibiting or otherwise regulating the presence, sale, recycling, generation, manufacture, use, transportation, disposal, release, storage, treatment of, or response or exposure to, toxic or hazardous substances, wastes or materials. Such laws, ordinances and regulations are hereinafter collectively referred to as the "Hazardous Materials Laws."



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(ii) Trustor shall, and Trustor shall cause all employees, agents, tenants, contractors and subcontractors of Trustor and any other persons from time to time present on or occupying the Trust Property to, keep and maintain the Trust Property in compliance with, and not cause or knowingly permit the Trust Property to be in violation of, any applicable Hazardous Materials Laws. Neither Trustor, nor any employees, agents, tenants, contractors or subcontractors of Trustor, nor any other persons occupying or present upon the Trust Property, shall use, generate, manufacture, store or dispose of on, under or about the Real Property, or transport to or from the Real Property any Hazardous Materials, except as such Hazardous Materials may be used, stored or transported in connection with the permitted uses of the Trust Property and then only in de minimus quantities and only to the extent permitted by law after obtaining all necessary permits and licenses therefor.

(iii) Trustor shall be solely responsible for, and shall indemnify, defend, protect and hold harmless Beneficiary, its directors, officers, employees, agents, successors and assigns for, from and against, any claim, demand, lawsuit, loss, damage, cost, expense or liability directly or indirectly arising out of or attributable to the use, generation, storage, release, threatened release, discharge, disposal or presence of Hazardous Materials on, under or about the Real Property (whether occurring prior to or during the pendency of the indebtedness secured hereby or otherwise and regardless of by whom caused, whether by Trustor or any predecessor in title or any owner of land adjacent to the Real Property or any other third party, or any employee, agent, tenant, contractor or subcontractor of Trustor or any predecessor in title or any such adjacent land owner or any third party) including: (i) claims of third parties (including governmental agencies) for injury or death to any person or for damage or destruction of any property; (ii) claims for response costs, clean-up costs, costs and expenses of removal and restoration, including fees of attorneys and experts, and costs of determining the existence of Hazardous Materials and reporting same to any governmental agency; (iii) any and all other claims for expenses or obligations, including attorneys' fees, costs and other expenses; (iv) any and all penalties threatened, sought or imposed on account of a violation of any Hazardous Materials Laws; (v) all fees of any consultants, attorneys and engineering firms retained in connection with monitoring the obligations of Trustor under this Deed of Trust; and (vi) any loss occasioned by diminution in the value of the Trust Property which results from any of the foregoing.

5. EQUITY-FLEX®/ DELAY FLEX® MORTGAGE LINE

a. **Equity-Flex®.** If that this Deed of Trust secures a Note with an Equity-Flex® Mortgage Line, Trustor may use, subject to the conditions set forth in the Note, the existing equity in the Trust Property in order to obtain additional funds beyond the amount of the Initial Funding of \$3,139,308.71 up to the Secured Loan Amount of \$3,139,308.71. This Deed of Trust secures the entire Secured Loan Amount regardless of the amount of the Initial Funding or any subsequent draws ('Advances') on the Loan account. The payoff amount required to release this Deed of Trust shall be based on the actual outstanding balance of the Loan account at the time of payoff.

Notice: If Beneficiary consents to alienation, assignment or transfer of the Trust Property or the obligations under this Deed of Trust in accordance with Section 14, all assignees, transferees and junior lien holders are hereby advised that this Deed of Trust provides for adjustable release provisions and fluctuating principal balances at Beneficiary's discretion.

b. **Delay-Flex®.** If this Deed of Trust secures a Note with a Delay-Flex® Mortgage Line, Trustor may, subject to the conditions set forth in the Loan Documents and described herein, obtain the Delay-Flex amount designated as such and in accordance to the portions set-forth in the Delay-Flex Funding Schedule outlined in the Delay-Flex Disbursement Summary executed in connection with this Loan. This Deed of Trust secures the entire Designated Loan Amount regardless of the amount of the Initial Funding or any subsequent fundings on the Loan account. However, the payoff amount required to release the Deed of Trust shall be based on the actual outstanding balance of the Loan account at the time of payoff.

c. **The Funding of each Delay-Flex portion is subject to Beneficiary's discretionary approval and satisfaction of the following conditions:**

- (i) There is no then-existing default under any of the Loan Documents and there exist no facts which, with the giving of notice or passage of time, would constitute a default under any of the Loan Documents;
- (ii) Beneficiary, or its agent, has conducted an inspection of the Trust Property and the present condition of the Trust Property has been approved;



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(iii) The increased loan amount following the funding of each Delay-Flex portion, if made, will not exceed Beneficiary's lending guidelines for the Trust Property;

(iv) Beneficiary may further condition any delayed funding on endorsements to Beneficiary's Title Policy insuring the continued validity and priority of this Deed of Trust, Beneficiary's approval of Trustor's proposed utilization of the Delay-Flex proceeds and any other reasonable assurances or conditions Beneficiary may require or impose;

(v) Beneficiary shall fund each Delay-Flex portion on a date set by Beneficiary at its sole and absolute discretion, which will occur no earlier than the thirtieth (30th) day prior to the Fund Date set forth in the Delay-Flex Funding Schedule and no later than the thirtieth (30th) consecutive day following the Fund Date set forth in the Delay-Flex Funding Schedule; and

(vi) **Funding the total Delay-Flex portion of the Loan is not to exceed 9 months from the date of Loan closing. The Delay-Flex Funding Schedule must be completed by Loan closing and included in the Disbursement Summary. Any modification to the Delay-Flex Funding Schedule requires written approval from Beneficiary or Servicing Agent.**

Notice: If Beneficiary consents to alienation, assignment or transfer of the Trust Property or the obligations under this Deed of Trust in accordance with Section 14, all assignees, transferees and junior lien holders are hereby advised that this Deed of Trust provides for adjustable release provisions and fluctuating principal balances at Beneficiary's discretion.

6. CONSTRUCTION MORTGAGE

This Deed of Trust may constitute a "construction mortgage" within the meaning of A.R.S. Section 47-9334 and is entitled to the benefits of A.R.S. Section 47-9334(H). If this Deed of Trust secures a construction loan, the proceeds of the obligations secured by this Deed of Trust are to be used by Trustor for the purpose of acquiring title to the Real Property and funding the acquisition, construction and improvement of the Improvements, or refinancing such secured obligations. If this Deed of Trust secures a construction loan, notice is hereby given that the proceeds of the Note secured hereby may be collaterally assigned to Beneficiary or its agent pursuant to the terms of the Construction Loan Agreement executed herewith.

7. CONDEMNATION

If any portion of the Trust Property is condemned or threatened to be condemned by the governing authority, Beneficiary, without notice, shall have the right to accelerate all sums owed under the Loan Documents, which are secured by this Deed of Trust, and those sums shall become immediately due and payable to Beneficiary irrespective of their maturity date. All awards of damages for any condemnation or taking, for injury to the Trust Property by reason of public use or for damages from private trespass or injury to the Trust Property, are hereby assigned, transferred and conveyed to Beneficiary and shall be paid to Beneficiary as further security for the Loan. Upon receipt of such monies, Beneficiary may hold the same as such further security, or apply or release the same in the same manner and with the same effect as herein provided for the disposition of proceeds of fire or other insurance.

8. BENEFICIARY'S OPTIONS

Without affecting the obligation of Trustor to pay and perform as required herein, without affecting the personal liability of any person for payment of the indebtedness secured hereby, and without affecting the lien or priority of lien hereof on the Trust Property, Beneficiary may, at its option:

- a. Release and reconvey all or any part of the Trust Property;
- b. Consent to the making and/or recording of any map or plat of the Trust Property or any part thereof;
- c. Join in granting any easement on the Trust Property;
- d. Join in or consent to any extension agreement or any agreement subordinating the lien, encumbrance or charge hereof;
- e. Extend the time for payment for all or any part of the indebtedness secured hereby, accept a renewal note therefore, reduce the payments thereon, release any person liable for all or any part thereof or otherwise change the terms of all or any part of the obligation or Note secured hereby; or



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f. Take and hold other security for the payment and performance of the obligation and Note secured hereby, and enforce, exchange, substitute, subordinate, waive or release any such security.

Any of the foregoing actions by Beneficiary or the Trustee at Beneficiary's direction may be taken without the consent of any junior lienholder, and shall not affect the priority of this Deed of Trust over any junior lien.

9. SECURITY AGREEMENT AND FIXTURE FILING

This Deed of Trust shall cover, and the Trust Property shall include, all property now or hereafter affixed on, attached to or incorporated upon the Real Property which, to the fullest extent permitted by law, shall be deemed a "fixture." To the extent that the Trust Property consists of rights in action or personal property covered by the Uniform Commercial Code, this Deed of Trust shall also constitute a security agreement, and Trustor hereby grants to Beneficiary, as secured party, a security interest in such property, including all proceeds thereof, for the purpose of securing the obligations herein and the other Loan Documents. In addition, for the purpose of securing the obligations herein and the other Loan Documents, Trustor, as debtors, hereby grants to Beneficiary, as secured party, a security interest in the following:

a. All personal property (including all goods, supplies, equipment, furniture, furnishings, fixtures, machinery, inventory and construction materials) in which Trustor now or hereafter acquires an interest or right, which is now or hereafter located on or affixed to the Real Property or the Improvements, or used or useful in the operation, use, or occupancy thereof or in the construction of any additional improvements thereon, together with any interest of Trustor in and to such personal property which is leased by Trustor or is subject to any superior security interest, and all books, records, leases and other agreements, documents, and instruments of whatever kind or character, relating to the Real Property, the Improvements, or such personal property;

b. All fees, income, rents, issues, profits, earnings, receipts, royalties, and revenues that may accrue from the personal property described in clause (a) above or any part thereof, or from the Real Property or the Improvements, or that may be received or receivable by Trustor from any hiring, using, letting, leasing, subhiring, subletting, subleasing, occupancy, operation or use thereof;

c. All of Trustor's present and future rights to receive payments of money, services, or property, including rights to receive capital contributions or subscription payments from the members, partners, shareholders or principals of Trustor, amounts payable on account of the sale of ownership interests in Trustor or the capital stock of Trustor, accounts and other accounts receivable, security deposits, chattel paper, notes, drafts, contract rights, instruments, general intangibles, and principal, interest and payments due on account of goods sold or leased, services rendered, loans made or credit extended, together with title to or interest in all agreements, documents, and instruments, evidencing, securing or guarantying the same;

d. All other intangible property and rights relating to the Real Property, the Improvements, the personal property described in clause (a) above or the operation, occupancy, or use thereof including all governmental and non-governmental permits, licenses (including Trustor's interest in any liquor license related to business operations conducted on the Real Property), and all approvals relating to construction on or operation, occupancy, or use of the Real Property or the Improvements, all names under or by which the Real Property or the Improvements may at any time be operated or known, all rights to carry on business under any such names, or any variant thereof, all trade names and trademarks relating in any way to the Real Property or the Improvements, and all good will in any way relating to the Real Property or the Improvements;

e. Trustor's rights under all insurance policies covering the Real Property, the Improvements or the personal property described in clause (a) above, and any and all proceeds, loss payments, and unearned premiums payable or refundable regarding the same;

f. All reserves, deferred payments, deposits, impound accounts, refunds, cost savings, and payments of any kind relating to the construction of any improvements on the Real Property;

g. All water stock or water rights relating to the Real Property;



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- h. All architectural, structural, mechanical, and engineering plans and specifications prepared for construction of improvements on the Real Property, or extraction of minerals or gravel from the Real Property, and all studies, data, and drawings relating thereto; and also all contracts and agreements of Trustor relating to such plans and specifications or to such studies, data, and drawings, for the construction of improvements on or extraction of minerals or gravel from the Real Property;
- i. All proceeds from the sale or other disposition of any of the collateral described above;
- j. All of Trustor's rights in proceeds of the loan made by Beneficiary to Trustor;
- k. All of Trustor's rights to security, cleaning, or other deposits from tenants relating to leases or occupancy agreements for any portion of the Real Property or the Improvements;
- l. All of Trustor's rights in any Impound account held by Trustor or Beneficiary on behalf of Trustor;
- m. All of Trustor's rights in any other deposit accounts of Trustor; and
- n. All wells, well equipment, rights to wells, permits and licenses, water rights and all other related property used in connection with the operation of any well on the Real Property or appurtenant to the Real Property.

Trustor acknowledges and agrees that Beneficiary may maintain certain deposit accounts (including a payment impound account and/or a construction impound account) in the name of Beneficiary for the benefit of Trustor and such accounts may include funds disbursed or to be disbursed with respect to the Loan. Trustor acknowledges and agrees that all such funds are the property of Beneficiary and Trustor hereby disclaims any interest therein.

Trustor shall promptly replace any personal property that is consumed or worn out in ordinary usage and such replacement shall be secured hereby. Trustor may sell or dispose of only that part of the personal property that Trustor is obligated to replace, and all proceeds from any such sale or disposition in excess of the amount expended for such replacements shall promptly be paid to Beneficiary to be applied according to the Loan Documents, whether or not then due. Trustor shall immediately notify Beneficiary of any change in the location of Trustor's chief executive office or residence (if Trustor is an individual without an office) in accordance with the terms of this Deed of Trust, and any change in location of the personal property encumbered hereby, except if replaced as permitted herein. All Trustor's representations, warranties and covenants contained in this Deed of Trust shall apply to the personal property encumbered hereby whether or not expressly referred to herein. Trustor's representations, warranties and covenants and warranties contained in this Section are in addition to, and not in limitation of, those contained in the other provisions of this Deed of Trust. Upon its recording in the real property records, this Deed of Trust shall be effective as a fixture filing. The filing of any other financing statement relating to any other personal property, rights or interests described herein shall not be construed to diminish any of Beneficiary's rights or priorities hereunder. Trustor hereby authorizes and empowers Beneficiary and irrevocably appoints Beneficiary its attorney-in-fact to execute and file, on Trustor's behalf, all financing statements and refilings and continuations thereof as Beneficiary deems necessary or advisable to create, preserve and protect the security interest created hereby.



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This Deed of Trust covers certain goods, which are or are to become fixtures related to the Real Property and CONSTITUTES A FIXTURE FILING with respect to such goods executed by Trustor, as debtor, in favor of Beneficiary, as secured party. For purposes of the Uniform Commercial Code, the following information is supplied:

Name and Address of Debtor: CDIG, L.L.C., an Arizona limited liability company,
JW Maricopa Holdings, L.L.C., an Arizona limited liability
company and TCB Property Management, L.L.C., an Arizona
limited liability company
9 Spur Circle
Scottsdale, AZ 85251

Name and Address of Record Owner: CDIG, L.L.C., an Arizona limited liability company, as to an
undivided 51.2% interest, JW Maricopa Holdings, LLC, an
Arizona limited liability company, as to an undivided 41.4%
interest and TCB Property Management, L.L.C., an Arizona
limited liability company, as to an undivided 7.4% interest
9 Spur Circle
Scottsdale, AZ 85251

Description of Real Estate: See Exhibit A attached hereto.

Name and Address of Secured Party: Mortgages Ltd., as agent
55 E. Thomas Road
Phoenix, Arizona 85012

This Deed of Trust covers goods that are or are to become fixtures.

10. RELEASE AND RECONVEYANCE

a. The release provisions contained in this Deed of Trust are subject to subsequent modification by separate agreements, which include, but are not limited to, Equity-Flex® Advance Agreements and/or upon the subsequent funding of Delay-Flex® Mortgage Line advances.

b. **There are no partial release provisions (intentional).**

c. Upon payment in full and satisfaction of the Obligations, Beneficiary will surrender this Deed of Trust and the other Loan Documents to Trustee for cancellation, retention and payment of Trustee's fees, and Trustee shall release and reconvey, without covenant or warranty, express or implied, the Trust Property then held hereunder. The recitals in such reconveyance or any matters or facts shall be conclusive proof of the truthfulness thereof. The grantee in such reconveyance may be described as "the person or persons legally entitled thereto."

11. ASSIGNMENT OF RENTS, LEASES AND PROFITS

To facilitate payment and performance of the obligations under this Deed of Trust and the other Loan Documents, Trustor hereby absolutely sells, transfers and assigns to Beneficiary all right, title and interest of Trustor in and to the following:

a. All existing and future leases, subleases, licenses and other agreements for the use and occupancy of all or a portion of the Trust Property, whether written or oral and whether for a definite term or month-to-month, together with any and all extensions, modifications and renewals thereof (collectively, the "Leases"); and

b. All income, receipts, revenues, royalties, rents, issues, profits and benefits now or hereafter arising from or out of the Leases or from or out of the Trust Property or any part thereof (collectively, the "Rents").



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So long as there shall not have occurred an event of default under this Deed of Trust or any of the other Loan Documents, Trustor shall have the right to collect all Rents, and shall hold the same, in trust. Beneficiary may, at its option, upon default, at any time, without notice, either by person, by agent or by receiver appointed by a court, and without regard to the adequacy of any security for the indebtedness hereby secured or the solvency of Trustor, collect the Trust Property income (including the Rents) by any method authorized by law and apply the same, less costs and expenses of operation and collection, including attorneys' fees, Trustee's fees and Servicing Agent's administrative fees, upon any indebtedness secured hereby, Servicing Agent's administrative fees, upon any indebtedness secured hereby, and in such order as Beneficiary may determine. The entering upon and taking possession of the Trust Property, the collection of Trust Property income and the application thereof shall not cure or waive any default or notice of Trustee's sale or invalidate any act done pursuant to such notice. Beneficiary shall have the right to exercise all its rights as provided by A.R.S. §§ 33-702(B) and 33-807, which may be revised from time to time. It is expressly covenanted and agreed by the Trustor, that at the time of the execution and delivery of this Deed of Trust there has been no prepayment of any Rents by any of the tenants occupying the Trust Property or the Leases. It is further covenanted and agreed that Trustor, its successors or assigns, shall have no right, power or authority to alter, modify or amend the terms, or any of them, of the Lease in any particular whatsoever, without first obtaining the consent in writing of Beneficiary, its successors or assigns to such alteration, modification or amendment. Nothing herein contained shall be construed as making Beneficiary, or its successors or assigns, a mortgagee in possession, nor shall Beneficiary, or its successors or assigns be liable for laches, or failure to collect said rents, issues, profits, revenues, royalties, rights and benefits, and it is understood that Beneficiary, its successors or assigns, are to be account only for such sums as are actually collected.

12. DEFAULT AND REMEDIES

a. Default. Among other things constituting a default under the provisions of the Loan Documents, Trustor shall be deemed in default upon the occurrence of any of the following events:

- (1) Trustor, third party borrower, any endorser or any guarantor fails to make payment of any indebtedness secured hereby in accordance with the Loan Documents;
- (2) Trustor, third party borrower, any endorser of the Note or any guarantor fails to perform any obligation required by and in accordance with the Loan Documents, or any representation by Trustor, third party borrower, any endorser of the Note or any guarantor in any of the Loan Documents is untrue;
- (3) The death, incapacity, dissolution, winding-up or termination of the existence of Trustor, third party borrower, any endorser of the Note or any guarantor;
- (4) The calling of a meeting of the creditors of Trustor, third party borrower, any endorser of the Note or any guarantor;
- (5) The making by Trustor, third party borrower, any endorser of the Note or any guarantor of an assignment for the benefit of any of its creditors;
- (6) Trustor, third party borrower, any endorser of the Note or any guarantor becomes insolvent;
- (7) Trustor, third party borrower, any endorser of the Note or any guarantor fails to pay its debts as they mature;
- (8) Trustor, third party borrower, any endorser of the Note or any guarantor admits in writing that such party is unable to pay such party's debts as they mature;
- (9) A receiver, trustee, custodian or conservator is appointed to manage over all or any part of the assets of Trustor, third party borrower, any endorser of the Note or any guarantor;
- (10) The occurrence of any material adverse change in the condition (financial or otherwise) of Trustor, third party Borrower, any endorser of the Note or any guarantor;
- (11) In the event that Chuck Sorensen has secured or secures additional loans through Mortgages Ltd. **personally or through any entity in which he possesses an ownership interest (the "Additional Loans" including but not limited to Loan Nos. 832705, and 861105)**, regardless as to whether Mortgages Ltd. has assigned its interests in the Additional Loans or this Loan, then a default in any Additional Loan shall constitute a default in this Loan and a default in this Loan shall constitute a default in the Additional Loans **only as to the interest of Chuck Sorensen as an individual and/or member of the borrowing entity to the extent of his ownership**; or
- (12) Beneficiary in good faith deems itself insecure or believes the prospect for payment or performance is impaired.



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b. Acceleration. Upon the occurrence of any of the foregoing events of default, Beneficiary, without notice, may declare all sums secured hereby immediately due and payable and may apply or cause to be applied amounts in any Impound Account to the obligations secured by this Deed of Trust in any manner that Beneficiary elects. Notwithstanding anything in this Deed of Trust or any other Loan Document to the contrary: (a) it shall be a default under this Deed of Trust if Trustor, third party borrower, the Note's endorser or any guarantor becomes the subject of any bankruptcy or voluntary or involuntary insolvency proceeding, in or out of court, for the adjustment of debtor-creditor relations ("Insolvency Proceedings"); and (b) if the any Insolvency Proceedings occur, any obligation of Beneficiary to make further advances shall terminate, and all sums of principal and interest under the Note shall automatically become due and payable without notice of default, presentment or demand for payment, protest or notice of nonpayment or dishonor, or other notices or demands of any kind or character.

c. Trustee's Sale. Should Beneficiary elect to have the Trust Property sold by Trustee, Beneficiary shall deliver to Trustee written notice, setting forth the nature of the default, and of the election to cause the Trust Property to be sold. Beneficiary also shall deposit with Trustee this Deed of Trust, the Note and all other Loan Documents evidencing expenditures secured hereby. Trustee shall record and give notice of the Trustee's Sale in the manner required by law, and after the lapse of such time as may then be required by law, Trustee shall sell, in the manner required by law, the Trust Property at public auction, at the time and place fixed by the notice of Trustee's Sale to the highest bidder for cash in lawful money of the United States, payable at the time of sale. Notice to Trustor shall be given in accordance with the provisions of A.R.S. Sections 33-808 and 33-809. Trustee, at Trustee's discretion, may postpone or continue the sale from time to time by giving notice of postponement or continuance by public declaration at the time and place last appointed for the sale. Trustee shall deliver to the purchaser at the Trustee's Sale a Deed conveying the Trust Property, but without any covenant or warranty, expressed or implied. The recitals in such deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any persons, including Trustor, Trustee or Beneficiary, may purchase the Trust Property at the Trustee's Sale. Beneficiary may bid for and purchase the Trust Property and shall be entitled to apply all or any part of the indebtedness secured hereby as a credit against the purchase price. The purchaser at the Trustee's sale shall be entitled to immediate possession of the Trust Property as against the Trustee or other persons in possession and shall have a right to the summary proceedings to obtain possession provided in Title 12, Chapter 8, Article 4, Arizona Revised Statutes, together with costs and attorneys' fees accrued therefor. After deducting all Trustee's costs, fees and expenses and of this Deed of Trust, including the costs of evidence of title in connection with the sale, Beneficiary and Trustee's attorneys' fees and Servicing Agent's administrative fees, Trustee shall apply the sale proceeds to the payment of all sums then secured hereby and all other sums due under the terms hereof, with accrued interest, and then the remainder, if any, to the person or persons legally entitled thereto or as provided in A.R.S. § 33-812.

d. Deficiency Judgment. To the extent permitted by law, Beneficiary shall be entitled to a deficiency judgment against Trustor for any balance remaining due hereunder after a Trustee's sale of the Trust Property.

e. Foreclosure and Other Remedies. In lieu of a Trustee's sale, pursuant to the power of sale conferred hereby, this Deed of Trust may be foreclosed in the same manner provided by law for the foreclosure of mortgages on real property. Beneficiary shall also have the right to exercise any or all remedies available hereunder and at law or in equity, including all remedies of a secured party under the Uniform Commercial Code with respect to any personal property secured hereby, the appointment of a receiver, provisional remedies and injunctive relief. All Beneficiary's rights and remedies shall be cumulative.

f. Appointment of Receiver or Mortgagee in Possession. If an event of default is continuing or if Beneficiary shall have accelerated the indebtedness secured hereby, Beneficiary, upon application to a court of competent jurisdiction, shall be entitled as a matter of strict right, without notice, and without regard to the occupancy or value of any security for the indebtedness secured hereby or the insolvency of any party bound for its payment, to the appointment, at Beneficiary's option, of itself as mortgagee in possession, or of a receiver to take possession of and to operate the Trust Property, and to collect and apply the Rents. Beneficiary and such receiver and their representatives shall have no liability for any loss, damage, injury, cost or expense resulting from any action or omission which was taken or omitted in good faith.



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**DEED OF TRUST, ASSIGNMENT OF RENTS AND LEASES,
SECURITY AGREEMENT AND FIXTURE FILING**

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13. SUCCESSOR TRUSTEE

Beneficiary may appoint a successor Trustee in the manner prescribed by law. A successor Trustee shall, without conveyance from the predecessor Trustee, succeed to all the predecessor's title, estate, rights, powers and duties. Trustee may resign at any time by complying with applicable law and by mailing or delivering notice thereof to Beneficiary and Trustor, and having so resigned shall be relieved of all liability and responsibility to Trustor, Beneficiary or otherwise hereunder. Any reference to "Trustee" herein shall include all successor trustees. Trustee shall not be liable for any action taken when acting in good faith, or upon any information supplied or direction given by Beneficiary.

14. ALIENATION

The Trust Property and the obligations under this Deed of Trust are not alienable, assignable or transferable by Trustor. Upon the occurrence any of the following, without prior written consent of Beneficiary or its Servicing Agent:

- a. Trustor sells, conveys, transfers, assigns, contracts for sale, leases with option to purchase or further encumbers the Trust Property or any part thereof, including any further assignment of the Trust Property's income, or a wraparound mortgage or purchase contract;
 - b. If Trustor is a corporation, the controlling interest in Trustor is sold, conveyed or transferred;
 - c. If Trustor is a limited liability company, any interest in Trustor is sold, conveyed or transferred;
- or
- d. If Trustor is a partnership, any general partnership interest, or the majority of limited parties interests, in Trustor is sold, conveyed or transferred, either voluntarily or involuntarily;

Beneficiary, without notice, shall have the right to accelerate all sums owed under the Loan Documents, which are secured by this Deed of Trust, and those sums shall become immediately due and payable to Beneficiary irrespective of their maturity date. This provision shall apply to each and every such sale, conveyance, transfer, lease, encumbrance or assignment, regardless as to whether Beneficiary has consented or waived its rights in connection with any previous sale, conveyance, transfer, lease, encumbrance or assignment.

15. THIRD PARTY BORROWER PROVISIONS.

The following provisions apply to the extent that a third party borrower has executed the Note:

- a. Trustor waives each of the following:
 - (i) Any right to require Beneficiary to make presentments or demands or to give notices of any kind, including demand for performance, notice of non-performance, protest, notice of protest, notice of dishonor, notice of acceptance of this Deed of Trust, notice of the existence, creation or incurrence of existing or new debt, notice of modification, payment, default or change or action of any kind relating to the Obligations.
 - (ii) Any defense to liability on this Deed of Trust based on any disability or other defense of the third party borrower or based upon any cessation of the liability of the third party borrower to Beneficiary for any reason other than the payment of the Obligations in full.
 - (iii) Any right to require Beneficiary to proceed against the third party borrower.
 - (iv) Any right to require Beneficiary to proceed against any other security held from third party borrower or from Trustor.
 - (v) To the extent permitted by applicable law, the benefit of any statute of limitations pertaining to the Obligations or to this Deed of Trust or affecting Trustor's liability on this Deed of Trust or its enforcement.



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MLPLAN-003257

(vi) Any defense based upon an election of remedies by Beneficiary, including any election to proceed against any collateral by judicial or nonjudicial foreclosure, whether real property or personal property, or by deed in lieu thereof, and whether or not every aspect of any foreclosure sale is commercially reasonable, and whether or not any such election of remedies destroys or otherwise impairs the subrogation rights of Trustor or the rights of Trustor to proceed against the third party borrower or any guarantor or Trustor for reimbursement, or both.

(vii) The benefits of any statutory provision limiting the liability of a surety, including the provisions of A.R.S. Sections 12-1641 through 12-1644, A.R.S. Section 12-1566, A.R.S. Section 33-814, A.R.S. Section 44-142, A.R.S. Section 47-3605 and Rule 17(f) of the Arizona Rules of Civil Procedure.

(viii) Any defense based upon the application by third party borrower of the proceeds of the loan evidenced by the Note for purposes other than the purposes represented by third party borrower to Beneficiary or intended or understood by Beneficiary or Trustor.

b. Trustor acknowledges and agrees that Beneficiary, without affecting Trustor's liability, may take any one or more of the following actions, at any one or more times:

(i) Renew, compromise, extend, accelerate or otherwise change the time for payment of, or the terms of, all or any part of the Obligations.

(ii) Take additional security for the payment of the Obligations, and exchange, enforce, alter or release all or any part of any security.

(iii) Add, release or substitute any one or more other third party trustors or guarantors.

(iv) Assign the Obligations in whole or part.

16. GENERAL

a. **Time.** Time is of the essence in all aspects of this Deed of Trust and the other Loan Documents.

b. **Liability.** This Deed of Trust applies to, inures to the benefit of and binds Trustor, Trustee and Beneficiary (collectively, the "Parties") and their heirs, personal representatives, successors, permitted assigns, beneficiaries and trustees. All liability created hereunder shall be joint and several.

c. **Assignability.** Beneficiary and Trustee may assign their rights and obligations under this Deed of Trust without prior notice to Trustor. "Beneficiary" shall include the owner and holder of the Note secured hereby, whether or not named as Beneficiary herein.

d. **Servicing Agent.** Trustor acknowledges that Mortgages Ltd. is the Servicing Agent and may enforce the terms of this Deed of Trust and the other Loan Documents on behalf of Beneficiary.

e. **Severability.** If any term or other provision of this Deed of Trust or any other Loan Document is declared invalid, illegal or incapable of being enforced by any rule of law or public policy, all other conditions and provisions of this Deed of Trust shall nevertheless remain in full force and effect.

f. **Law.** This Deed of Trust shall be governed by, construed and enforced in accordance with the laws of the State of Arizona, without regard to the choice of law rules of the State of Arizona. In the event any statute or law referred to herein is subsequently amended or renumbered, the statute as amended or renumbered shall be intended by the Parties to be referred to herein, thereafter, and should said statute or law be repealed, if law permits, that statute or law as it exists on the date hereof is intended to be a part hereof.

g. **Jurisdiction and Venue.** Trustor hereby submits to the jurisdiction and venue of any Arizona State or Federal Court sitting in the City of Phoenix in any action or proceeding arising out of or relating to this Deed of Trust. Trustor hereby waives the defense of an inconvenient forum.



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MLPLAN-003258

**DEED OF TRUST, ASSIGNMENT OF RENTS AND LEASES,
SECURITY AGREEMENT AND FIXTURE FILING**

Loan No. 861405

October 12, 2007

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h. Jury Trial Waiver. Trustor, and Beneficiary, by its acceptance of this Deed of Trust, hereby waive their respective rights to a trial by jury in any action or proceeding based upon, or related to, the subject matter of this Deed of Trust and the business relationship that is being established. This waiver is knowingly, intentionally, voluntarily and irrevocably made by Trustor and Beneficiary, and Trustor acknowledges that neither Beneficiary, nor any person acting on behalf of Beneficiary, has made any representations of fact to include this waiver of trial by jury or has taken any actions which in any way modify or nullify its effect. Trustor and Beneficiary acknowledge that this waiver is a material inducement to enter into a business relationship, that each of them has already relied on this waiver in entering into this Deed of Trust and that each of them will continue to rely on this waiver in their related future dealings.

i. Promotional Information. Beneficiary shall have the right to release information related to this Deed of Trust and the other Loan Documents ("Promotional Information"), including photographs of the Trust Property, characteristics of the Trust Property, Loan characteristics, financing terms and aspects of underwriting, for advertising, marketing and other promotional purposes, such as commercials, advertising fliers, trade articles, Internet releases and public presentations. Beneficiary shall not be held liable to Trustor for the release of Promotional Information.

j. Modification. This Deed of Trust may be amended, modified, superseded, canceled, renewed or extended and the terms or covenants hereof may be waived only by a written instrument executed by all Parties.

k. Waiver. The failure of Beneficiary, at any time or times, to require performance of any provision of this Deed of Trust shall in no manner affect the right of Beneficiary at a later time to enforce that provision. Further, if payment of any sum secured hereby is accepted after its due date, Beneficiary does not waive its right either to require prompt payment when due of all other sums or to declare a default for failure to pay as required by the Loan Documents. No waiver by Beneficiary of the breach of any term or covenant contained in this Deed of Trust, whether by conduct or otherwise, in any one or more instances, shall be deemed to be, or construed as, a further or continuing waiver by Beneficiary of any such breach, or a waiver of the breach of any other term or covenant contained in this Deed of Trust.

l. Waiver of Statute of Limitations. To the extent permitted by applicable law, Trustor hereby waives the right to assert any statute of limitations as a bar to the enforcement of the lien created by any of the Loan Documents or to any action brought to enforce the Note or any other obligations secured by any of the Loan Documents.

m. Waiver of Homestead and Redemption. Trustor hereby waives all right of homestead exemption in the Trust Property. Trustor hereby waives all right of redemption on behalf of Trustor and on behalf of all other persons acquiring any interest or title in the Trust Property subsequent to the date of this Deed of Trust, except decree or judgment creditors of Trustor.

n. Interpretation. As used in this Deed of Trust, the word "include(s)" means "include(s), without limitation," and the word "including" means "including, without limitation."

o. Variable Rate. THIS DEED OF TRUST MAY SECURE A VARIABLE INTEREST RATE LOAN.

SEE ATTACHED SIGNATURE AND NOTARY PAGE



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Handwritten initials in black ink, appearing to be 'M' and 'B' or similar characters, with a horizontal line underneath them.
initials

MLPLAN-003259

DEED OF TRUST, ASSIGNMENT OF RENTS AND LEASES,
SECURITY AGREEMENT AND FIXTURE FILING SIGNATURE AND NOTARY PAGE

IN WITNESS WHEREOF, this Deed of Trust has been executed as of the date set forth on the first page.

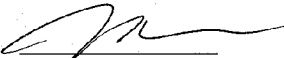
TRUSTOR:

CDIG, L.L.C., an Arizona limited liability company



By: Chuck Sorensen
Its: Manager

TCB Property Management, L.L.C., an Arizona limited liability company



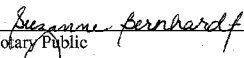
By: Michael G. Berkner
Its: Manager

STATE OF AZ)
)ss
COUNTY OF MARICOPA)

The foregoing instrument was acknowledged before me this 12th day of October, 2007 by **Chuck Sorensen** of **CDIG, L.L.C., an Arizona limited liability company on behalf of the limited liability company**

My Commission Expires:



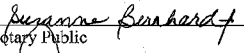

Notary Public

STATE OF AZ)
)ss
COUNTY OF MARICOPA)

The foregoing instrument was acknowledged before me this 12th day of October, 2007 by **Michael G. Berkner** of **TCB Property Management, L.L.C., an Arizona limited liability company on behalf of the limited liability company**

My Commission Expires:




Notary Public

SEE ATTACHED COUNTERPART SIGNATURE AND NOTARY PAGE





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MLPLAN-003260

DEED OF TRUST, ASSIGNMENT OF RENTS AND LEASES,
SECURITY AGREEMENT AND FIXTURE FILING COUNTERPART SIGNATURE AND NOTARY
PAGE

JW Maricopa Holdings, LLC, an Arizona limited liability company

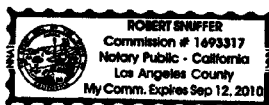
Jon Webster
By Jon Webster
Its: Manager

STATE OF AZ)
)ss
COUNTY OF MARICOPA)

The foregoing instrument was acknowledged before me this 15th day of October, 2007 by Jon Webster of JW Maricopa Holdings, LLC, an Arizona limited liability company on behalf of the limited liability company

Robert Sniffer
Notary Public

My Commission Expires: 9/12/2010



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MLPLAN-003261

EXHIBIT "A"

Loan No.: 861405

Borrower: CDIG, L.L.C., an Arizona limited liability company, as to an undivided 51.2% interest, JW Maricopa Holdings, LLC, an Arizona limited liability company, as to an undivided 41.4% interest and TCB Property Management, L.L.C., an Arizona limited liability company, as to an undivided 7.4% interest

That portion of Parcel 2, of Plat of Survey recorded in the office of the County Recorder of Pinal County, Arizona in Book 1 of Surveys, Page 46, being located in a portion of Section 2, Township 4 South, Range 8 East of the Gila and Salt River Base and Meridian, Pinal County, Arizona, described as follows:

Commencing at brass cap found for the Northwest corner of the above mentioned Section 2;

Thence South 00 degrees 41 minutes 11 seconds East, a distance of 40.00 feet to the Southerly right of way of Arizona Farms Road;

Thence along said Southerly right of way South 89 degrees 40 minutes 03 seconds East, a distance of 1258.20 feet to the Northwest corner of said Parcel 2;

Thence continuing along the above said Southerly right of way South 89 degrees 40 minutes 03 seconds East, a distance of 922.03 feet to the TRUE POINT OF BEGINNING;

Thence South 00 degrees 12 minutes 40 seconds East, a distance of 473.63 feet;

Thence North 89 degrees 46 minutes 43 seconds West, a distance of 292.97 feet;

Thence South 00 degrees 18 minutes 53 seconds East, a distance of 822.62 feet to a point on the Southerly line of the above said Parcel 2;

Thence North 89 degrees 46 minutes 32 seconds West, a distance of 627.16 feet to the Southwest corner of said Parcel 2;

Thence along the West line of said Parcel 2, North 00 degrees 21 minutes 35 seconds West, a distance of 1298.02 feet to a point on the Southerly right of way of Arizona Farms Road;

Thence continuing along said Southerly line, South 89 degrees 40 minutes 03 seconds East, a distance of 922.03 feet to the POINT OF BEGINNING.

APN(s): 200-58-002/Maricopa

Ex. 15

SERVICING AGENT AGREEMENT

Loan No. 861405

October 12, 2007

"Borrower" (individually and collectively):

CDIG, L.L.C., an Arizona limited liability company,
JW Maricopa Holdings, LLC, an Arizona limited liability company and
TCB Property Management, L.L.C., an Arizona limited liability company

"Lender": Scott M. Coles or Christopher J. Olson, Trustees of the Mortgages Ltd. 401(k) Plan

"Servicing Agent": Mortgages Ltd., an Arizona corporation.

In consideration of the reciprocal promises contained herein, Borrower, Lender and Servicing Agent (collectively, the "Parties") hereby agree to the following.

1. APPOINTMENT AND AUTHORITY OF SERVICING AGENT

Trustor and Beneficiary hereby appoint Mortgages Ltd. to act as the Servicing Agent with regard to the Loan. Servicing Agent is authorized to perform any and all of the following tasks:

- a. Hold the originals of the Promissory Note, Deed of Trust, Fee Schedule and all other documents executed by the Borrower or any other party in connection with the Loan (collectively, the "Loan Documents").
b. Service and administer the Loan in any manner provided by the Loan Documents.
c. Process any and all Loan payments from Borrower or other payor.
d. Assess and process all fees and charges set forth in the Loan Documents including, but not limited to, administrative fees, notice fees and late charges.
e. Apply any funds received by Servicing Agent to the fees and costs incurred or assessed by Beneficiary before applying the funds to the amounts owing under the Loan Documents (including notice fees, service fees, administrative fees, inspection fees, appraisal fees, expert fees, attorneys' fees, litigation costs, forced placed insurance premiums, late charges and guarantor collection expenses (as described herein)). Any insurance placed by Servicing Agent may be placed with an affiliate of servicing Agent or a captive insurance company.
f. Retain deposits received under the Loan Documents as impounds for the payment of the following:
(1) Future payments due;
(2) Taxes and assessments;
(3) Construction;
(4) Insurance premiums;
(5) Extension fees;
(6) Administration fees; and
(7) Any other expenditure required under the Loan Documents.

(Any impound account may be held in the name of Servicing Agent for the benefit of Lender and others, and Servicing Agent may apply and/or disburse any such deposits in accordance with the Loan Documents).

- g. Evaluate, effectuate and process an assumption of the Loan, and assess and receive an assumption fee and/or an interest rate increase.
h. Sign, file and record all documents which are reasonable or desirable to facilitate servicing or the loan, including:
(1) deeds of release and reconveyance (full and partial);
(2) endorsements and assignments of Loan Documents (including assignments of all or a portion of the beneficial interest of any deed of trust included in the Loan Documents);
(3) corrections, amendments, modifications and extensions of Loan Documents;
(4) disclaimers;



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SERVICING AGENT AGREEMENT

Loan No. 861405
October 12, 2007

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- (5) financing statements; and
- (6) assumptions and various certifications.

i. Incur all fees, costs and expenses deemed necessary by Servicing Agent to protect Beneficiary's interests under the Loan Documents;

j. Incur all fees, costs and expenses deemed necessary by Servicing Agent to protect the property securing the Loan (the "Trust Property"), including insurance premiums, receiver fees, property manager fees, maintenance expenses and security expenses.

k. Obtain forced placed insurance on any portion of the Trust Property in the event the Borrower fails to maintain insurance as required by the Loan Documents.

l. Sign, file and record any and all documents reasonable or desirable to protect Lender's interests and/or pursue Lender's remedies upon default, including:

- (1) a statement of breach or non-performance;
- (2) a substitution of trustee;
- (3) a notice of election to foreclose;
- (4) a notice of trustee's sale;
- (5) an affidavit of non-military service;
- (6) a notice of proposed disposition of collateral and various verifications.

m. In the event of default and at Servicing Agent's discretion, commence foreclosure of the Trust Property, initiate a trustee's sale and/or institute any proceeding necessary to collect the sums due under the Loan Documents or to enforce any provision therein, including:

- (1) pursuing an action against any borrower or guarantor of the Loan;
- (2) pursuing injunctive relief, the appointment of a receiver, provisional remedies or a deficiency

judgment;

- (3) pursuing claims in bankruptcy court;
- (4) pursuing an appeal;
- (5) collecting rents; and
- (6) taking possession or operating the Trust Property).

n. In the event of default and at Servicing Agent's discretion effect a sale of Lender's interest, in whole or in part, in the Loan Documents at the expense of Trustor which expense shall be secured by the Deed of Trust.

o. Retain attorneys, trustees and other agents necessary to collect the sums due under the Loan Documents, to protect the Trust Property and/or to proceed with foreclosure of the Trust Property, initiate a trustee's sale and/or institute, defend, appear or otherwise participate in any proceeding (legal, administrative or otherwise) that Servicing Agent deems reasonable and desirable.

p. Incur and pay such costs, expenses and fees as Servicing Agent deems appropriate in undertaking and pursuing enforcement of the Loan Documents and/or collection of amounts owed thereunder, including attorney fees, receiver fees, trustee fees, expert fees and any fees, costs and expenses incurred in an effort to collect against any borrower or any guarantor of the Loan.

2. ACCOMMODATION.

Servicing Agent provides its services as an accommodation only, and shall incur no responsibility or liability to any person, including, Borrower and Lender for any act or omission by Servicing Agent or any person or entity active for Servicing Agent.



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MLPLAN-003178

SERVICING AGENT AGREEMENT

Loan No. 861405

October 12, 2007

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3. ASSIGNMENT, RESIGNATION AND TERMINATION.

a. Servicing Agent shall have the right to assign the collection account or resign as Servicing Agent at any time, provided that Servicing Agent notifies Lender and Borrower of such assignment or resignation in writing.

(1) If Servicing Agent assigns the collection account, Servicing Agent will deliver all Loan Documents, directions and account records to assignee, at which time Servicing Agent will have no further duties or liabilities hereunder.

(2) If Servicing Agent resigns, Lender shall have the right to designate a new collection agent and Servicing Agent shall deliver to Lender all Loan Documents, directions and account records to Lender or the newly designated collection agent, at which time Servicing Agent will have no further duties or liabilities hereunder.

b. If that the ownership of the Trust Property becomes vested in the Lender by trustee's sale, judicial foreclosure or otherwise, then this Agreement shall automatically terminate and Servicing Agent will have no further duties or liabilities hereunder.

c. Upon Servicing Agent's assignment or resignation, or termination of this Agreement, Borrower shall immediately reimburse Lender for all fees, costs and expenses incurred hereunder. After such reimbursement and payment, Borrower shall remain obligated to indemnify, in accordance with Section 4 hereof, for liabilities which accrued prior to such resignation or termination.

4. INDEMNITY

a. Lender and Borrower shall immediately indemnify and hold Servicing Agent harmless for, from and against any and all liabilities incurred by Servicing Agent in performing under the terms of this Agreement or otherwise arising, directly or indirectly, from the Loan or Loan Documents, including all attorneys' fees, insurance premiums, expenses, costs, damages and expenses.

b. In the event that Servicing Agent requests that Lender and/or Borrower pay any amount owed hereunder, Lender and/or Borrower shall remit that amount to Servicing Agent within 5 business days of Servicing Agent's request.

5. BORROWER'S OBLIGATIONS

a. Standard Fees and Costs. Borrower shall pay to Servicing Agent, for the account of Beneficiary, its current fees and costs, including those items set forth in the Fee Schedule received by Borrower. The Fee Schedule is subject to change without notice as to the amounts and items included therein. Borrower shall pay a servicing set-up fee of \$1,500.00, and a monthly servicing fee of \$30.00. When the Loan is paid in full, Borrower shall pay a Close Out Fee of \$1,500.00, which is in addition to the monthly servicing fee. There will be a \$30.00 charge to Borrower for each payoff request.

b. Late Fees and Notices. In the event that a regular payment is not received by Servicing Agent on or before the fifth calendar day after the due date, a late charge of 35% of the monthly Principal and Interest payment will be charged and Borrower shall pay that amount to Servicing Agent, for the account of Lender. The parties agree that this late payment charge is intended to compensate Lender for losses incurred as a result of the late payment and that such late payment charge does not constitute and shall not be construed as a penalty. Servicing Agent will charge \$125.00, plus postage, for each notice sent regarding late payments, nonpayment of taxes, assessments, insurance premiums or any other matter that affects the Trust Property. Servicing Agent will charge \$25.00 for each notice sent regarding returned checks, plus any actual charges assessed by the financial institution of the Servicing Agent as a result of each returned check. These notice fees are subject to change at the Servicing Agent's discretion. In the event that the Loan is not paid in full by the maturity date, Borrower acknowledges that a late charge will be assessed, for the account of Lender, in the amount of 3% of the remaining principal balance of the Loan on the first day after Borrower's failure to pay and on the same day each month thereafter, until the final payment is received by Servicing Agent. All fees and charges are independent of one another and any default interest assessed; thus, a matured loan shall accrue default interest, maturity late fees and any other applicable fees and charges.

c. Payment Statements. Servicing Agent, as a convenience only, will provide to Borrower a monthly payment statement. Borrower acknowledges and agrees that it is obligated to make all payments when due under the Loan Documents, whether or not such payment statement is received by Borrower.



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MLPLAN-003179

SERVICING AGENT AGREEMENT

Loan No. 861405

October 12, 2007

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6. PARTIAL AND FINAL PAYMENTS

a. **Partial Payments.** In the event that Servicing Agent receives and processes a partial payment of any amount due under the Loan Documents, such act shall not constitute full payment, estoppel or a waiver of any right of Lender or Servicing Agent to recover the deficiency or to require future payments to be made in full.

b. **Final Payment.** In the event that the final sum to pay the principal balance in total is received by Servicing Agent **after 1:00 p.m.**, interest shall be charged through the next normal business day.

7. GENERAL PROVISIONS

a. This Agreement is binding on the Parties and their heirs, personal representatives, successors, permitted assigns, beneficiaries and trustees.

b. This Agreement and the benefits hereunder are **not** assignable or transferable by Borrower. Lender may assign Lender's rights and obligations under this Agreement without prior notice to Borrower. Lender, however, must give Servicing Agent prior written notice. After assignment, Lender shall have no further duties or liabilities to Borrower.

c. This Agreement shall be governed by, construed and enforced in accordance with the laws of the State of Arizona, without regard to the choice of law rules of the State of Arizona. The Parties hereby submit to the exclusive jurisdiction of any Arizona State or Federal Court sitting in the City of Phoenix in any action or proceeding arising out of or relating to this Agreement. The Parties waive the defense of an inconvenient forum.

d. The Parties voluntarily, knowingly, irrevocably and unconditionally waive the right to a jury trial on any contested matters arising from this Agreement or the Loan Documents.

e. This Agreement sets forth the entire agreement and understanding of the Parties with respect to the subject matter hereof and is to be read in consistency and accordance with the other Loan Documents.

f. This Agreement may be amended, modified, superseded, canceled, renewed or extended and the terms and covenants hereof may be waived only by a written instrument signed by all of the parties hereto. The failure of Servicing Agent or Beneficiary at any time or times to require performance of any provision of this Agreement shall in no manner affect the right of Servicing Agent at a later time to enforce the same. No waiver by Beneficiary or Servicing Agent of the breach of any term or covenant contained in this Agreement, whether by conduct or otherwise, in any one or more instances, shall be deemed to be, or construed as, a further or continuing waiver by Servicing Agent or Lender of any such breach, or a waiver of the breach of any other term or covenant contained in this Agreement.

g. If any term or other provision of this Agreement is declared invalid, illegal or incapable of being enforced by any rule of law or public policy, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect.

h. As used in this Agreement, the word "include(s)" means "Include(s), without limitation," and the word "Including" means "including, but without limitation."



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MLPLAN-003180

SERVICING AGENT AGREEMENT

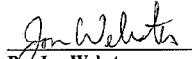
Loan No. 861405

October 12, 2007

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SERVICING AGENT AGREEMENT COUNTERPART SIGNATURE PAGE

JW Maricopa Holdings, LLC, an Arizona limited liability company



By: Jon Webster
Its: Manager



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Ex. 16

PROMISSORY NOTE
Interest Only/Commercial

Loan No. 860306 July 20, 2007

Loan Amount: \$1,250,000.00

"Maker" (individually and collectively):

**Downtown Community Builders Limited Partnership, an Arizona limited
partnership
P. O. Box 15195
Phoenix, AZ 85060**

"Holder": **Scott M. Coles or Christopher J. Olson, CPA, Trustees of the Mortgages Ltd.
401(k) Plan**

1. PROMISE TO PAY

a. As consideration for the receipt of a loan and other value, Maker hereby promises to pay the outstanding balance of the Designated Loan Amount **\$1,250,000.00** in United States currency (the "Principal"), plus interest, to the order of the Holder, **Scott M. Coles or Christopher J. Olson, CPA, Trustees of the Mortgages Ltd. 401(k) Plan**, or any subsequent holder of this Promissory Note (this "Note"). Maker understands and agrees that **Scott M. Coles or Christopher J. Olson, CPA, Trustees of the Mortgages Ltd. 401(k) Plan**, may subsequently transfer this Note, subject to the terms and conditions contained herein. **Scott M. Coles or Christopher J. Olson, CPA, Trustees of the Mortgages Ltd. 401(k) Plan**, or anyone who takes this Note by transfer and who is entitled to receive payments under this Note, is referred to hereinafter as the "Holder."

b. In connection with this Note and on the same date, Maker or a third party trustor executed a Deed of Trust, Assignment of Rents and Leases, Security Agreement and Fixture Filing (the "Deed of Trust") securing this Note (the "Deed of Trust") and a Servicing Agent Agreement. This Note, the Deed of Trust, the Servicing Agent Agreement and any other agreement, document or instrument evidencing, governing or securing the payment of the indebtedness evidenced by the Note are collectively referred to herein as the "Loan Documents". Maker understands and agrees that the Servicing Agent Agreement, which is incorporated herein by reference, authorizes the Servicing Agent appointed thereunder to, among other things, act on the Holder's behalf in accordance with this Note.

3. INTEREST

Interest will be charged on that portion of the Principal which has been committed by Holder, beginning, at Holder's discretion, on the Loan Funding Date or the Commitment Termination Date (in the event that the Loan closing was delayed for any reason other than one caused by Holder) continuing until the Principal has been paid in full. The Loan Funding Date is the date upon which Lender allocates and designates sums sufficient to fund this Loan. The Commitment Termination Date is the date upon which Lender's Loan commitment expires. Beginning on the Loan Funding Date or the Commitment Termination Date, as the case may be, and so long as no event of default exists, interest will accrue and be paid at the rate of **12.25%** per annum. In the event of default, Maker agrees to pay the Default Interest Rate as set forth herein.

4. PAYMENTS

a. **Time of Payments.** Maker will pay interest only by making monthly payments on the 1st day of each month beginning **September 1, 2007**. Maker will continue to make monthly payments until Maker has paid all of the Principal, interest and any other charges that Maker may owe under this Note or the other Loan Documents. Monthly payments received by Holder in advance will not be posted to Maker's account greater than 14 calendar days prior to the payment due date.



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PROMISSORY NOTE

Loan No. 860306

July 20, 2007

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b. Maker's monthly payments will be applied to the following in such order as Holder, in its sole discretion, may determine

- (i) To the payment of any costs, fees or other charges incurred under this Note and the other Loan Documents;
- (ii) To the payment of accrued interest; **and**
- (iii) To the reduction of the Principal balance.

c. All remaining Principal, together with accrued unpaid interest and any other amounts due hereunder or under the Loan Documents (collectively, the "Maker's Liabilities") shall be due and payable in full on **July 26, 2008** (the "Maturity Date"), unless Maker's Liabilities become due and payable sooner because of acceleration, in which case Maker's Liabilities shall be due and payable in full on the date of such acceleration. Maker understands that the Maturity Date requires Maker to pay all Principal, interest and all other charges then due.

d. **Place of Payments.** Maker will make all monthly payments to Servicing Agent at 55 E. Thomas Road, Phoenix, Arizona 85012, or at a different address if Servicing Agent has given Maker written notice of a different address.

5. RIGHT TO PREPAY AND PREPAYMENT PREMIUM

a. Maker has the right to make payments of Principal at any time before they are due ("Prepayment") provided that:

- (1) All sums due under the Note are current;
- (2) Prepayment is made on a monthly payment due date;
- (3) Payment of a prepayment premium equal to **5%** of the Principal balance of the Note before reduction, if Prepayment is made before **July 26, 2007; and**
- (4) At the time of making a Prepayment, Maker advises Servicing Agent, in writing that Maker is making a Prepayment.

b. Any payment of Principal only is considered a Prepayment. Holder will use all of Maker's Prepayments to reduce the amount of Principal that Maker owes under this Note. If Maker makes a partial Prepayment, there may be a change in the amount of Maker's monthly payment.

6. LOAN CHARGES

a. **Note Interest Rate.** If Holder charges or if Maker pays any fees, charges or other sums pursuant to this Note or any other Loan Documents which, under the law, may be deemed to be interest, then the interest rate set forth in Section 2 above shall be deemed to be increased to include such additional interest. Therefore, if it is determined that the rate of interest applicable to this Note is greater than the rate of interest stated in Section 2 above, then the actual rate thus determined shall become the agreed upon and contracted rate of interest for this Note.

b. **Interpretation and Remedy.** Notwithstanding any provision herein or in any of the Loan Documents, the total liability for payments in the nature of interest shall not exceed the limits now imposed by the usury laws of Arizona, if any. If a law, which applies to this Note and which sets maximum loan charges, is finally interpreted so that the interest or other loan charges collected or to be collected in connection with this Note exceed the permitted limits, then: (i) loan charges shall be reduced by Holder in an amount sufficient to reduce the loan charges to the permitted limit; **and** (ii) any sums already collected from Maker which exceeded permitted limits will be refunded to Maker. Holder may choose to make this refund by reducing the Principal Maker owes under this Note or by making a direct payment to Maker. If a refund reduces Principal, then the reduction will be treated as a partial Prepayment and the provisions of 4 will not apply.



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PROMISSORY NOTE

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July 20, 2007

Page 3

7. MAKER'S FAILURE TO PAY AS REQUIRED

a. Late Charge for Overdue Payments. If Holder has not received the full amount of any of Maker's monthly payments by the close of business on a date which is five (5) calendar days after the date it is due, Maker will pay a late charge to **Holder**. The amount of the late charge will be 35% of the monthly Principal and Interest payment. In the event that this Note is not paid in full by the Maturity Date, Maker acknowledges that a late charge will be assessed in the amount of 3% of the remaining Principal balance on the next day following the Maturity Date and on the same day each month thereafter until the Note is paid in full.

b. Default. A default under this Note if exists if any of the following occurs:

- (i) Maker Fails to pay the full amount of each monthly payment on or before the date it is due;
- (ii) Maker Fails to pay all sums due as of the Maturity Date;
- (iii) Maker Fails to pay all sums required by any other Loan Documents;
- (iv) Maker Fails to perform or observe any covenants or obligations set forth herein or in any other Loan Documents; or
- (v) Any default exists under and of the other Loan Documents.

c. Acceleration. If a default exists, then Holder may accelerate the Maturity Date and declare that all sums owing under this Note and the other Loan Documents are immediately due and payable, without notice.

d. No Waiver By Holder. Failure of Holder, for any period of time or on more than one occasion, to exercise its option to accelerate the Maturity Date shall not constitute a waiver of the right to exercise the same at any time during the continued existence of an event of default or any subsequent event of default.

e. Payment of Holder's Costs and Expenses. If an event of default occurs, Maker shall pay all costs of enforcement, collection and preparation therefor, whether or not any action or proceeding is commenced in any court and, if commenced, during all appeals, including attorneys' fees, guarantor collection expenses (as described in the Servicing Agent Agreement), appraisal fees, inspection fees, expert witness fees, foreclosure processing fees, litigation costs and all other related expenses (collectively, "Default Costs"). Maker, at the option of Holder, shall appear and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Holder and shall pay all costs and expenses of Holder, including the cost of evidence of title and attorneys' fees, in any such action or proceeding in which Holder may appear or be named, with interest thereon at the Default Interest Rate from the date incurred or expended until paid in full.

f. Default Interest. If a default exists, then (in addition to the late charge as stated in Section 6(a)above) the interest rate on the unpaid Principal shall be **increased to 27% per annum** (the "Default Interest Rate") commencing on the date through which interest was last paid, and shall continue, at the option of the Holder, until all payments have been made current, all sums due under this Note and the other Loan Documents have been paid in full and/or all non-monetary defaults under the Loan Documents have been cured to the Holder's satisfaction. Any advances made by Holder, pursuant to the terms of the Loan Documents, and all Default Costs shall accrue interest at the Default Interest Rate. In the event Maker files or is involuntarily placed in bankruptcy, Maker hereby agrees that Holder shall be entitled to interest on all Loan arrearages of whatever nature at the Default Interest Rate.

8. NOTICES

Unless applicable law requires a different method, any notice that must be given to Maker under this Note will be given by mailing it by first class mail or by delivering it to Maker at the address stated above or at a different address if Maker gives Servicing Agent written notice of a different address. Any notice that must be given to Holder shall be given by mailing it by first class mail to Servicing Agent, at 55 E. Thomas Road, Phoenix, Arizona 85012, or at a different address if Servicing Agent has given Maker written notice of a different address.



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PROMISSORY NOTE

Loan No. 860306

July 20, 2007

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9. OBLIGATIONS OF PERSONS UNDER THIS NOTE

Any person who is a guarantor, surety or indorser of this Note is also obligated to perform under the terms of this Note. Any subsequent person who takes over Maker's rights under this Note by whatever means, including the obligations of a guarantor, surety or indorser of this Note, is also bound by all of the promises and liabilities created by this Note and the other Loan Documents. Holder may enforce its rights under this Note against each Maker or successor, jointly and severally. This means that each signer may be required to pay all sums owed under this Note irrespective of the type, value or ownership of the property securing the Note.

10. WAIVERS

Maker, for itself and all endorsers, guarantors and sureties of this Note, and their heirs, personal representatives, successors, assigns, beneficiaries and trustees, hereby waives presentment for payment, demand, notice of nonpayment, notice of dishonor, protest of any dishonor, notice of protest and protest of this Note, and all other notices in connection with the delivery, acceptance, performance, default or enforcement of the payment of this Note, and agrees that their respective liability shall be unconditional and without regard to the liability of any other party and shall not be in any manner affected by any indulgence, extension of time, renewal, waiver or modification granted or consented to by Holder. Maker, for itself and all endorsers, guarantors and sureties of the Note, and their heirs, personal representatives, successors, assigns, beneficiaries and trustees, hereby consents to every extension of time, renewal, waiver or modification that may be granted by Holder with respect to the payment or other provisions of this Note, and to the release of any makers, endorsers, guarantors or sureties, and of any collateral given to secure the payment hereof, or any part hereof, with or without substitution, and agrees that additional makers, endorsers, guarantors or sureties may become parties hereto without notice to Maker or to any endorser, guarantor or surety and without affecting the liability of any of them.

11. SECURITY

This Note and the other Loan Documents, including, among others, the Deed of Trust, were executed by Maker and, if necessary, various other parties to protect Holder from possible losses which might result if Maker does not perform the obligations set forth in this Note. The Loan Documents describe how, and under what conditions, Maker may be required to make immediate payment in full of all sums Maker owes under this Note. Some of those conditions, but not all, are described as follows:

- a. If Maker or another party, such as a third party trustor of the Deed of Trust securing this Note, sells, conveys, transfers, assigns, contracts for sale, leases with option to purchase or further encumbers the property securing the Note (the "Secured Property") or any part thereof, including, but not limited to, any further assignment of the Secured Property's income, wraparound mortgage or purchase contract;
- b. If Maker is a limited liability company and any ownership interest in Maker is sold, conveyed or transferred;
- c. If Maker is a partnership and any general partnership interest in Maker is sold, conveyed or transferred, either voluntarily or involuntarily without the prior written consent of Holder; **or**
- d. If Maker is a corporation and the controlling interest in Maker is sold, conveyed or transferred.

Upon the occurrence of any of the above or any other triggering events set forth in the Loan Documents, Holder, at its option, shall have the right to accelerate the sums owing under the Note and those sums shall become immediately due and payable to Holder. This provision shall apply to each and every such sale, conveyance, transfer, lease, encumbrance or assignment, regardless as to whether Holder has consented or waived its rights in connection with any such previous sale, conveyance, transfer, lease, encumbrance or assignment by Maker.

12. TIME

Time is of the essence in all aspects of this Note and the Loan Documents.

13. GENERAL

- a. This Note is binding on Maker and Maker's heirs, personal representatives, successors, permitted assigns, beneficiaries and trustees.



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PROMISSORY NOTE

Loan No. 860306

July 20, 2007

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b. This Note and the benefits hereunder are not assignable or transferable by Maker. However, Holder may assign its rights under this Note and the other Loan Documents without prior notice to Maker.

c. Maker acknowledges that Mortgages Ltd. is Holder's Servicing Agent.

d. This Note shall be governed by, construed and enforced in accordance with the laws of the State of Arizona, without regard to the choice of law rules of the State of Arizona. Maker hereby submits to the jurisdiction of any Arizona State or Federal Court sitting in the City of Phoenix in any action or proceeding arising out of or relating to this Note. Maker hereby waives the defense of an inconvenient forum.

e. Maker, and Holder by its acceptance of this Note, hereby waive their respective rights to a trial by jury in any action or proceeding based upon, or related to, the subject matter of this Note and the business relationship that it being established. This waiver is knowingly, intentionally, voluntarily and irrevocably made by Maker and by Holder and Maker acknowledges that neither Holder nor any person acting on behalf of Holder has made any representations of fact to include this waiver of trial by jury or has taken any actions which in any way modify or nullify its effect. Maker and Holder acknowledge that this waiver is a material inducement to enter into a business relationship, that Maker and holder have already relied on this waiver in entering into this Note and that each of them will continue to rely on this waiver in their related future dealings.

f. This Note, together with the other Loan Documents, sets forth the entire agreement and understanding between Maker and Holder, and supersedes all prior agreements, arrangements and understandings, written or oral, between Maker and Holder.

g. This Note may be amended, modified, superseded, canceled, renewed or extended and the terms or covenants hereof may be waived only by a written instrument executed by Maker, Holder. The failure of Servicing Agent, at any time or times, to require performance of any provision of this Note shall in no manner affect the right of the Holder or Servicing Agent at a later time to enforce the same. No waiver by Holder or Servicing Agent of the breach of any term or covenant contained in this Note, whether by conduct or otherwise, in any one or more instances, shall be deemed to be, or construed as, a further or continuing waiver by Holder or Servicing Agent of any such breach, or a waiver of the breach of any other term or covenant contained in this Note.

h. If any term or other provision of this Note or any other Loan Document is declared invalid, illegal or incapable of being enforced by any rule of law or public policy, all other conditions and provisions of this Note shall nevertheless remain in full force and effect.

i. Notwithstanding any provision contained in this Note or any of the other Loan Documents to the contrary, including, without limitation, Maker's right to obtain advances or disbursements under the Loan, Holder may, in Holder's sole and absolute discretion, exercise Holder's rights and enforce Holder's remedies under and pursuant to Title 33, Chapter 7, Article 9 of Arizona Revised Statutes (including, without limitation, A.R.S. Section 33-1058), without any liability to Maker and without releasing Maker from any of Maker's obligations, duties and liabilities under the Loan Documents.

j. As used in this Note, the word "include(s)" means "include(s), without limitation," and the word "including" means "including, without limitation."

SEE ATTACHED SIGNATURE PAGE



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MLPLAN-004285

PROMISSORY NOTE SIGNATURE PAGE


IN WITNESS WHEREOF, this Note has been executed as of the date set forth on the first page.

MAKER:

Downtown Community Builders Limited Partnership, an Arizona limited partnership

By: Troon Peak Resort Properties Limited Partnership, an Arizona limited partnership

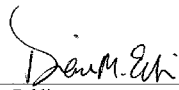
Its: General Partner



By: Michael J. Peloquin
Its: General Partner

STATE OF AZ)
)ss
COUNTY OF MARICOPA)

The foregoing instrument was acknowledged before me 20th day of July, 2007 by Michael J. Peloquin of Troon Peak Resort Properties Limited Partnership, an Arizona limited partnership on behalf of the limited partnership, as General Partner for Downtown Community Builders Limited Partnership, an Arizona limited partnership, on behalf of limited partnership.



Notary Public

My Commission Expires:



Ex. 17

When recorded return to:

MORTGAGES LTD.
55 E. Thomas Rd.
Phoenix, Arizona 85012
212358-46 1/1

COMMERCIAL

OFFICIAL RECORDS OF
MARICOPA COUNTY RECORDER
HELEN PURCELL
20070848793 07/26/2007 03:49
2712358-17-1-1--
ELECTRONIC RECORDING

**DEED OF TRUST, ASSIGNMENT OF RENTS AND LEASES,
SECURITY AGREEMENT AND FIXTURE FILING**

Loan No. 860306 July 20, 2007
Secured Loan Amount: \$1,250,000.00

"Trustor" (individually and collectively):

Downtown Community Builders Limited Partnership, an Arizona limited partnership
P. O. Box 15195
Phoenix, AZ 85060

"Trustee":

Scott M. Coles, a licensed real estate broker
55 E. Thomas Rd.
Phoenix, AZ 85012

"Beneficiary":

Scott M. Coles or Christopher J. Olson, CPA, Trustees of the Mortgages Ltd. 401(k) Plan
55 E. Thomas Rd.
Phoenix, Arizona 85012

This Deed of Trust, Assignment of Rents, Leases, Security Agreement, and Fixture Filing (this "Deed of Trust"), is executed by Trustor in favor of Trustee for the benefit of Beneficiary as of the date written above. In connection with this Deed of Trust and on the same date, Trustor or a third party borrower has executed a Promissory Note (the "Note"), a Servicing Agent Agreement and other related documents to evidence and secure the monetary and non-monetary obligations owed to Beneficiary by Trustor and related third parties. These documents, including this Deed of Trust, and any other agreement, document, or instrument evidencing, governing or securing the payment of the indebtedness evidenced by the Note, are collectively referred to as the "Loan Documents." Trustor understands and agrees that Servicing Agent Agreement, which is incorporated herein by reference, authorizes Servicing Agent appointed thereunder to, among other things, act on the Beneficiary's behalf in accordance with this Deed of Trust.

1. TRUST PROPERTY

For good and valuable consideration, including the indebtedness referenced herein and the trust created hereby, the receipt and sufficiency of which is hereby acknowledged, Trustor irrevocably grants, transfers, conveys and assigns to Trustee, in trust, with the power of sale, for the benefit and security of Beneficiary, all of Trustor's present and future estate, right, title and interest, under and subject to the terms and conditions set forth herein, in and to that certain real property located in **Maricopa County**, Arizona, more particularly described in **Exhibit A** attached hereto and incorporated herein by this reference (the "Real Property"), together with all of the following:

- a. Buildings, structures, fixtures or other improvements now or hereafter placed on the Real Property (collectively, the "Improvements");
- b. All existing and future leases, subleases, licenses and other agreements for the use and occupancy of all or any portion of the Real Property;
- c. All rents, issues and profits and income generated by the Real Property (the "Property Income");
- d. All classes of property now or at any time hereafter attached to or used in any way in connection with the use, operation or occupancy of the Real Property;



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MLPLAN-004264

**DEED OF TRUST, ASSIGNMENT OF RENTS AND LEASES,
SECURITY AGREEMENT AND FIXTURE FILING**

Loan No. 860306

July 20, 2007

Page 2

e. All property, rights, permits and privileges now or hereafter owned by Trustor or now or hereafter appurtenant to the Real Property, which entitle Trustor or the Real Property to receive all available utilities for use thereon;

f. All awards resulting from eminent domain or condemnation in whole or in part, proceeds of insurance required on the Real Property and any other award for damage to or destruction of the Real Property or the Improvements;

g. Any licenses, contracts, permits and agreements required or used in connection with the ownership, operation or maintenance of the Real Property, and the right to the use of any trade names, trademarks or service marks, now or hereafter associated with operation of any business conducted on the Real Property;

h. All "Impounds," as defined herein, held by Beneficiary or its Servicing Agent for the benefit of Trustor, including, but not limited to, Impounds for taxes, assessments, insurance, homeowners' dues and construction;

i. All easements, profits, rights of way and other rights now owned or hereafter assigned to Trustor; and

j. All proceeds of the foregoing, including all proceeds of and all unearned premiums due from all insurance policies covering the Real Property.

All of the foregoing are collectively referred to hereinafter as the "Trust Property."

2. TRUSTOR'S REPRESENTATIONS AND WARRANTIES

Trustor hereby represents and warrants that Trustor has a good, marketable and insurable title to the Trust Property acceptable to Beneficiary and that Trustor holds fee simple title to the Real Property. Trustor forever warrants and shall defend title to the Trust Property for the Beneficiary, its successors and assigns, against all claims whatsoever; subject, however, to the following:

a. The right, power and authority hereinafter given to and conferred upon Beneficiary to collect and apply such Property Income; and

b. Any easements and restrictions approved by Beneficiary and listed in the schedule of exceptions to coverage in any title insurance policy insuring Beneficiary's interest in the Trust Property.

3. SECURITY

This Deed of Trust secures the following (the "Obligations"), in such order of priority as Beneficiary may elect:

a. Strict performance of every obligation of Trustor and the third party borrower, if any, under all Loan Documents;


b. Payment of all sums due under the Note including the principal amount of the 'Initial Funding' of \$1,250,000.00, interest thereon and all other charges assessed thereunder, such as late charges, notice fees and prepayment premiums;

c. In the event that this Deed of Trust secures a Note with an Equity-Flex[®] Mortgage Line and "Advances," as defined therein, are made by Beneficiary, then payment of the aggregate amount of all Advances and all Equity-Flex Fees (as defined in said Note);

d. In the event of default, payment of interest at the "Default Interest Rate," as defined by the Note;



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**DEED OF TRUST, ASSIGNMENT OF RENTS AND LEASES,
SECURITY AGREEMENT AND FIXTURE FILING**

Loan No. 860306

July 20, 2007

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e. Payment of all sums incurred by Beneficiary or its Servicing Agent, with interest thereon, to protect, preserve, repair or maintain the Trust Property or to cure any senior or junior loans, trust deeds, mortgages or other security instruments, including taxes, assessments, homeowners' dues, ground rents, force placed insurance, attorneys' fees, litigation costs, appraisal fees, inspection fees, project manager fees, receiver fees and other expert or consulting fees;

f. Payment of all sums incurred by Beneficiary or its Servicing Agent, with interest thereon, in the event of Trustor or the third party borrower's default under the Loan Documents, including, without limitation, attorneys' fees, litigation costs and expenses, appellate costs and expenses, bankruptcy fees, foreclosure fees, trustee fees, receiver fees, expert fees and witness fees;

g. Payment of all sums incurred by Beneficiary or its Servicing Agent, with interest thereon, in the collection of amounts owed by any guarantor of the Note, including attorneys' fees, litigation costs and expenses, appellate costs and expenses, bankruptcy fees, foreclosure fees, trustee fees, receiver fees, expert fees and witness fees;

h. Strict performance of every obligation of Trustor and the third party borrower, if any, contained in any agreement, document or instrument, hereafter executed by Trustor or the third party borrower, reciting that the obligations thereunder are secured by this Deed of Trust, which includes Advance Agreements, forbearance agreements, extension agreements, payment plans and Note modifications;

i. Payment of all other sums, with interest thereon, that hereafter may be loaned to Trustor or the third party borrower, if any, or their successors or assigns, by Beneficiary or its successors or assigns when evidenced by an agreement or promissory note reciting that they are secured by this Deed of Trust, which includes, but is not limited to, Advance Agreements, forbearance agreements, extension agreements, payment plans and Note modifications;

j. Strict compliance with and performance of each and every provision of any declaration of covenants, conditions and restrictions, any maintenance, easement and party wall agreement or any other agreement, document or instrument by which the Trust Property is bound or may be affected; **and**

k. In the event of default, payment of any fees incurred by Beneficiary to Servicing Agent to effect a sale in whole or in part of Beneficiary's interest in the Loan Documents.


4. TRUSTOR'S OBLIGATIONS

a. **Trust Property.** Trustor shall keep the Trust Property in good condition and repair. Trustor shall not to remove or demolish any Improvements on the Real Property. Trustor shall complete or restore promptly and in good and workmanlike manner any Improvement which may be constructed, damaged or destroyed, and pay, when due, all claims for labor performed and materials furnished therefor. Trustor shall comply with all laws affecting the Trust Property or requiring any alterations or Improvements to be made thereon. Trustor shall not (i) commit or permit waste of the Trust Property or (ii) abandon the Trust Property. Trustor shall not initiate or acquiesce in a change in the zoning classification of the Real Property without Beneficiary's prior written consent. Trustor shall not commit, suffer or permit any act to or upon the Trust Property in violation of any law. Trustor shall do all acts which, from the character or use of the Trust Property, may be reasonably necessary.

b. **Appraisal.** If the Loan's principal exceeds \$250,000.00, then Trustor shall obtain, at Trustor's sole cost and expense, a MAI or equivalently certified appraisal of the Trust Property addressed to Beneficiary and prepared by an appraiser approved by Beneficiary. Trustor shall provide Beneficiary a copy of the appraisal and all relevant supporting documents within 90 days of the date of the Loan closing. If the appraisal is not received by Beneficiary within that 90 day period, then the Loan shall be in default and Beneficiary shall be entitled to pursue any and all remedies available under the Loan Documents. In addition, at the request of Beneficiary, Trustor shall provide an updated MAI or equivalently certified appraisal of the Trust Property within 30 days of such request. If such updated appraisal is not received by Beneficiary within that 30 day period, then the Loan shall be in default and Beneficiary shall be entitled to pursue any and all remedies available under the Loan Documents.



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MLPLAN-004266

**DEED OF TRUST, ASSIGNMENT OF RENTS AND LEASES,
SECURITY AGREEMENT AND FIXTURE FILING**

Loan No. 860306

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c. **Insurance and Casualty.** Trustor shall keep all Improvements now or hereafter erected on the Real Property continuously insured against loss by fire or other hazards in an amount not less than the replacement cost of the Improvements, and shall maintain and evidence liability insurance in the minimum amount of **\$1,000,000** or in such other amount required by Beneficiary. When requested by Beneficiary, Trustor shall provide and maintain insurance policies with annual premiums in amounts required by Beneficiary covering vandalism and malicious mischief, sprinkler leakage, rent abatement, business loss, flood damage and/or all other risks commonly insured against by persons owning like properties in the locality of the Property or commonly required by prudent institutional investors making loans secured by liens against such properties. All insurance policies or certificates shall be held by Beneficiary, shall be in such companies as Beneficiary may approve and shall name the Beneficiary as an additional insured with the proceeds payable first to Beneficiary, as its interest may appear, and then to Trustor. All insurance policies shall provide that Beneficiary is to receive 30 days notice prior to cancellation or non-renewal and shall otherwise be in the form and substance satisfactory to Beneficiary. All renewal policies shall be delivered to Beneficiary 30 days before the expiration of the then existing policies together with satisfactory proof that the premiums for renewal have been paid. The amount collected under any insurance policy may be applied in whole or in part by Beneficiary to any indebtedness hereby secured and in such order as Beneficiary may determine whether or not then due, or, at the option of Beneficiary, the entire amount so collected or any part thereof may be released to Trustor for restoration or repair of the Trust Property upon such terms and conditions as are acceptable to Beneficiary. Such application or release shall not cure or waive any default hereunder or cause discontinuance of any action that may have been or may thereafter be taken by Beneficiary or Trustee because of such default. In the event of loss, Trustor shall give immediate notice to Beneficiary. If Trustor has not given proof of loss, then Beneficiary may make proof of loss at any time. Each insurance company is hereby authorized and directed to make payment for any loss directly to Beneficiary, instead of to Trustor, or to Trustor and Beneficiary jointly. Beneficiary shall not be liable for any insurance, for the collection of any insurance proceeds or for the insolvency of any insurer. Any application of insurance proceeds to the outstanding Loan balance by Beneficiary shall not cure or waive any event of default. In the event of the sale of the Trust Property under the power of sale granted to Trustee, the judicial foreclosure of this Deed of Trust or the takeover of possession by a court appointed receiver or trustee, then all right, title and interest of Trustor to such policies of insurance shall inure to the benefit of and shall pass to the successor title-holder of the Trust Property (or to the receiver, if applicable).

d. **Litigation.** If an event of default occurs under the Loan Documents, Trustor shall pay all costs of enforcement, collection and preparation therefor, whether or not any action or proceeding is commenced in any court through all appeals, which includes Servicing Agent administration fees, attorneys' fees, appraisal fees, inspection fees, expert witness fees and foreclosure processing fees. Trustor, at the option of Beneficiary, shall appear and defend any action or proceeding purporting to affect the Trust Property or the rights or powers of Beneficiary and shall pay all costs and expenses of Beneficiary, including all costs of proving title and attorney's fees, with interest thereon at the Default Interest Rate from the date incurred or expended.


e. **Property Payments.** Trustor shall pay, when due, and before any interest, collection fees or penalties shall accrue, the following:

- (1) All taxes, assessments, homeowners' dues, owners' association fees, ground rents, and any other charges and obligations which may become a lien or charge against the Trust Property;
- (2) All encumbrances, charges and liens on the Trust Property or any part thereof; **and**
- (3) All costs, fees and expenses incurred under this Deed of Trust and the other Loan Documents, including all Trustee's fees for the issuance of any deed of partial or full release and partial or full reconveyance and all charges, costs and expenses incurred in the event of default or reinstatement.

f. **Right to Cure.** If Trustor fails to make any payment or to do any act as required hereby, Beneficiary or Trustee, but without obligation to do so and without prior notice or demand upon Trustor and without releasing Trustor from any obligation herein, may take such action in such manner and to such extent as either may deem necessary to protect the Trust Property. Beneficiary or Trustee may enter the Real Property for such purposes, appear in and defend any action or proceeding purporting to affect the Trust Property or the rights or powers of Beneficiary or Trustee and pay, purchase, contest or compromise any encumbrance, charge or lien, which in the judgment of either Beneficiary or Trustee appears to jeopardize Beneficiary's security hereunder, and, in exercising any such powers, pay necessary expenses, employ counsel and pay attorneys' fees.



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g. Expenditures. Trustor shall pay immediately all sums expended by Beneficiary or Trustee pursuant to the provisions of this Deed of Trust or the other Loan Documents, together with interest from date of such expenditure at the Default Interest Rate. Any amount paid by Beneficiary or Trustee to protect the Trust Property, together with interest thereon, shall become a part of the indebtedness secured by this Deed of Trust and a lien on the Trust Property, and shall be immediately due and payable to Beneficiary or Trustee.

h. Impounds. Whenever required by Beneficiary, Trustor shall pay with each monthly installment payment an additional sum equal to 1/12th of the annual real property taxes, special assessments, homeowners' or owners' association dues, ground rents, if any, and insurance premiums next due on the Trust Property ("Impounds"), as may be estimated by Beneficiary, which will be held by Beneficiary in a special account (the "Impound Account"). Impounds may be commingled with other Impounds held by Beneficiary or its Servicing Agent. Any interest on Impounds shall accrue to Beneficiary or its Servicing Agent. Impounds may be used to pay taxes, assessments, homeowners' or owners' association dues, ground rents, if any, and insurance premiums before delinquent or before the insurance expires. If any of the Impounds, in the opinion of Beneficiary, are insufficient to accumulate a fund with which to pay such items, Trustor shall pay Beneficiary upon demand the amount necessary to make up the deficiency. If the Impounds held by Beneficiary exceed the amount necessary, in the opinion of Beneficiary, to pay such items, such excess shall, at Beneficiary's option, be refunded to Trustor or shall be credited on any sums due Beneficiary under this Deed of Trust or the other Loan Documents. If there is a default under this Deed of Trust or the other Loan Documents, Beneficiary may apply, at its discretion, the amount then remaining in the Impound Account to any sums due under this Deed of Trust or the other Loan Documents. Any Impound amount is subject to change in the event that the county tax assessor increases or decreases the valuation of the Trust Property, or in the event that there is any other change of circumstances affecting the Trust Property. Any sums held in any construction loan account shall be considered an "Impound."

i. Financial Statements. Trustor shall provide in form and substance satisfactory to Beneficiary: (a) within 90 days after the end of each calendar year, a statement of income and expenses, relating to the Trust Property for such calendar year; (b) within 90 days after the end of each calendar year, financial statements for such year from Trustor and any Guarantor of the Loan; (c) within 30 days after the end of each calendar year, a rent roll for the Trust Property as of January 1 of the current year; (d) upon the request of Beneficiary, all filed Federal and State income tax returns for Trustor and any Guarantor of the Loan; and (e) such other financial information concerning the Trust Property, Trustor, or any Guarantor as Beneficiary may reasonably require from time to time. Beneficiary or its designated agent shall have the right to inspect the books and records with respect to the Trust Property at any time, upon reasonable notice to Trustor.

j. Environmental Matters.

(i) Trustor represents and warrants to Beneficiary, to the best of Trustor's knowledge after all appropriate inquiry, and covenants that there are no, nor will there be, for so long as any of the indebtedness secured hereby remains outstanding, any Hazardous Materials (as defined below) generated, released, stored, buried, or deposited over, beneath, in or upon the Real Property or on or beneath the surface of adjacent property, except as such Hazardous Materials may be used, stored or transported in connection with the permitted uses of the Trust Property and then only in de minimus quantities and only to the extent permitted by law after obtaining all necessary permits and licenses therefor. "Hazardous Materials" shall mean and include any pollutants, flammables, explosives, petroleum (including crude oil) or any fraction thereof, radioactive materials, hazardous wastes, dangerous or toxic substances or related materials, including substances defined as or included within the definition of toxic or hazardous substances, wastes or materials under any federal, state or local laws, ordinances, regulations or guidelines which relate to pollution, the environment or the protection of public health and safety, or limiting, prohibiting or otherwise regulating the presence, sale, recycling, generation, manufacture, use, transportation, disposal, release, storage, treatment of, or response or exposure to, toxic or hazardous substances, wastes or materials. Such laws, ordinances and regulations are hereinafter collectively referred to as the "Hazardous Materials Laws."



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(ii) Trustor shall, and Trustor shall cause all employees, agents, tenants, contractors and subcontractors of Trustor and any other persons from time to time present on or occupying the Trust Property to, keep and maintain the Trust Property in compliance with, and not cause or knowingly permit the Trust Property to be in violation of, any applicable Hazardous Materials Laws. Neither Trustor, nor any employees, agents, tenants, contractors or subcontractors of Trustor, nor any other persons occupying or present upon the Trust Property, shall use, generate, manufacture, store or dispose of on, under or about the Real Property, or transport to or from the Real Property any Hazardous Materials, except as such Hazardous Materials may be used, stored or transported in connection with the permitted uses of the Trust Property and then only in de minimus quantities and only to the extent permitted by law after obtaining all necessary permits and licenses therefor.

(iii) Trustor shall be solely responsible for, and shall indemnify, defend, protect and hold harmless Beneficiary, its directors, officers, employees, agents, successors and assigns for, from and against, any claim, demand, lawsuit, loss, damage, cost, expense or liability directly or indirectly arising out of or attributable to the use, generation, storage, release, threatened release, discharge, disposal or presence of Hazardous Materials on, under or about the Real Property (whether occurring prior to or during the pendency of the indebtedness secured hereby or otherwise and regardless of by whom caused, whether by Trustor or any predecessor in title or any owner of land adjacent to the Real Property or any other third party, or any employee, agent, tenant, contractor or subcontractor of Trustor or any predecessor in title or any such adjacent land owner or any third party) including: (i) claims of third parties (including governmental agencies) for injury or death to any person or for damage or destruction of any property; (ii) claims for response costs, clean-up costs, costs and expenses of removal and restoration, including fees of attorneys and experts, and costs of determining the existence of Hazardous Materials and reporting same to any governmental agency; (iii) any and all other claims for expenses or obligations, including attorneys' fees, costs and other expenses; (iv) any and all penalties threatened, sought or imposed on account of a violation of any Hazardous Materials Laws; (v) all fees of any consultants, attorneys and engineering firms retained in connection with monitoring the obligations of Trustor under this Deed of Trust; and (vi) any loss occasioned by diminution in the value of the Trust Property which results from any of the foregoing.

5. EQUITY-FLEX®/ DELAY FLEX® MORTGAGE LINE

a. **Equity-Flex®.** If that this Deed of Trust secures a Note with an Equity-Flex® Mortgage Line, Trustor may use, subject to the conditions set forth in the Note, the existing equity in the Trust Property in order to obtain additional funds beyond the amount of the Initial Funding of \$1,250,000.00 up to the Secured Loan Amount of \$1,250,000.00. This Deed of Trust secures the entire Secured Loan Amount regardless of the amount of the Initial Funding or any subsequent draws ('Advances') on the Loan account. The payoff amount required to release this Deed of Trust shall be based on the actual outstanding balance of the Loan account at the time of payoff.

Notice: If Beneficiary consents to alienation, assignment or transfer of the Trust Property or the obligations under this Deed of Trust in accordance with Section 14, all assignees, transferees and junior lien holders are hereby advised that this Deed of Trust provides for adjustable release provisions and fluctuating principal balances at Beneficiary's discretion.

b. **Delay-Flex®.** If this Deed of Trust secures a Note with a Delay-Flex® Mortgage Line, Trustor may, subject to the conditions set forth in the Loan Documents and described herein, obtain the Delay-Flex amount designated as such and in accordance to the portions set-forth in the Delay-Flex Funding Schedule outlined in the Delay-Flex Disbursement Summary executed in connection with this Loan. This Deed of Trust secures the entire Designated Loan Amount regardless of the amount of the Initial Funding or any subsequent fundings on the Loan account. However, the payoff amount required to release the Deed of Trust shall be based on the actual outstanding balance of the Loan account at the time of payoff.

c. **The Funding of each Delay-Flex portion is subject to Beneficiary's discretionary approval and satisfaction of the following conditions:**

(i) There is no then-existing default under any of the Loan Documents and there exist no facts which, with the giving of notice or passage of time, would constitute a default under any of the Loan Documents;

(ii) Beneficiary, or its agent, has conducted an inspection of the Trust Property and the present condition of the Trust Property has been approved;



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(iii) The increased loan amount following the funding of each Delay-Flex portion, if made, will not exceed Beneficiary's lending guidelines for the Trust Property;

(iv) Beneficiary may further condition any delayed funding on endorsements to Beneficiary's Title Policy insuring the continued validity and priority of this Deed of Trust, Beneficiary's approval of Trustor's proposed utilization of the Delay-Flex proceeds and any other reasonable assurances or conditions Beneficiary may require or impose;

(v) Beneficiary shall fund each Delay-Flex portion on a date set by Beneficiary at its sole and absolute discretion, which will occur no earlier than the thirtieth (30th) day prior to the Fund Date set forth in the Delay-Flex Funding Schedule and no later than the thirtieth (30th) consecutive day following the Fund Date set forth in the Delay-Flex Funding Schedule; and

(vi) **Funding the total Delay-Flex portion of the Loan is not to exceed 9 months from the date of Loan closing. The Delay-Flex Funding Schedule must be completed by Loan closing and included in the Disbursement Summary. Any modification to the Delay-Flex Funding Schedule requires written approval from Beneficiary or Servicing Agent.**

Notice: If Beneficiary consents to alienation, assignment or transfer of the Trust Property or the obligations under this Deed of Trust in accordance with Section 14, all assignees, transferees and junior lien holders are hereby advised that this Deed of Trust provides for adjustable release provisions and fluctuating principal balances at Beneficiary's discretion.

6. CONSTRUCTION MORTGAGE

This Deed of Trust may constitute a "construction mortgage" within the meaning of A.R.S. Section 47-9334 and is entitled to the benefits of A.R.S. Section 47-9334(H). If this Deed of Trust secures a construction loan, the proceeds of the obligations secured by this Deed of Trust are to be used by Trustor for the purpose of acquiring title to the Real Property and funding the acquisition, construction and improvement of the Improvements, or refinancing such secured obligations. If this Deed of Trust secures a construction loan, notice is hereby given that the proceeds of the Note secured hereby may be collaterally assigned to Beneficiary or its agent pursuant to the terms of the Construction Loan Agreement executed herewith.

7. CONDEMNATION

If any portion of the Trust Property is condemned or threatened to be condemned by the governing authority, Beneficiary, without notice, shall have the right to accelerate all sums owed under the Loan Documents, which are secured by this Deed of Trust, and those sums shall become immediately due and payable to Beneficiary irrespective of their maturity date. All awards of damages for any condemnation or taking, for injury to the Trust Property by reason of public use or for damages from private trespass or injury to the Trust Property, are hereby assigned, transferred and conveyed to Beneficiary and shall be paid to Beneficiary as further security for the Loan. Upon receipt of such monies, Beneficiary may hold the same as such further security, or apply or release the same in the same manner and with the same effect as herein provided for the disposition of proceeds of fire or other insurance.

8. BENEFICIARY'S OPTIONS

Without affecting the obligation of Trustor to pay and perform as required herein, without affecting the personal liability of any person for payment of the indebtedness secured hereby, and without affecting the lien or priority of lien hereof on the Trust Property, Beneficiary may, at its option:

- a. Release and reconvey all or any part of the Trust Property;
- b. Consent to the making and/or recording of any map or plat of the Trust Property or any part thereof;
- c. Join in granting any easement on the Trust Property;
- d. Join in or consent to any extension agreement or any agreement subordinating the lien, encumbrance or charge hereof;
- e. Extend the time for payment for all or any part of the indebtedness secured hereby, accept a renewal note therefore, reduce the payments thereon, release any person liable for all or any part thereof or otherwise change the terms of all or any part of the obligation or Note secured hereby; or



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f. Take and hold other security for the payment and performance of the obligation and Note secured hereby, and enforce, exchange, substitute, subordinate, waive or release any such security.

Any of the foregoing actions by Beneficiary or the Trustee at Beneficiary's direction may be taken without the consent of any junior lienholder, and shall not affect the priority of this Deed of Trust over any junior lien.

9. SECURITY AGREEMENT AND FIXTURE FILING

This Deed of Trust shall cover, and the Trust Property shall include, all property now or hereafter affixed on, attached to or incorporated upon the Real Property which, to the fullest extent permitted by law, shall be deemed a "fixture." To the extent that the Trust Property consists of rights in action or personal property covered by the Uniform Commercial Code, this Deed of Trust shall also constitute a security agreement, and Trustor hereby grants to Beneficiary, as secured party, a security interest in such property, including all proceeds thereof, for the purpose of securing the obligations herein and the other Loan Documents. In addition, for the purpose of securing the obligations herein and the other Loan Documents, Trustor, as debtors, hereby grants to Beneficiary, as secured party, a security interest in the following:

a. All personal property (including all goods, supplies, equipment, furniture, furnishings, fixtures, machinery, inventory and construction materials) in which Trustor now or hereafter acquires an interest or right, which is now or hereafter located on or affixed to the Real Property or the Improvements, or used or useful in the operation, use, or occupancy thereof or in the construction of any additional improvements thereon, together with any interest of Trustor in and to such personal property which is leased by Trustor or is subject to any superior security interest, and all books, records, leases and other agreements, documents, and instruments of whatever kind or character, relating to the Real Property, the Improvements, or such personal property;

b. All fees, income, rents, issues, profits, earnings, receipts, royalties, and revenues that may accrue from the personal property described in clause (a) above or any part thereof, or from the Real Property or the Improvements, or that may be received or receivable by Trustor from any hiring, using, letting, leasing, subhiring, subletting, subleasing, occupancy, operation or use thereof;

c. All of Trustor's present and future rights to receive payments of money, services, or property, including rights to receive capital contributions or subscription payments from the members, partners, shareholders or principals of Trustor, amounts payable on account of the sale of ownership interests in Trustor or the capital stock of Trustor, accounts and other accounts receivable, security deposits, chattel paper, notes, drafts, contract rights, instruments, general intangibles, and principal, interest and payments due on account of goods sold or leased, services rendered, loans made or credit extended, together with title to or interest in all agreements, documents, and instruments, evidencing, securing or guarantying the same;

d. All other intangible property and rights relating to the Real Property, the Improvements, the personal property described in clause (a) above or the operation, occupancy, or use thereof including all governmental and non-governmental permits, licenses (including Trustor's interest in any liquor license related to business operations conducted on the Real Property), and all approvals relating to construction on or operation, occupancy, or use of the Real Property or the Improvements, all names under or by which the Real Property or the Improvements may at any time be operated or known, all rights to carry on business under any such names, or any variant thereof, all trade names and trademarks relating in any way to the Real Property or the Improvements, and all good will in any way relating to the Real Property or the Improvements;

e. Trustor's rights under all insurance policies covering the Real Property, the Improvements or the personal property described in clause (a) above, and any and all proceeds, loss payments, and unearned premiums payable or refundable regarding the same;

f. All reserves, deferred payments, deposits, impound accounts, refunds, cost savings, and payments of any kind relating to the construction of any improvements on the Real Property;

g. All water stock or water rights relating to the Real Property;

h. All architectural, structural, mechanical, and engineering plans and specifications prepared for construction of improvements on the Real Property, or extraction of minerals or gravel from the Real Property, and all studies, data, and drawings relating thereto; and also all contracts and agreements of Trustor relating to such plans and specifications or to such studies, data, and drawings, for the construction of improvements on or extraction of minerals or gravel from the Real Property;



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- i. All proceeds from the sale or other disposition of any of the collateral described above;
- j. All of Trustor's rights in proceeds of the loan made by Beneficiary to Trustor;
- k. All of Trustor's rights to security, cleaning, or other deposits from tenants relating to leases or occupancy agreements for any portion of the Real Property or the Improvements;
- l. All of Trustor's rights in any Impound account held by Trustor or Beneficiary on behalf of Trustor;
- m. All of Trustor's rights in any other deposit accounts of Trustor; and
- n. All wells, well equipment, rights to wells, permits and licenses, water rights and all other related property used in connection with the operation of any well on the Real Property or appurtenant to the Real Property.

Trustor acknowledges and agrees that Beneficiary may maintain certain deposit accounts (including a payment impound account and/or a construction impound account) in the name of Beneficiary for the benefit of Trustor and such accounts may include funds disbursed or to be disbursed with respect to the Loan. Trustor acknowledges and agrees that all such funds are the property of Beneficiary and Trustor hereby disclaims any interest therein.

Trustor shall promptly replace any personal property that is consumed or worn out in ordinary usage and such replacement shall be secured hereby. Trustor may sell or dispose of only that part of the personal property that Trustor is obligated to replace, and all proceeds from any such sale or disposition in excess of the amount expended for such replacements shall promptly be paid to Beneficiary to be applied according to the Loan Documents, whether or not then due. Trustor shall immediately notify Beneficiary of any change in the location of Trustor's chief executive office or residence (if Trustor is an individual without an office) in accordance with the terms of this Deed of Trust, and any change in location of the personal property encumbered hereby, except if replaced as permitted herein. All Trustor's representations, warranties and covenants contained in this Deed of Trust shall apply to the personal property encumbered hereby whether or not expressly referred to herein. Trustor's representations, warranties and covenants and warranties contained in this Section are in addition to, and not in limitation of, those contained in the other provisions of this Deed of Trust. Upon its recording in the real property records, this Deed of Trust shall be effective as a fixture filing. The filing of any other financing statement relating to any other personal property, rights or interests described herein shall not be construed to diminish any of Beneficiary's rights or priorities hereunder. Trustor hereby authorizes and empowers Beneficiary and irrevocably appoints Beneficiary its attorney-in-fact to execute and file, on Trustor's behalf, all financing statements and refilings and continuations thereof as Beneficiary deems necessary or advisable to create, preserve and protect the security interest created hereby.



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This Deed of Trust covers certain goods, which are or are to become fixtures related to the Real Property and CONSTITUTES A FIXTURE FILING with respect to such goods executed by Trustor, as debtor, in favor of Beneficiary, as secured party. For purposes of the Uniform Commercial Code, the following information is supplied:

Name and Address of Debtor: Downtown Community Builders Limited Partnership, an
Arizona limited partnership
P. O. Box 15195
Phoenix, AZ 85060

Name and Address of Record Owner: Downtown Community Builders Limited Partnership, an
Arizona limited partnership
P. O. Box 15195
Phoenix, AZ 85060

Description of Real Estate: See Exhibit A attached hereto.

Name and Address of Secured Party: Mortgages Ltd., as agent
55 E. Thomas Road
Phoenix, Arizona 85012

This Deed of Trust covers goods that are or are to become fixtures.

10. RELEASE AND RECONVEYANCE

a. The release provisions contained in this Deed of Trust are subject to subsequent modification by separate agreements, which include, but are not limited to, Equity-Flex® Advance Agreements and/or upon the subsequent funding of Delay-Flex® Mortgage Line advances.

b. At any time, when Trustor is not in default under the Loan Documents, Beneficiary will execute or direct the Trustee to execute and deliver a Partial Deed of Release and Reconveyance, subject to any prepayment provisions contained in the Note, as follows: (i) The release price for the Real Property described as Lots 1 and 2, Artesano at Troon Canyon, Scottsdale, AZ, 85255, APN(s) 217-55-535 and 217-55-536, shall be \$1,000,000.00. Lots 1 and 2 cannot be released separately. The release price for the Real Property described as Lot 14, Artesano at Troon Canyon, Scottsdale, AZ, 85255, APN(s) 217-55-548, shall be \$450,000.00. (ii) Upon payment of a Release Fee of \$75.00 per lot released, (iii) Upon payment of any prepayment penalties, if any, due pursuant to the Note, (iv) Upon Mortgages Ltd.'s receipt and approval of a Partial Release Endorsement to title policy if required by Beneficiary, (v) Upon payment of all applicable ALTA title policy endorsement and recording costs.

c. Upon payment in full and satisfaction of the Obligations, Beneficiary will surrender this Deed of Trust and the other Loan Documents to Trustee for cancellation, retention and payment of Trustee's fees, and Trustee shall release and reconvey, without covenant or warranty, express or implied, the Trust Property then held hereunder. The recitals in such reconveyance or any matters or facts shall be conclusive proof of the truthfulness thereof. The grantee in such reconveyance may be described as "the person or persons legally entitled thereto."

11. ASSIGNMENT OF RENTS, LEASES AND PROFITS

To facilitate payment and performance of the obligations under this Deed of Trust and the other Loan Documents, Trustor hereby absolutely sells, transfers and assigns to Beneficiary all right, title and interest of Trustor in and to the following:

a. All existing and future leases, subleases, licenses and other agreements for the use and occupancy of all or a portion of the Trust Property, whether written or oral and whether for a definite term or month-to-month, together with any and all extensions, modifications and renewals thereof (collectively, the "Leases"); and

b. All income, receipts, revenues, royalties, rents, issues, profits and benefits now or hereafter arising from or out of the Leases or from or out of the Trust Property or any part thereof (collectively, the "Rents").



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So long as there shall not have occurred an event of default under this Deed of Trust or any of the other Loan Documents, Trustor shall have the right to collect all Rents, and shall hold the same, in trust. Beneficiary may, at its option, upon default, at any time, without notice, either by person, by agent or by receiver appointed by a court, and without regard to the adequacy of any security for the indebtedness hereby secured or the solvency of Trustor, collect the Trust Property income (including the Rents) by any method authorized by law and apply the same, less costs and expenses of operation and collection, including attorneys' fees, Trustee's fees and Servicing Agent's administrative fees, upon any indebtedness secured hereby, Servicing Agent's administrative fees, upon any indebtedness secured hereby, and in such order as Beneficiary may determine. The entering upon and taking possession of the Trust Property, the collection of Trust Property income and the application thereof shall not cure or waive any default or notice of Trustee's sale or invalidate any act done pursuant to such notice. Beneficiary shall have the right to exercise all its rights as provided by A.R.S. §§ 33-702(B) and 33-807, which may be revised from time to time. It is expressly covenanted and agreed by the Trustor, that at the time of the execution and delivery of this Deed of Trust there has been no prepayment of any Rents by any of the tenants occupying the Trust Property or the Leases. It is further covenanted and agreed that Trustor, its successors or assigns, shall have no right, power or authority to alter, modify or amend the terms, or any of them, of the Lease in any particular whatsoever, without first obtaining the consent in writing of Beneficiary, its successors or assigns to such alteration, modification or amendment. Nothing herein contained shall be construed as making Beneficiary, or its successors or assigns, a mortgagee in possession, nor shall Beneficiary, or its successors or assigns be liable for laches, or failure to collect said rents, issues, profits, revenues, royalties, rights and benefits, and it is understood that Beneficiary, its successors or assigns, are to be account only for such sums as are actually collected.

12. DEFAULT AND REMEDIES

a. Default. Among other things constituting a default under the provisions of the Loan Documents, Trustor shall be deemed in default upon the occurrence of any of the following events:

- (1) Trustor, third party borrower, any endorser or any guarantor fails to make payment of any indebtedness secured hereby in accordance with the Loan Documents;
- (2) Trustor, third party borrower, any endorser of the Note or any guarantor fails to perform any obligation required by and in accordance with the Loan Documents, or any representation by Trustor, third party borrower, any endorser of the Note or any guarantor in any of the Loan Documents is untrue;
- (3) The death, incapacity, dissolution, winding-up or termination of the existence of Trustor, third party borrower, any endorser of the Note or any guarantor;
- (4) The calling of a meeting of the creditors of Trustor, third party borrower, any endorser of the Note or any guarantor;
- (5) The making by Trustor, third party borrower, any endorser of the Note or any guarantor of an assignment for the benefit of any of its creditors;
- (6) Trustor, third party borrower, any endorser of the Note or any guarantor becomes insolvent;
- (7) Trustor, third party borrower, any endorser of the Note or any guarantor fails to pay its debts as they mature;
- (8) Trustor, third party borrower, any endorser of the Note or any guarantor admits in writing that such party is unable to pay such party's debts as they mature;
- (9) A receiver, trustee, custodian or conservator is appointed to manage over all or any part of the assets of Trustor, third party borrower, any endorser of the Note or any guarantor;
- (10) The occurrence of any material adverse change in the condition (financial or otherwise) of Trustor, third party Borrower, any endorser of the Note or any guarantor; or
- (11) Beneficiary in good faith deems itself insecure or believes the prospect for payment or performance is impaired.



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b. **Acceleration.** Upon the occurrence of any of the foregoing events of default, Beneficiary, without notice, may declare all sums secured hereby immediately due and payable and may apply or cause to be applied amounts in any Impound Account to the obligations secured by this Deed of Trust in any manner that Beneficiary elects. Notwithstanding anything in this Deed of Trust or any other Loan Document to the contrary: (a) it shall be a default under this Deed of Trust if Trustor, third party borrower, the Note's endorser or any guarantor becomes the subject of any bankruptcy or voluntary or involuntary insolvency proceeding, in or out of court, for the adjustment of debtor-creditor relations ("Insolvency Proceedings"); and (b) if the any Insolvency Proceedings occur, any obligation of Beneficiary to make further advances shall terminate, and all sums of principal and interest under the Note shall automatically become due and payable without notice of default, presentment or demand for payment, protest or notice of nonpayment or dishonor, or other notices or demands of any kind or character.

c. **Trustee's Sale.** Should Beneficiary elect to have the Trust Property sold by Trustee, Beneficiary shall deliver to Trustee written notice, setting forth the nature of the default, and of the election to cause the Trust Property to be sold. Beneficiary also shall deposit with Trustee this Deed of Trust, the Note and all other Loan Documents evidencing expenditures secured hereby. Trustee shall record and give notice of the Trustee's Sale in the manner required by law, and after the lapse of such time as may then be required by law, Trustee shall sell, in the manner required by law, the Trust Property at public auction, at the time and place fixed by the notice of Trustee's Sale to the highest bidder for cash in lawful money of the United States, payable at the time of sale. Notice to Trustor shall be given in accordance with the provisions of A.R.S. Sections 33-808 and 33-809. Trustee, at Trustee's discretion, may postpone or continue the sale from time to time by giving notice of postponement or continuance by public declaration at the time and place last appointed for the sale. Trustee shall deliver to the purchaser at the Trustee's Sale a Deed conveying the Trust Property, but without any covenant or warranty, expressed or implied. The recitals in such deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any persons, including Trustor, Trustee or Beneficiary, may purchase the Trust Property at the Trustee's Sale. Beneficiary may bid for and purchase the Trust Property and shall be entitled to apply all or any part of the indebtedness secured hereby as a credit against the purchase price. The purchaser at the Trustee's sale shall be entitled to immediate possession of the Trust Property as against the Trustee or other persons in possession and shall have a right to the summary proceedings to obtain possession provided in Title 12, Chapter 8, Article 4, Arizona Revised Statutes, together with costs and attorneys' fees accrued therefor. After deducting all Trustee's costs, fees and expenses and of this Deed of Trust, including the costs of evidence of title in connection with the sale, Beneficiary and Trustee's attorneys' fees and Servicing Agent's administrative fees, Trustee shall apply the sale proceeds to the payment of all sums then secured hereby and all other sums due under the terms hereof, with accrued interest, and then the remainder, if any, to the person or persons legally entitled thereto or as provided in A.R.S. § 33-812.

d. **Deficiency Judgment.** To the extent permitted by law, Beneficiary shall be entitled to a deficiency judgment against Trustor for any balance remaining due hereunder after a Trustee's sale of the Trust Property.

e. **Foreclosure and Other Remedies.** In lieu of a Trustee's sale, pursuant to the power of sale conferred hereby, this Deed of Trust may be foreclosed in the same manner provided by law for the foreclosure of mortgages on real property. Beneficiary shall also have the right to exercise any or all remedies available hereunder and at law or in equity, including all remedies of a secured party under the Uniform Commercial Code with respect to any personal property secured hereby, the appointment of a receiver, provisional remedies and injunctive relief. All Beneficiary's rights and remedies shall be cumulative.

f. **Appointment of Receiver or Mortgagee in Possession.** If an event of default is continuing or if Beneficiary shall have accelerated the indebtedness secured hereby, Beneficiary, upon application to a court of competent jurisdiction, shall be entitled as a matter of strict right, without notice, and without regard to the occupancy or value of any security for the indebtedness secured hereby or the insolvency of any party bound for its payment, to the appointment, at Beneficiary's option, of itself as mortgagee in possession, or of a receiver to take possession of and to operate the Trust Property, and to collect and apply the Rents. Beneficiary and such receiver and their representatives shall have no liability for any loss, damage, injury, cost or expense resulting from any action or omission which was taken or omitted in good faith.



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**DEED OF TRUST, ASSIGNMENT OF RENTS AND LEASES,
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13. SUCCESSOR TRUSTEE

Beneficiary may appoint a successor Trustee in the manner prescribed by law. A successor Trustee shall, without conveyance from the predecessor Trustee, succeed to all the predecessor's title, estate, rights, powers and duties. Trustee may resign at any time by complying with applicable law and by mailing or delivering notice thereof to Beneficiary and Trustor, and having so resigned shall be relieved of all liability and responsibility to Trustor, Beneficiary or otherwise hereunder. Any reference to "Trustee" herein shall include all successor trustees. Trustee shall not be liable for any action taken when acting in good faith, or upon any information supplied or direction given by Beneficiary.

14. ALIENATION

The Trust Property and the obligations under this Deed of Trust are not alienable, assignable or transferable by Trustor. Upon the occurrence any of the following, without prior written consent of Beneficiary or its Servicing Agent:

- a. Trustor sells, conveys, transfers, assigns, contracts for sale, leases with option to purchase or further encumbers the Trust Property or any part thereof, including any further assignment of the Trust Property's income, or a wraparound mortgage or purchase contract;
 - b. If Trustor is a corporation, the controlling interest in Trustor is sold, conveyed or transferred;
 - c. If Trustor is a limited liability company, any interest in Trustor is sold, conveyed or transferred;
- or
- d. If Trustor is a partnership, any general partnership interest, or the majority of limited parties interests, in Trustor is sold, conveyed or transferred, either voluntarily or involuntarily;

Beneficiary, without notice, shall have the right to accelerate all sums owed under the Loan Documents, which are secured by this Deed of Trust, and those sums shall become immediately due and payable to Beneficiary irrespective of their maturity date. This provision shall apply to each and every such sale, conveyance, transfer, lease, encumbrance or assignment, regardless as to whether Beneficiary has consented or waived its rights in connection with any previous sale, conveyance, transfer, lease, encumbrance or assignment.

15. THIRD PARTY BORROWER PROVISIONS.

The following provisions apply to the extent that a third party borrower has executed the Note:

- a. Trustor waives each of the following:
 - (i) Any right to require Beneficiary to make presentments or demands or to give notices of any kind, including demand for performance, notice of non-performance, protest, notice of protest, notice of dishonor, notice of acceptance of this Deed of Trust, notice of the existence, creation or incurrence of existing or new debt, notice of modification, payment, default or change or action of any kind relating to the Obligations.
 - (ii) Any defense to liability on this Deed of Trust based on any disability or other defense of the third party borrower or based upon any cessation of the liability of the third party borrower to Beneficiary for any reason other than the payment of the Obligations in full.
 - (iii) Any right to require Beneficiary to proceed against the third party borrower.
 - (iv) Any right to require Beneficiary to proceed against any other security held from third party borrower or from Trustor.
 - (v) To the extent permitted by applicable law, the benefit of any statute of limitations pertaining to the Obligations or to this Deed of Trust or affecting Trustor's liability on this Deed of Trust or its enforcement.



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(vi) Any defense based upon an election of remedies by Beneficiary, including any election to proceed against any collateral by judicial or nonjudicial foreclosure, whether real property or personal property, or by deed in lieu thereof, and whether or not every aspect of any foreclosure sale is commercially reasonable, and whether or not any such election of remedies destroys or otherwise impairs the subrogation rights of Trustor or the rights of Trustor to proceed against the third party borrower or any guarantor or Trustor for reimbursement, or both.

(vii) The benefits of any statutory provision limiting the liability of a surety, including the provisions of A.R.S. Sections 12-1641 through 12-1644, A.R.S. Section 12-1566, A.R.S. Section 33-814, A.R.S. Section 44-142, A.R.S. Section 47-3605 and Rule 17(f) of the Arizona Rules of Civil Procedure.

(viii) Any defense based upon the application by third party borrower of the proceeds of the loan evidenced by the Note for purposes other than the purposes represented by third party borrower to Beneficiary or intended or understood by Beneficiary or Trustor.

b. Trustor acknowledges and agrees that Beneficiary, without affecting Trustor's liability, may take any one or more of the following actions, at any one or more times:

(i) Renew, compromise, extend, accelerate or otherwise change the time for payment of, or the terms of, all or any part of the Obligations.

(ii) Take additional security for the payment of the Obligations, and exchange, enforce, alter or release all or any part of any security.

(iii) Add, release or substitute any one or more other third party trustors or guarantors.

(iv) Assign the Obligations in whole or part.

16. GENERAL

a. **Time.** Time is of the essence in all aspects of this Deed of Trust and the other Loan Documents.

b. **Liability.** This Deed of Trust applies to, inures to the benefit of and binds Trustor, Trustee and Beneficiary (collectively, the "Parties") and their heirs, personal representatives, successors, permitted assigns, beneficiaries and trustees. All liability created hereunder shall be joint and several.

c. **Assignability.** Beneficiary and Trustee may assign their rights and obligations under this Deed of Trust without prior notice to Trustor. "Beneficiary" shall include the owner and holder of the Note secured hereby, whether or not named as Beneficiary herein.

d. **Servicing Agent.** Trustor acknowledges that Mortgages Ltd. is the Servicing Agent and may enforce the terms of this Deed of Trust and the other Loan Documents on behalf of Beneficiary.

e. **Severability.** If any term or other provision of this Deed of Trust or any other Loan Document is declared invalid, illegal or incapable of being enforced by any rule of law or public policy, all other conditions and provisions of this Deed of Trust shall nevertheless remain in full force and effect.

f. **Law.** This Deed of Trust shall be governed by, construed and enforced in accordance with the laws of the State of Arizona, without regard to the choice of law rules of the State of Arizona. In the event any statute or law referred to herein is subsequently amended or renumbered, the statute as amended or renumbered shall be intended by the Parties to be referred to herein, thereafter, and should said statute or law be repealed, if law permits, that statute or law as it exists on the date hereof is intended to be a part hereof.

g. **Jurisdiction and Venue.** Trustor hereby submits to the jurisdiction and venue of any Arizona State or Federal Court sitting in the City of Phoenix in any action or proceeding arising out of or relating to this Deed of Trust. Trustor hereby waives the defense of an inconvenient forum.



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DEED OF TRUST, ASSIGNMENT OF RENTS AND LEASES,
SECURITY AGREEMENT AND FIXTURE FILING

Loan No. 860306

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h. Jury Trial Waiver. Trustor, and Beneficiary, by its acceptance of this Deed of Trust, hereby waive their respective rights to a trial by jury in any action or proceeding based upon, or related to, the subject matter of this Deed of Trust and the business relationship that is being established. This waiver is knowingly, intentionally, voluntarily and irrevocably made by Trustor and Beneficiary, and Trustor acknowledges that neither Beneficiary, nor any person acting on behalf of Beneficiary, has made any representations of fact to include this waiver of trial by jury or has taken any actions which in any way modify or nullify its effect. Trustor and Beneficiary acknowledge that this waiver is a material inducement to enter into a business relationship, that each of them has already relied on this waiver in entering into this Deed of Trust and that each of them will continue to rely on this waiver in their related future dealings.

i. Promotional Information. Beneficiary shall have the right to release information related to this Deed of Trust and the other Loan Documents ("Promotional Information"), including photographs of the Trust Property, characteristics of the Trust Property, Loan characteristics, financing terms and aspects of underwriting, for advertising, marketing and other promotional purposes, such as commercials, advertising fliers, trade articles, Internet releases and public presentations. Beneficiary shall not be held liable to Trustor for the release of Promotional Information.

j. Modification. This Deed of Trust may be amended, modified, superseded, canceled, renewed or extended and the terms or covenants hereof may be waived only by a written instrument executed by all Parties.

k. Waiver. The failure of Beneficiary, at any time or times, to require performance of any provision of this Deed of Trust shall in no manner affect the right of Beneficiary at a later time to enforce that provision. Further, if payment of any sum secured hereby is accepted after its due date, Beneficiary does not waive its right either to require prompt payment when due of all other sums or to declare a default for failure to pay as required by the Loan Documents. No waiver by Beneficiary of the breach of any term or covenant contained in this Deed of Trust, whether by conduct or otherwise, in any one or more instances, shall be deemed to be, or construed as, a further or continuing waiver by Beneficiary of any such breach, or a waiver of the breach of any other term or covenant contained in this Deed of Trust.

l. Waiver of Statute of Limitations. To the extent permitted by applicable law, Trustor hereby waives the right to assert any statute of limitations as a bar to the enforcement of the lien created by any of the Loan Documents or to any action brought to enforce the Note or any other obligations secured by any of the Loan Documents.

m. Waiver of Homestead and Redemption. Trustor hereby waives all right of homestead exemption in the Trust Property. Trustor hereby waives all right of redemption on behalf of Trustor and on behalf of all other persons acquiring any interest or title in the Trust Property subsequent to the date of this Deed of Trust, except decree or judgment creditors of Trustor.

n. Interpretation. As used in this Deed of Trust, the word "include(s)" means "include(s), without limitation," and the word "including" means "including, without limitation."

o. Variable Rate. THIS DEED OF TRUST MAY SECURE A VARIABLE INTEREST RATE LOAN.

SEE ATTACHED SIGNATURE PAGE



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DEED OF TRUST, ASSIGNMENT OF RENTS AND LEASES, SECURITY AGREEMENT AND
FIXTURE FILING SIGNATURE PAGE

IN WITNESS WHEREOF, this Deed of Trust has been executed as of the date set forth on the first page.

TRUSTOR:

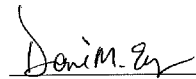
Downtown Community Builders Limited Partnership, an Arizona limited partnership

By: Troon Peak Resort Properties Limited Partnership, an Arizona limited partnership
Its: General Partner


By: Michael J. Peloquin
Its: General Partner

STATE OF AZ)
)ss
COUNTY OF MARICOPA)

The foregoing instrument was acknowledged before me 25TH day of July, 2007 by **Michael J. Peloquin of Troon Peak Resort Properties Limited Partnership, an Arizona limited partnership on behalf of the limited partnership, as General Partner for Downtown Community Builders Limited Partnership, an Arizona limited partnership, on behalf of limited partnership.**



Notary Public

My Commission Expires:



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EXHIBIT "A"

Loan No.: 860306
Borrower: Downtown Community Builders Limited Partnership, an Arizona limited partnership

PARCEL NO. 1: (APN 217-55-535 and 217-55-536)

Lots 1 and 2, ARTESANO AT TROON CANYON, according to the plat of record in the office of the County Recorder of Maricopa County, Arizona, in Book 420 of Maps, page 14.

PARCEL NO. 2: (APN 217-55-548)

Lot 14, ARTESANO AT TROON CANYON, according to the plat of record in the office of the County Recorder of Maricopa County, Arizona, in Book 420 of Maps, page 14.

APN(s): 217-55-535, 217-55-536, and 217-55-548

Ex. 18

SERVICING AGENT AGREEMENT

Loan No. 860306

July 20, 2007

"Borrower" (individually and collectively):

Downtown Community Builders Limited Partnership, an Arizona limited partnership

"Lender": **Scott M. Coles or Christopher J. Olson, CPA, Trustees of the Mortgages Ltd. 401(k) Plan**

"Servicing Agent": **Mortgages Ltd., an Arizona corporation.**

In consideration of the reciprocal promises contained herein, Borrower, Lender and Servicing Agent (collectively, the "Parties") hereby agree to the following.

1. APPOINTMENT AND AUTHORITY OF SERVICING AGENT

Trustor and Beneficiary hereby appoint Mortgages Ltd. to act as the Servicing Agent with regard to the Loan. Servicing Agent is authorized to perform any and all of the following tasks:

- a. Hold the originals of the Promissory Note, Deed of Trust, Fee Schedule and all other documents executed by the Borrower or any other party in connection with the Loan (collectively, the "Loan Documents").
- b. Service and administer the Loan in any manner provided by the Loan Documents.
- c. Process any and all Loan payments from Borrower or other payor.
- d. Assess and process all fees and charges set forth in the Loan Documents including, but not limited to, administrative fees, notice fees and late charges.
- e. Apply any funds received by Servicing Agent to the fees and costs incurred or assessed by Beneficiary before applying the funds to the amounts owing under the Loan Documents (including notice fees, service fees, administrative fees, inspection fees, appraisal fees, expert fees, attorneys' fees, litigation costs, forced placed insurance premiums, late charges and guarantor collection expenses (as described herein)). Any insurance placed by Servicing Agent may be placed with an affiliate of servicing Agent or a captive insurance company.
- f. Retain deposits received under the Loan Documents as impounds for the payment of the following:
 - (1) Future payments due;
 - (2) Taxes and assessments;
 - (3) Construction;
 - (4) Insurance premiums;
 - (5) Extension fees;
 - (6) Administration fees; and
 - (7) Any other expenditure required under the Loan Documents.

(Any impound account may be held in the name of Servicing Agent for the benefit of Lender and others, and Servicing Agent may apply and/or disburse any such deposits in accordance with the Loan Documents).

- g. Evaluate, effectuate and process an assumption of the Loan, and assess and receive an assumption fee and/or an interest rate increase.
- h. Sign, file and record all documents which are reasonable or desirable to facilitate servicing of the loan, including:
 - (1) deeds of release and reconveyance (full and partial);



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SERVICING AGENT AGREEMENT

Loan No. 860306

July 20, 2007

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(2) endorsements and assignments of Loan Documents (including assignments of all or a portion of the beneficial interest of any deed of trust included in the Loan Documents);

(3) corrections, amendments, **modifications** and extensions of Loan Documents;

(4) disclaimers;

(5) financing statements; and

(6) assumptions and various certifications.

i. Incur all fees, costs and expenses deemed necessary by Servicing Agent to protect Beneficiary's interests under the Loan Documents;

j. Incur all fees, costs and expenses deemed necessary by Servicing Agent to protect the property securing the Loan (the "Trust Property"), including insurance premiums, receiver fees, property manager fees, maintenance expenses and security expenses.

k. Obtain forced placed insurance on any portion of the Trust Property in the event the Borrower fails to maintain insurance as required by the Loan Documents.

l. Sign, file and record any and all documents reasonable or desirable to protect Lender's interests and/or pursue Lender's remedies upon default, including:

(1) a statement of breach or non-performance;

(2) a substitution of trustee;

(3) a notice of election to foreclose;

(4) a notice of trustee's sale;

(5) an affidavit of non-military service;

(6) a notice of proposed disposition of collateral and various verifications.

m. In the event of default and at Servicing Agent's discretion, commence foreclosure of the Trust Property, initiate a trustee's sale and/or institute any proceeding necessary to collect the sums due under the Loan Documents or to enforce any provision therein, including:

(1) pursuing an action against any borrower or guarantor of the Loan;

(2) pursuing injunctive relief, the appointment of a receiver, provisional remedies or a deficiency judgment;

(3) pursuing claims in bankruptcy court;

(4) pursuing an appeal;

(5) collecting rents; and

(6) taking possession or operating the Trust Property).

n. In the event of default and at Servicing Agent's discretion effect a sale of Lender's interest, in whole or in part, in the Loan Documents at the expense of Trustor which expense shall be secured by the Deed of Trust.

o. Retain attorneys, trustees and other agents necessary to collect the sums due under the Loan Documents, to protect the Trust Property and/or to proceed with foreclosure of the Trust Property, initiate a trustee's sale and/or institute, defend, appear or otherwise participate in any proceeding (legal, administrative or otherwise) that Servicing Agent deems reasonable and desirable.

p. Incur and pay such costs, expenses and fees as Servicing Agent deems appropriate in undertaking and pursuing enforcement of the Loan Documents and/or collection of amounts owed thereunder, including attorney fees, receiver fees, trustee fees, expert fees and any fees, costs and expenses incurred in an effort to collect against any borrower or any guarantor of the Loan.

2. ACCOMMODATION.

Servicing Agent provides its services as an accommodation only, and shall incur no responsibility or liability to any person, including, Borrower and Lender for any act or omission by Servicing Agent or any person or entity active for Servicing Agent.



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SERVICING AGENT AGREEMENT

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3. ASSIGNMENT, RESIGNATION AND TERMINATION.

a. Servicing Agent shall have the right to assign the collection account or resign as Servicing Agent at any time, provided that Servicing Agent notifies Lender and Borrower of such assignment or resignation in writing.

(1) If Servicing Agent assigns the collection account, Servicing Agent will deliver all Loan Documents, directions and account records to assignee, at which time Servicing Agent will have no further duties or liabilities hereunder.

(2) If Servicing Agent resigns, Lender shall have the right to designate a new collection agent and Servicing Agent shall deliver to Lender all Loan Documents, directions and account records to Lender or the newly designated collection agent, at which time Servicing Agent will have no further duties or liabilities hereunder.

b. If that the ownership of the Trust Property becomes vested in the Lender by trustee's sale, judicial foreclosure or otherwise, then this Agreement shall automatically terminate and Servicing Agent will have no further duties or liabilities hereunder.

c. Upon Servicing Agent's assignment or resignation, or termination of this Agreement, Borrower shall immediately reimburse Lender for all fees, costs and expenses incurred hereunder. After such reimbursement and payment, Borrower shall remain obligated to indemnify, in accordance with Section 4 hereof, for liabilities which accrued prior to such resignation or termination.

4. INDEMNITY

a. Lender and Borrower shall immediately indemnify and hold Servicing Agent harmless for, from and against any and all liabilities incurred by Servicing Agent in performing under the terms of this Agreement or otherwise arising, directly or indirectly, from the Loan or Loan Documents, including all attorneys' fees, insurance premiums, expenses, costs, damages and expenses.

b. In the event that Servicing Agent requests that Lender and/or Borrower pay any amount owed hereunder, Lender and/or Borrower shall remit that amount to Servicing Agent within 5 business days of Servicing Agent's request.

5. BORROWER'S OBLIGATIONS

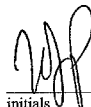
a. **Standard Fees and Costs.** Borrower shall pay to Servicing Agent, for the account of Beneficiary, its current fees and costs, including those items set forth in the Fee Schedule received by Borrower. The Fee Schedule is subject to change without notice as to the amounts and items included therein. Borrower shall pay a servicing set-up fee of **\$1,500.00**, and a monthly servicing fee of **\$30.00**. When the Loan is paid in full, Borrower shall pay a Close Out Fee of **\$1,500.00**, which is in addition to the monthly servicing fee. There will be a **\$30.00** charge to Borrower for each payoff request.

b. **Late Fees and Notices.** In the event that a regular payment is not received by Servicing Agent on or before the fifth calendar day after the due date, a late charge of **35%** of the monthly Principal and Interest payment will be charged and Borrower shall pay that amount to Servicing Agent, for the account of Lender. The parties agree that this late payment charge is intended to compensate Lender for losses incurred as a result of the late payment and that such late payment charge does not constitute and shall not be construed as a penalty. Servicing Agent will charge **\$125.00**, plus postage, for each notice sent regarding late payments, nonpayment of taxes, assessments, insurance premiums or any other matter that affects the Trust Property. Servicing Agent will charge **\$25.00** for each notice sent regarding returned checks, plus any actual charges assessed by the financial institution of the Servicing Agent as a result of each returned check. These notice fees are subject to change at the Servicing Agent's discretion. In the event that the Loan is not paid in full by the maturity date, Borrower acknowledges that a late charge will be assessed, for the account of Lender, in the amount of **3%** of the remaining principal balance of the Loan on the first day after Borrower's failure to pay and on the same day each month thereafter, until the final payment is received by Servicing Agent. All fees and charges are independent of one another and any default interest assessed; thus, a matured loan shall accrue default interest, maturity late fees and any other applicable fees and charges.

c. **Payment Statements.** Servicing Agent, as a convenience only, will provide to Borrower a monthly payment statement. Borrower acknowledges and agrees that it is obligated to make all payments when due under the Loan Documents, whether or not such payment statement is received by Borrower.



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SERVICING AGENT AGREEMENT

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6. PARTIAL AND FINAL PAYMENTS

a. **Partial Payments.** In the event that Servicing Agent receives and processes a partial payment of any amount due under the Loan Documents, such act shall not constitute full payment, estoppel or a waiver of any right of Lender or Servicing Agent to recover the deficiency or to require future payments to be made in full.

b. **Final Payment.** In the event that the final sum to pay the principal balance in total is received by Servicing Agent after 1:00 p.m., interest shall be charged through the next normal business day.

7. GENERAL PROVISIONS

a. This Agreement is binding on the Parties and their heirs, personal representatives, successors, permitted assigns, beneficiaries and trustees.

b. This Agreement and the benefits hereunder are **not** assignable or transferable by Borrower. Lender may assign Lender's rights and obligations under this Agreement without prior notice to Borrower. Lender, however, must give Servicing Agent prior written notice. After assignment, Lender shall have no further duties or liabilities to Borrower.

c. This Agreement shall be governed by, construed and enforced in accordance with the laws of the State of Arizona, without regard to the choice of law rules of the State of Arizona. The Parties hereby submit to the exclusive jurisdiction of any Arizona State or Federal Court sitting in the City of Phoenix in any action or proceeding arising out of or relating to this Agreement. The Parties waive the defense of an inconvenient forum.

d. The Parties voluntarily, knowingly, irrevocably and unconditionally waive the right to a jury trial on any contested matters arising from this Agreement or the Loan Documents.

e. This Agreement sets forth the entire agreement and understanding of the Parties with respect to the subject matter hereof and is to be read in consistency and accordance with the other Loan Documents.

f. This Agreement may be amended, modified, superseded, canceled, renewed or extended and the terms and covenants hereof may be waived only by a written instrument signed by all of the parties hereto. The failure of Servicing Agent or Beneficiary at any time or times to require performance of any provision of this Agreement shall in no manner affect the right of Servicing Agent at a later time to enforce the same. No waiver by Beneficiary or Servicing Agent of the breach of any term or covenant contained in this Agreement, whether by conduct or otherwise, in any one or more instances, shall be deemed to be, or construed as, a further or continuing waiver by Servicing Agent or Lender of any such breach, or a waiver of the breach of any other term or covenant contained in this Agreement.

g. If any term or other provision of this Agreement is declared invalid, illegal or incapable of being enforced by any rule of law or public policy, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect.

h. As used in this Agreement, the word "include(s)" means "Include(s), without limitation," and the word "Including" means "including, but without limitation."



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SERVICING AGENT AGREEMENT

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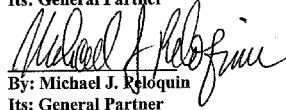
i. No remedy herein conferred upon or reserved to Servicing Agent is intended to be exclusive of any other remedy herein or by law provided or permitted, but each shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute.

This Agreement is effective on the date set forth on the first page.

BORROWER:

Downtown Community Builders Limited Partnership, an Arizona limited partnership

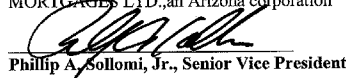
**By: Troon Peak Resort Properties Limited Partnership, an Arizona limited partnership
Its: General Partner**



**By: Michael J. Ploquin
Its: General Partner**

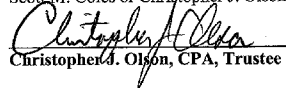
SERVICING AGENT:

MORTGAGES LTD., an Arizona corporation


Phillip A. Sallomi, Jr., Senior Vice President

LENDER:

Scott M. Coles or Christopher J. Olson, Trustees of the Mortgages Ltd. 401(k) Plan


Christopher J. Olson, CPA, Trustee

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MLPLAN-004211

Ex. 19

PROMISSORY NOTE
Interest Only/Commercial

Loan No. 860206

July 18, 2007

Loan Amount: \$4,550,000.00

“Maker” (individually and collectively):

GP Properties Carefree Cave Creek, L.L.C., an Arizona limited liability company
P. O. Box 15195
Phoenix, AZ 85060

“Holder”:
Scott M. Coles or Christopher J. Olson, CPA, Trustees of the Mortgages Ltd.
401(k) Plan

1. PROMISE TO PAY

a. As consideration for the receipt of a loan and other value, Maker hereby promises to pay the outstanding balance of the Designated Loan Amount **\$4,550,000.00** in United States currency (the "Principal"), plus interest, to the order of the Holder, **Scott M. Coles or Christopher J. Olson, CPA, Trustees of the Mortgages Ltd. 401(k) Plan**, or any subsequent holder of this Promissory Note (this "Note"). Maker understands and agrees that **Scott M. Coles or Christopher J. Olson, CPA, Trustees of the Mortgages Ltd. 401(k) Plan**, may subsequently transfer this Note, subject to the terms and conditions contained herein. **Scott M. Coles or Christopher J. Olson, CPA, Trustees of the Mortgages Ltd. 401(k) Plan**, or anyone who takes this Note by transfer and who is entitled to receive payments under this Note, is referred to hereinafter as the "Holder."

b. In connection with this Note and on the same date, Maker or a third party trustor executed a Deed of Trust, Assignment of Rents and Leases, Security Agreement and Fixture Filing (the "Deed of Trust") securing this Note (the "Deed of Trust") and a Servicing Agent Agreement. This Note, the Deed of Trust, the Servicing Agent Agreement and any other agreement, document or instrument evidencing, governing or securing the payment of the indebtedness evidenced by the Note are collectively referred to herein as the "Loan Documents". Maker understands and agrees that the Servicing Agent Agreement, which is incorporated herein by reference, authorizes the Servicing Agent appointed thereunder to, among other things, act on the Holder's behalf in accordance with this Note.

3. INTEREST

Interest will be charged on that portion of the Principal which has been committed by Holder, beginning, at Holder's discretion, on the Loan Funding Date or the Commitment Termination Date (in the event that the Loan closing was delayed for any reason other than one caused by Holder) continuing until the Principal has been paid in full. 'The Loan Funding Date' is the date upon which Lender allocates and designates sums sufficient to fund this Loan. The 'Commitment Termination Date' is the date upon which Lender's Loan commitment expires. Beginning on the Loan Funding Date or the Commitment Termination Date, as the case may be, and so long as no event of default exists, interest will accrue and be paid at the rate of **12.25%** per annum. In the event of default, Maker agrees to pay the Default Interest Rate as set forth herein.

4. PAYMENTS

a. **Time of Payments.** Maker will pay **interest only** by making monthly payments on the **1st** day of each month beginning **September 1, 2007**. Maker will continue to make monthly payments until Maker has paid all of the Principal, interest and any other charges that Maker may owe under this Note or the other Loan Documents. Monthly payments received by Holder in advance will not be posted to Maker's account greater than 14 calendar days prior to the payment due date.




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PROMISSORY NOTE

Loan No. 860206

July 18, 2007

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b. Maker's monthly payments will be applied to the following in such order as Holder, in its sole discretion, may determine

- (i) To the payment of any costs, fees or other charges incurred under this Note and the other Loan Documents;
- (ii) To the payment of accrued interest; **and**
- (iii) To the reduction of the Principal balance.

c. All remaining Principal, together with accrued unpaid interest and any other amounts due hereunder or under the Loan Documents (collectively, the "Maker's Liabilities") shall be due and payable in full on **July 19, 2008** (the "Maturity Date"), unless Maker's Liabilities become due and payable sooner because of acceleration, in which case Maker's Liabilities shall be due and payable in full on the date of such acceleration. Maker understands that the Maturity Date requires Maker to pay all Principal, interest and all other charges then due.

d. **Place of Payments.** Maker will make all monthly payments to Servicing Agent at 55 E. Thomas Road, Phoenix, Arizona 85012, or at a different address if Servicing Agent has given Maker written notice of a different address.

5. RIGHT TO PREPAY AND PREPAYMENT PREMIUM

a. Maker has the right to make payments of Principal at any time before they are due ("Prepayment") provided that:

- (1) All sums due under the Note are current;
- (2) Prepayment is made on a monthly payment due date;
- (3) Payment of a prepayment premium equal to **5%** of the Principal balance of the Note before reduction, if Prepayment is made before **July 19, 2007**; **and**
- (4) At the time of making a Prepayment, Maker advises Servicing Agent, in writing that Maker is making a Prepayment.

b. Any payment of Principal only is considered a Prepayment. Holder will use all of Maker's Prepayments to reduce the amount of Principal that Maker owes under this Note. If Maker makes a partial Prepayment, there may be a change in the amount of Maker's monthly payment.

6. LOAN CHARGES

a. **Note Interest Rate.** If Holder charges or if Maker pays any fees, charges or other sums pursuant to this Note or any other Loan Documents which, under the law, may be deemed to be interest, then the interest rate set forth in Section 2 above shall be deemed to be increased to include such additional interest. Therefore, if it is determined that the rate of interest applicable to this Note is greater than the rate of interest stated in Section 2 above, then the actual rate thus determined shall become the agreed upon and contracted rate of interest for this Note.

b. **Interpretation and Remedy.** Notwithstanding any provision herein or in any of the Loan Documents, the total liability for payments in the nature of interest shall not exceed the limits now imposed by the usury laws of Arizona, if any. If a law, which applies to this Note and which sets maximum loan charges, is finally interpreted so that the interest or other loan charges collected or to be collected in connection with this Note exceed the permitted limits, then: (i) loan charges shall be reduced by Holder in an amount sufficient to reduce the loan charges to the permitted limit; **and** (ii) any sums already collected from Maker which exceeded permitted limits will be refunded to Maker. Holder may choose to make this refund by reducing the Principal Maker owes under this Note or by making a direct payment to Maker. If a refund reduces Principal, then the reduction will be treated as a partial Prepayment and the provisions of 4 will not apply.



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PROMISSORY NOTE

Loan No. 860206

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7. MAKER'S FAILURE TO PAY AS REQUIRED

a. Late Charge for Overdue Payments. If Holder has not received the full amount of any of Maker's monthly payments by the close of business on a date which is five (5) calendar days after the date it is due, Maker will pay a late charge to **Holder**. The amount of the late charge will be **35%** of the monthly Principal and Interest payment. In the event that this Note is not paid in full by the Maturity Date, Maker acknowledges that a late charge will be assessed in the amount of **3%** of the remaining Principal balance on the next day following the Maturity Date and on the same day each month thereafter until the Note is paid in full.

b. Default. A default under this Note if exists if any of the following occurs:

- (i) Maker Fails to pay the full amount of each monthly payment on or before the date it is due;
- (ii) Maker Fails to pay all sums due as of the Maturity Date;
- (iii) Maker Fails to pay all sums required by any other Loan Documents;
- (iv) Maker Fails to perform or observe any covenants or obligations set forth herein or in any other Loan Documents; **or**
- (v) Any default exists under and of the other Loan Documents.

c. Acceleration. If a default exists, then Holder may accelerate the Maturity Date and declare that all sums owing under this Note and the other Loan Documents are immediately due and payable, without notice.

d. No Waiver By Holder. Failure of Holder, for any period of time or on more that one occasion, to exercise its option to accelerate the Maturity Date shall not constitute a waiver of the right to exercise the same at any time during the continued existence of an event of default or any subsequent event of default.

e. Payment of Holder's Costs and Expenses. If an event of default occurs, Maker shall pay all costs of enforcement, collection and preparation therefor, whether or not any action or proceeding is commenced in any court and, if commenced, during all appeals, including attorneys' fees, guarantor collection expenses (as described in the Servicing Agent Agreement), appraisal fees, inspection fees, expert witness fees, foreclosure processing fees, litigation costs and all other related expenses (collectively, "Default Costs"). Maker, at the option of Holder, shall appear and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Holder and shall pay all costs and expenses of Holder, including the cost of evidence of title and attorneys' fees, in any such action or proceeding in which Holder may appear or be named, with interest thereon at the Default Interest Rate from the date incurred or expended until paid in full.

f. Default Interest. If a default exists, then (in addition to the late charge as stated in Section 6(a)above) the interest rate on the unpaid Principal shall be **increased to 27% per annum** (the "Default Interest Rate") commencing on the date through which interest was last paid, and shall continue, at the option of the Holder, until all payments have been made current, all sums due under this Note and the other Loan Documents have been paid in full and/or all non-monetary defaults under the Loan Documents have been cured to the Holder's satisfaction. Any advances made by Holder, pursuant to the terms of the Loan Documents, and all Default Costs shall accrue interest at the Default Interest Rate. In the event Maker files or is involuntarily placed in bankruptcy, Maker hereby agrees that Holder shall be entitled to interest on all Loan arrearages of whatever nature at the Default Interest Rate.

8. NOTICES

Unless applicable law requires a different method, any notice that must be given to Maker under this Note will be given by mailing it by first class mail or by delivering it to Maker at the address stated above or at a different address if Maker gives Servicing Agent written notice of a different address. Any notice that must be given to Holder shall be given by mailing it by first class mail to Servicing Agent, at 55 E. Thomas Road, Phoenix, Arizona 85012, or at a different address if Servicing Agent has given Maker written notice of a different address.




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PROMISSORY NOTE

Loan No. 860206

July 18, 2007

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9. OBLIGATIONS OF PERSONS UNDER THIS NOTE

Any person who is a guarantor, surety or indorser of this Note is also obligated to perform under the terms of this Note. Any subsequent person who takes over Maker's rights under this Note by whatever means, including the obligations of a guarantor, surety or indorser of this Note, is also bound by all of the promises and liabilities created by this Note and the other Loan Documents. Holder may enforce its rights under this Note against each Maker or successor, jointly and severally. This means that each signer may be required to pay all sums owed under this Note irrespective of the type, value or ownership of the property securing the Note.

10. WAIVERS

Maker, for itself and all endorsers, guarantors and sureties of this Note, and their heirs, personal representatives, successors, assigns, beneficiaries and trustees, hereby waives presentment for payment, demand, notice of nonpayment, notice of dishonor, protest of any dishonor, notice of protest and protest of this Note, and all other notices in connection with the delivery, acceptance, performance, default or enforcement of the payment of this Note, and agrees that their respective liability shall be unconditional and without regard to the liability of any other party and shall not be in any manner affected by any indulgence, extension of time, renewal, waiver or modification granted or consented to by Holder. Maker, for itself and all endorsers, guarantors and sureties of the Note, and their heirs, personal representatives, successors, assigns, beneficiaries and trustees, hereby consents to every extension of time, renewal, waiver or modification that may be granted by Holder with respect to the payment or other provisions of this Note, and to the release of any makers, endorsers, guarantors or sureties, and of any collateral given to secure the payment hereof, or any part hereof, with or without substitution, and agrees that additional makers, endorsers, guarantors or sureties may become parties hereto without notice to Maker or to any endorser, guarantor or surety and without affecting the liability of any of them.

11. SECURITY

This Note and the other Loan Documents, including, among others, the Deed of Trust, were executed by Maker and, if necessary, various other parties to protect Holder from possible losses which might result if Maker does not perform the obligations set forth in this Note. The Loan Documents describe how, and under what conditions, Maker may be required to make immediate payment in full of all sums Maker owes under this Note. Some of those conditions, but not all, are described as follows:

- a. If Maker or another party, such as a third party trustor of the Deed of Trust securing this Note, sells, conveys, transfers, assigns, contracts for sale, leases with option to purchase or further encumbers the property securing the Note (the "Secured Property") or any part thereof, including, but not limited to, any further assignment of the Secured Property's income, wraparound mortgage or purchase contract;
- b. If Maker is a limited liability company and any ownership interest in Maker is sold, conveyed or transferred;
- c. If Maker is a partnership and any general partnership interest in Maker is sold, conveyed or transferred, either voluntarily or involuntarily without the prior written consent of Holder; or
- d. If Maker is a corporation and the controlling interest in Maker is sold, conveyed or transferred.

Upon the occurrence of any of the above or any other triggering events set forth in the Loan Documents, Holder, at its option, shall have the right to accelerate the sums owing under the Note and those sums shall become immediately due and payable to Holder. This provision shall apply to each and every such sale, conveyance, transfer, lease, encumbrance or assignment, regardless as to whether Holder has consented or waived its rights in connection with any such previous sale, conveyance, transfer, lease, encumbrance or assignment by Maker.


12. TIME

Time is of the essence in all aspects of this Note and the Loan Documents.

13. GENERAL

- a. This Note is binding on Maker and Maker's heirs, personal representatives, successors, permitted assigns, beneficiaries and trustees.




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PROMISSORY NOTE

Loan No. 860206

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b. This Note and the benefits hereunder are not assignable or transferable by Maker. However, Holder may assign its rights under this Note and the other Loan Documents without prior notice to Maker.

c. Maker acknowledges that Mortgages Ltd. is Holder's Servicing Agent.

d. This Note shall be governed by, construed and enforced in accordance with the laws of the State of Arizona, without regard to the choice of law rules of the State of Arizona. Maker hereby submits to the jurisdiction of any Arizona State or Federal Court sitting in the City of Phoenix in any action or proceeding arising out of or relating to this Note. Maker hereby waives the defense of an inconvenient forum.

e. Maker, and Holder by its acceptance of this Note, hereby waive their respective rights to a trial by jury in any action or proceeding based upon, or related to, the subject matter of this Note and the business relationship that it being established. This waiver is knowingly, intentionally, voluntarily and irrevocably made by Maker and by Holder and Maker acknowledges that neither Holder nor any person acting on behalf of Holder has made any representations of fact to include this waiver of trial by jury or has taken any actions which in any way modify or nullify its effect. Maker and Holder acknowledge that this waiver is a material inducement to enter into a business relationship, that Maker and holder have already relied on this waiver in entering into this Note and that each of them will continue to rely on this wavier in their related future dealings.

f. This Note, together with the other Loan Documents, sets forth the entire agreement and understanding between Maker and Holder, and supersedes all prior agreements, arrangements and understandings, written or oral, between Maker and Holder.

g. This Note may be amended, modified, superseded, canceled, renewed or extended and the terms or covenants hereof may be waived only by a written instrument executed by Maker, Holder. The failure of Servicing Agent, at any time or times, to require performance of any provision of this Note shall in no manner affect the right of the Holder or Servicing Agent at a later time to enforce the same. No waiver by Holder or Servicing Agent of the breach of any term or covenant contained in this Note, whether by conduct or otherwise, in any one or more instances, shall be deemed to be, or construed as, a further or continuing waiver by Holder or Servicing Agent of any such breach, or a waiver of the breach of any other term or covenant contained in this Note.

h. If any term or other provision of this Note or any other Loan Document is declared invalid, illegal or incapable of being enforced by any rule of law or public policy, all other conditions and provisions of this Note shall nevertheless remain in full force and effect.

i. Notwithstanding any provision contained in this Note or any of the other Loan Documents to the contrary, including, without limitation, Maker's right to obtain advances or disbursements under the Loan, Holder may, in Holder's sole and absolute discretion, exercise Holder's rights and enforce Holder's remedies under and pursuant to Title 33, Chapter 7, Article 9 of Arizona Revised Statutes (including, without limitation, A.R.S. Section 33-1058), without any liability to Maker and without releasing Maker from any of Maker's obligations, duties and liabilities under the Loan Documents.

j. As used in this Note, the word "include(s)" means "include(s), without limitation," and the word "including" means "including, without limitation."

SEE ATTACHED SIGNITURE PAGE



Handwritten initials in black ink, appearing to be 'MS' or similar, written over a horizontal line. Below the line, the word 'initials' is printed in a small, lowercase font.

PROMISSORY NOTE

Loan No. 860206

July 18, 2007

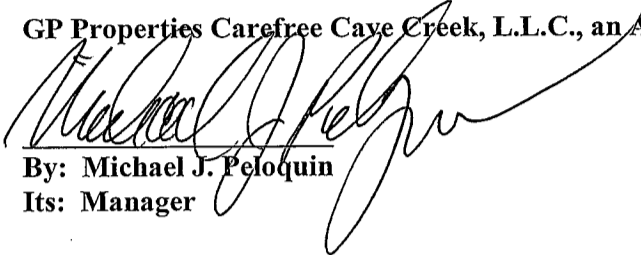
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PROMISSORY NOTE SIGNATURE PAGE

IN WITNESS WHEREOF, this Note has been executed as of the date set forth on the first page.

MAKER:

GP Properties Carefree Cave Creek, L.L.C., an Arizona limited liability company

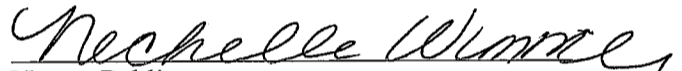


By: Michael J. Peloquin

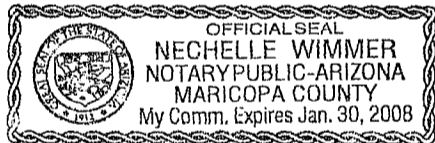
Its: Manager

STATE OF AZ)
)ss
COUNTY OF MARICOPA)

The foregoing instrument was acknowledged before me 19 day of July, 2007 by **Michael J. Peloquin of GP Properties Carefree Cave Creek, L.L.C., an Arizona limited liability company on behalf of the LLC**


Notary Public

My Commission Expires:



Ex. 20

When recorded return to:

MORTGAGES LTD.
55 E. Thomas Rd.
Phoenix, Arizona 85012

**DEED OF TRUST, ASSIGNMENT OF RENTS AND LEASES,
SECURITY AGREEMENT AND FIXTURE FILING**

Loan No. 860206 **July 18, 2007**
Secured Loan Amount: \$4,550,000.00

“Trustor” (individually and collectively):

GP Properties Carefree Cave Creek, L.L.C., an Arizona limited liability company
P. O. Box 15195
Phoenix, AZ 85060

“Trustee”:

Scott M. Coles, a licensed real estate broker
55 E. Thomas Rd.
Phoenix, AZ 85012

“Beneficiary”:

Scott M. Coles or Christopher J. Olson, CPA, Trustees of the Mortgages Ltd. 401(k) Plan
55 E. Thomas Rd.
Phoenix, Arizona 85012

This Deed of Trust, Assignment of Rents, Leases, Security Agreement, and Fixture Filing (this “Deed of Trust”), is executed by Trustor in favor of Trustee for the benefit of Beneficiary as of the date written above. In connection with this Deed of Trust and on the same date, Trustor or a third party borrower has executed a Promissory Note (the “Note”), a Servicing Agent Agreement and other related documents to evidence and secure the monetary and non-monetary obligations owed to Beneficiary by Trustor and related third parties. These documents, including this Deed of Trust, and any other agreement, document, or instrument evidencing, governing or securing the payment of the indebtedness evidenced by the Note, are collectively referred to as the “Loan Documents.” Trustor understands and agrees that Servicing Agent Agreement, which is incorporated herein by reference, authorizes Servicing Agent appointed thereunder to, among other things, act on the Beneficiary’s behalf in accordance with this Deed of Trust.

1. TRUST PROPERTY

For good and valuable consideration, including the indebtedness referenced herein and the trust created hereby, the receipt and sufficiency of which is hereby acknowledged, Trustor irrevocably grants, transfers, conveys and assigns to Trustee, in trust, with the power of sale, for the benefit and security of Beneficiary, all of Trustor’s present and future estate, right, title and interest, under and subject to the terms and conditions set forth herein, in and to that certain real property located in **Maricopa County**, Arizona, more particularly described in **Exhibit A** attached hereto and incorporated herein by this reference (the “Real Property”), together with all of the following:

- a. Buildings, structures, fixtures or other improvements now or hereafter placed on the Real Property (collectively, the “Improvements”);
- b. All existing and future leases, subleases, licenses and other agreements for the use and occupancy of all or any portion of the Real Property;
- c. All rents, issues and profits and income generated by the Real Property (the “Property Income”);



**DEED OF TRUST, ASSIGNMENT OF RENTS AND LEASES,
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Loan No. 860206

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- d. All classes of property now or at any time hereafter attached to or used in any way in connection with the use, operation or occupancy of the Real Property;
- e. All property, rights, permits and privileges now or hereafter owned by Trustor or now or hereafter appurtenant to the Real Property, which entitle Trustor or the Real Property to receive all available utilities for use thereon;
- f. All awards resulting from eminent domain or condemnation in whole or in part, proceeds of insurance required on the Real Property and any other award for damage to or destruction of the Real Property or the Improvements;
- g. Any licenses, contracts, permits and agreements required or used in connection with the ownership, operation or maintenance of the Real Property, and the right to the use of any trade names, trademarks or service marks, now or hereafter associated with operation of any business conducted on the Real Property;
- h. All "Impounds," as defined herein, held by Beneficiary or its Servicing Agent for the benefit of Trustor, including, but not limited to, Impounds for taxes, assessments, insurance, homeowners' dues and construction;
- i. All easements, profits, rights of way and other rights now owned or hereafter assigned to Trustor; and
- j. All proceeds of the foregoing, including all proceeds of and all unearned premiums due from all insurance policies covering the Real Property.

All of the foregoing are collectively referred to hereinafter as the "Trust Property."

2. TRUSTOR'S REPRESENTATIONS AND WARRANTIES

Trustor hereby represents and warrants that Trustor has a good, marketable and insurable title to the Trust Property acceptable to Beneficiary and that Trustor holds fee simple title to the Real Property. Trustor forever warrants and shall defend title to the Trust Property for the Beneficiary, its successors and assigns, against all claims whatsoever; subject, however, to the following:

- a. The right, power and authority hereinafter given to and conferred upon Beneficiary to collect and apply such Property Income; and
- b. Any easements and restrictions approved by Beneficiary and listed in the schedule of exceptions to coverage in any title insurance policy insuring Beneficiary's interest in the Trust Property.


3. SECURITY

This Deed of Trust secures the following (the "Obligations"), in such order of priority as Beneficiary may elect:

- a. Strict performance of every obligation of Trustor and the third party borrower, if any, under all Loan Documents;
- b. Payment of all sums due under the Note including the principal amount of the 'Initial Funding' of \$4,550,000.00, interest thereon and all other charges assessed thereunder, such as late charges, notice fees and prepayment premiums;
- c. In the event that this Deed of Trust secures a Note with an Equity-Flex[®] Mortgage Line and "Advances," as defined therein, are made by Beneficiary, then payment of the aggregate amount of all Advances and all Equity-Flex Fees (as defined in said Note);
- d. In the event of default, payment of interest at the "Default Interest Rate," as defined by the Note;



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**DEED OF TRUST, ASSIGNMENT OF RENTS AND LEASES,
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e. Payment of all sums incurred by Beneficiary or its Servicing Agent, with interest thereon, to protect, preserve, repair or maintain the Trust Property or to cure any senior or junior loans, trust deeds, mortgages or other security instruments, including taxes, assessments, homeowners' dues, ground rents, force placed insurance, attorneys' fees, litigation costs, appraisal fees, inspection fees, project manager fees, receiver fees and other expert or consulting fees;

f. Payment of all sums incurred by Beneficiary or its Servicing Agent, with interest thereon, in the event of Trustor or the third party borrower's default under the Loan Documents, including, without limitation, attorneys' fees, litigation costs and expenses, appellate costs and expenses, bankruptcy fees, foreclosure fees, trustee fees, receiver fees, expert fees and witness fees;

g. Payment of all sums incurred by Beneficiary or its Servicing Agent, with interest thereon, in the collection of amounts owed by any guarantor of the Note, including attorneys' fees, litigation costs and expenses, appellate costs and expenses, bankruptcy fees, foreclosure fees, trustee fees, receiver fees, expert fees and witness fees;

h. Strict performance of every obligation of Trustor and the third party borrower, if any, contained in any agreement, document or instrument, hereafter executed by Trustor or the third party borrower, reciting that the obligations thereunder are secured by this Deed of Trust, which includes Advance Agreements, forbearance agreements, extension agreements, payment plans and Note modifications;

i. Payment of all other sums, with interest thereon, that hereafter may be loaned to Trustor or the third party borrower, if any, or their successors or assigns, by Beneficiary or its successors or assigns when evidenced by an agreement or promissory note reciting that they are secured by this Deed of Trust, which includes, but is not limited to, Advance Agreements, forbearance agreements, extension agreements, payment plans and Note modifications;

j. Strict compliance with and performance of each and every provision of any declaration of covenants, conditions and restrictions, any maintenance, easement and party wall agreement or any other agreement, document or instrument by which the Trust Property is bound or may be affected; **and**

k. In the event of default, payment of any fees incurred by Beneficiary to Servicing Agent to effect a sale in whole or in part of Beneficiary's interest in the Loan Documents.

4. TRUSTOR'S OBLIGATIONS

a. **Trust Property.** Trustor shall keep the Trust Property in good condition and repair. Trustor shall not to remove or demolish any Improvements on the Real Property. Trustor shall complete or restore promptly and in good and workmanlike manner any Improvement which may be constructed, damaged or destroyed, and pay, when due, all claims for labor performed and materials furnished therefor. Trustor shall comply with all laws affecting the Trust Property or requiring any alterations or Improvements to be made thereon. Trustor shall not (i) commit or permit waste of the Trust Property or (ii) abandon the Trust Property. Trustor shall not initiate or acquiesce in a change in the zoning classification of the Real Property without Beneficiary's prior written consent. Trustor shall not commit, suffer or permit any act to or upon the Trust Property in violation of any law. Trustor shall do all acts which, from the character or use of the Trust Property, may be reasonably necessary.

b. **Appraisal.** If the Loan's principal exceeds \$250,000.00, then Trustor shall obtain, at Trustor's sole cost and expense, a MAI or equivalently certified appraisal of the Trust Property addressed to Beneficiary and prepared by an appraiser approved by Beneficiary. Trustor shall provide Beneficiary a copy of the appraisal and all relevant supporting documents within 90 days of the date of the Loan closing. If the appraisal is not received by Beneficiary within that 90 day period, then the Loan shall be in default and Beneficiary shall be entitled to pursue any and all remedies available under the Loan Documents. In addition, at the request of Beneficiary, Trustor shall provide an updated MAI or equivalently certified appraisal of the Trust Property within 30 days of such request. If such updated appraisal is not received by Beneficiary within that 30 day period, then the Loan shall be in default and Beneficiary shall be entitled to pursue any and all remedies available under the Loan Documents.




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**DEED OF TRUST, ASSIGNMENT OF RENTS AND LEASES,
SECURITY AGREEMENT AND FIXTURE FILING**

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c. Insurance and Casualty. Trustor shall keep all Improvements now or hereafter erected on the Real Property continuously insured against loss by fire or other hazards in an amount not less than the replacement cost of the Improvements, and shall maintain and evidence liability insurance in the minimum amount of **\$1,000,000** or in such other amount required by Beneficiary. When requested by Beneficiary, Trustor shall provide and maintain insurance policies with annual premiums in amounts required by Beneficiary covering vandalism and malicious mischief, sprinkler leakage, rent abatement, business loss, flood damage and/or all other risks commonly insured against by persons owning like properties in the locality of the Property or commonly required by prudent institutional investors making loans secured by liens against such properties. All insurance policies or certificates shall be held by Beneficiary, shall be in such companies as Beneficiary may approve and shall name the Beneficiary as an additional insured with the proceeds payable first to Beneficiary, as its interest may appear, and then to Trustor. All insurance policies shall provide that Beneficiary is to receive 30 days notice prior to cancellation or non-renewal and shall otherwise be in the form and substance satisfactory to Beneficiary. All renewal policies shall be delivered to Beneficiary 30 days before the expiration of the then existing policies together with satisfactory proof that the premiums for renewal have been paid. The amount collected under any insurance policy may be applied in whole or in part by Beneficiary to any indebtedness hereby secured and in such order as Beneficiary may determine whether or not then due, or, at the option of Beneficiary, the entire amount so collected or any part thereof may be released to Trustor for restoration or repair of the Trust Property upon such terms and conditions as are acceptable to Beneficiary. Such application or release shall not cure or waive any default hereunder or cause discontinuance of any action that may have been or may thereafter be taken by Beneficiary or Trustee because of such default. In the event of loss, Trustor shall give immediate notice to Beneficiary. If Trustor has not given proof of loss, then Beneficiary may make proof of loss at any time. Each insurance company is hereby authorized and directed to make payment for any loss directly to Beneficiary, instead of to Trustor, or to Trustor and Beneficiary jointly. Beneficiary shall not be liable for any insurance, for the collection of any insurance proceeds or for the insolvency of any insurer. Any application of insurance proceeds to the outstanding Loan balance by Beneficiary shall not cure or waive any event of default. In the event of the sale of the Trust Property under the power of sale granted to Trustee, the judicial foreclosure of this Deed of Trust or the takeover of possession by a court appointed receiver or trustee, then all right, title and interest of Trustor to such policies of insurance shall inure to the benefit of and shall pass to the successor title-holder of the Trust Property (or to the receiver, if applicable).

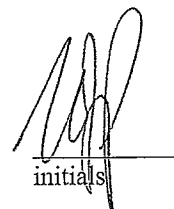
d. Litigation. If an event of default occurs under the Loan Documents, Trustor shall pay all costs of enforcement, collection and preparation therefor, whether or not any action or proceeding is commenced in any court through all appeals, which includes Servicing Agent administration fees, attorneys' fees, appraisal fees, inspection fees, expert witness fees and foreclosure processing fees. Trustor, at the option of Beneficiary, shall appear and defend any action or proceeding purporting to affect the Trust Property or the rights or powers of Beneficiary and shall pay all costs and expenses of Beneficiary, including all costs of proving title and attorney's fees, with interest thereon at the Default Interest Rate from the date incurred or expended.

e. Property Payments. Trustor shall pay, when due, and before any interest, collection fees or penalties shall accrue, the following:

- (1) All taxes, assessments, homeowners' dues, owners' association fees, ground rents, and any other charges and obligations which may become a lien or charge against the Trust Property;
- (2) All encumbrances, charges and liens on the Trust Property or any part thereof; **and**
- (3) All costs, fees and expenses incurred under this Deed of Trust and the other Loan Documents, including all Trustee's fees for the issuance of any deed of partial or full release and partial or full reconveyance and all charges, costs and expenses incurred in the event of default or reinstatement.

f. Right to Cure. If Trustor fails to make any payment or to do any act as required hereby, Beneficiary or Trustee, but without obligation to do so and without prior notice or demand upon Trustor and without releasing Trustor from any obligation herein, may take such action in such manner and to such extent as either may deem necessary to protect the Trust Property. Beneficiary or Trustee may enter the Real Property for such purposes, appear in and defend any action or proceeding purporting to affect the Trust Property or the rights or powers of Beneficiary or Trustee and pay, purchase, contest or compromise any encumbrance, charge or lien, which in the judgment of either Beneficiary or Trustee appears to jeopardize Beneficiary's security hereunder, and, in exercising any such powers, pay necessary expenses, employ counsel and pay attorneys' fees.




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g. Expenditures. Trustor shall pay immediately all sums expended by Beneficiary or Trustee pursuant to the provisions of this Deed of Trust or the other Loan Documents, together with interest from date of such expenditure at the Default Interest Rate. Any amount paid by Beneficiary or Trustee to protect the Trust Property, together with interest thereon, shall become a part of the indebtedness secured by this Deed of Trust and a lien on the Trust Property, and shall be immediately due and payable to Beneficiary or Trustee.

h. Impounds. Whenever required by Beneficiary, Trustor shall pay with each monthly installment payment an additional sum equal to 1/12th of the annual real property taxes, special assessments, homeowners' or owners' association dues, ground rents, if any, and insurance premiums next due on the Trust Property ("Impounds"), as may be estimated by Beneficiary, which will be held by Beneficiary in a special account (the "Impound Account"). Impounds may be commingled with other Impounds held by Beneficiary or its Servicing Agent. Any interest on Impounds shall accrue to Beneficiary or its Servicing Agent. Impounds may be used to pay taxes, assessments, homeowners' or owners' association dues, ground rents, if any, and insurance premiums before delinquent or before the insurance expires. If any of the Impounds, in the opinion of Beneficiary, are insufficient to accumulate a fund with which to pay such items, Trustor shall pay Beneficiary upon demand the amount necessary to make up the deficiency. If the Impounds held by Beneficiary exceed the amount necessary, in the opinion of Beneficiary, to pay such items, such excess shall, at Beneficiary's option, be refunded to Trustor or shall be credited on any sums due Beneficiary under this Deed of Trust or the other Loan Documents. If there is a default under this Deed of Trust or the other Loan Documents, Beneficiary may apply, at its discretion, the amount then remaining in the Impound Account to any sums due under this Deed of Trust or the other Loan Documents. Any Impound amount is subject to change in the event that the county tax assessor increases or decreases the valuation of the Trust Property, or in the event that there is any other change of circumstances affecting the Trust Property. Any sums held in any construction loan account shall be considered an "Impound."


i. Financial Statements. Trustor shall provide in form and substance satisfactory to Beneficiary: (a) within 90 days after the end of each calendar year, a statement of income and expenses, relating to the Trust Property for such calendar year; (b) within 90 days after the end of each calendar year, financial statements for such year from Trustor and any Guarantor of the Loan; (c) within 30 days after the end of each calendar year, a rent roll for the Trust Property as of January 1 of the current year; (d) upon the request of Beneficiary, all filed Federal and State income tax returns for Trustor and any Guarantor of the Loan; and (e) such other financial information concerning the Trust Property, Trustor, or any Guarantor as Beneficiary may reasonably require from time to time. Beneficiary or its designated agent shall have the right to inspect the books and records with respect to the Trust Property at any time, upon reasonable notice to Trustor.

j. Environmental Matters.

(i) Trustor represents and warrants to Beneficiary, to the best of Trustor's knowledge after all appropriate inquiry, and covenants that there are no, nor will there be, for so long as any of the indebtedness secured hereby remains outstanding, any Hazardous Materials (as defined below) generated, released, stored, buried, or deposited over, beneath, in or upon the Real Property or on or beneath the surface of adjacent property, except as such Hazardous Materials may be used, stored or transported in connection with the permitted uses of the Trust Property and then only in de minimus quantities and only to the extent permitted by law after obtaining all necessary permits and licenses therefor. "Hazardous Materials" shall mean and include any pollutants, flammables, explosives, petroleum (including crude oil) or any fraction thereof, radioactive materials, hazardous wastes, dangerous or toxic substances or related materials, including substances defined as or included within the definition of toxic or hazardous substances, wastes or materials under any federal, state or local laws, ordinances, regulations or guidelines which relate to pollution, the environment or the protection of public health and safety, or limiting, prohibiting or otherwise regulating the presence, sale, recycling, generation, manufacture, use, transportation, disposal, release, storage, treatment of, or response or exposure to, toxic or hazardous substances, wastes or materials. Such laws, ordinances and regulations are hereinafter collectively referred to as the "Hazardous Materials Laws."



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(ii) Trustor shall, and Trustor shall cause all employees, agents, tenants, contractors and subcontractors of Trustor and any other persons from time to time present on or occupying the Trust Property to, keep and maintain the Trust Property in compliance with, and not cause or knowingly permit the Trust Property to be in violation of, any applicable Hazardous Materials Laws. Neither Trustor, nor any employees, agents, tenants, contractors or subcontractors of Trustor, nor any other persons occupying or present upon the Trust Property, shall use, generate, manufacture, store or dispose of on, under or about the Real Property, or transport to or from the Real Property any Hazardous Materials, except as such Hazardous Materials may be used, stored or transported in connection with the permitted uses of the Trust Property and then only in de minimus quantities and only to the extent permitted by law after obtaining all necessary permits and licenses therefor.

(iii) Trustor shall be solely responsible for, and shall indemnify, defend, protect and hold harmless Beneficiary, its directors, officers, employees, agents, successors and assigns for, from and against, any claim, demand, lawsuit, loss, damage, cost, expense or liability directly or indirectly arising out of or attributable to the use, generation, storage, release, threatened release, discharge, disposal or presence of Hazardous Materials on, under or about the Real Property (whether occurring prior to or during the pendency of the indebtedness secured hereby or otherwise and regardless of by whom caused, whether by Trustor or any predecessor in title or any owner of land adjacent to the Real Property or any other third party, or any employee, agent, tenant, contractor or subcontractor of Trustor or any predecessor in title or any such adjacent land owner or any third party) including: (i) claims of third parties (including governmental agencies) for injury or death to any person or for damage or destruction of any property; (ii) claims for response costs, clean-up costs, costs and expenses of removal and restoration, including fees of attorneys and experts, and costs of determining the existence of Hazardous Materials and reporting same to any governmental agency; (iii) any and all other claims for expenses or obligations, including attorneys' fees, costs and other expenses; (iv) any and all penalties threatened, sought or imposed on account of a violation of any Hazardous Materials Laws; (v) all fees of any consultants, attorneys and engineering firms retained in connection with monitoring the obligations of Trustor under this Deed of Trust; and (vi) any loss occasioned by diminution in the value of the Trust Property which results from any of the foregoing.

5. EQUITY-FLEX®/ DELAY FLEX® MORTGAGE LINE

a. **Equity-Flex®.** If that this Deed of Trust secures a Note with an Equity-Flex® Mortgage Line, Trustor may use, subject to the conditions set forth in the Note, the existing equity in the Trust Property in order to obtain additional funds beyond the amount of the Initial Funding of \$4,550,000.00 up to the Secured Loan Amount of \$4,550,000.00. This Deed of Trust secures the entire Secured Loan Amount regardless of the amount of the Initial Funding or any subsequent draws ('Advances') on the Loan account. The payoff amount required to release this Deed of Trust shall be based on the actual outstanding balance of the Loan account at the time of payoff.

Notice: If Beneficiary consents to alienation, assignment or transfer of the Trust Property or the obligations under this Deed of Trust in accordance with Section 14, all assignees, transferees and junior lien holders are hereby advised that this Deed of Trust provides for adjustable release provisions and fluctuating principal balances at Beneficiary's discretion.

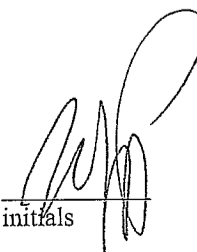
b. **Delay-Flex®.** If this Deed of Trust secures a Note with a Delay-Flex® Mortgage Line, Trustor may, subject to the conditions set forth in the Loan Documents and described herein, obtain the Delay-Flex amount designated as such and in accordance to the portions set-forth in the Delay-Flex Funding Schedule outlined in the Delay-Flex Disbursement Summary executed in connection with this Loan. This Deed of Trust secures the entire Designated Loan Amount regardless of the amount of the Initial Funding or any subsequent fundings on the Loan account. However, the payoff amount required to release the Deed of Trust shall be based on the actual outstanding balance of the Loan account at the time of payoff.

c. **The Funding of each Delay-Flex portion is subject to Beneficiary's discretionary approval and satisfaction of the following conditions:**

(i) There is no then-existing default under any of the Loan Documents and there exist no facts which, with the giving of notice or passage of time, would constitute a default under any of the Loan Documents;

(ii) Beneficiary, or its agent, has conducted an inspection of the Trust Property and the present condition of the Trust Property has been approved;



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(iii) The increased loan amount following the funding of each Delay-Flex portion, if made, will not exceed Beneficiary's lending guidelines for the Trust Property;

(iv) Beneficiary may further condition any delayed funding on endorsements to Beneficiary's Title Policy insuring the continued validity and priority of this Deed of Trust, Beneficiary's approval of Trustor's proposed utilization of the Delay-Flex proceeds and any other reasonable assurances or conditions Beneficiary may require or impose;

(v) Beneficiary shall fund each Delay-Flex portion on a date set by Beneficiary at its sole and absolute discretion, which will occur no earlier than the thirtieth (30th) day prior to the Fund Date set forth in the Delay-Flex Funding Schedule and no later than the thirtieth (30th) consecutive day following the Fund Date set forth in the Delay-Flex Funding Schedule; and

(vi) **Funding the total Delay-Flex portion of the Loan is not to exceed 9 months from the date of Loan closing. The Delay-Flex Funding Schedule must be completed by Loan closing and included in the Disbursement Summary. Any modification to the Delay-Flex Funding Schedule requires written approval from Beneficiary or Servicing Agent.**

Notice: If Beneficiary consents to alienation, assignment or transfer of the Trust Property or the obligations under this Deed of Trust in accordance with Section 14, all assignees, transferees and junior lien holders are hereby advised that this Deed of Trust provides for adjustable release provisions and fluctuating principal balances at Beneficiary's discretion.

6. CONSTRUCTION MORTGAGE

This Deed of Trust may constitute a "construction mortgage" within the meaning of A.R.S. Section 47-9334 and is entitled to the benefits of A.R.S. Section 47-9334(H). If this Deed of Trust secures a construction loan, the proceeds of the obligations secured by this Deed of Trust are to be used by Trustor for the purpose of acquiring title to the Real Property and funding the acquisition, construction and improvement of the Improvements, or refinancing such secured obligations. If this Deed of Trust secures a construction loan, notice is hereby given that the proceeds of the Note secured hereby may be collaterally assigned to Beneficiary or its agent pursuant to the terms of the Construction Loan Agreement executed herewith.

7. CONDEMNATION

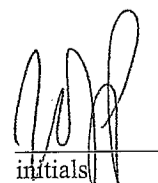
If any portion of the Trust Property is condemned or threatened to be condemned by the governing authority, Beneficiary, without notice, shall have the right to accelerate all sums owed under the Loan Documents, which are secured by this Deed of Trust, and those sums shall become immediately due and payable to Beneficiary irrespective of their maturity date. All awards of damages for any condemnation or taking, for injury to the Trust Property by reason of public use or for damages from private trespass or injury to the Trust Property, are hereby assigned, transferred and conveyed to Beneficiary and shall be paid to Beneficiary as further security for the Loan. Upon receipt of such monies, Beneficiary may hold the same as such further security, or apply or release the same in the same manner and with the same effect as herein provided for the disposition of proceeds of fire or other insurance.

8. BENEFICIARY'S OPTIONS

Without affecting the obligation of Trustor to pay and perform as required herein, without affecting the personal liability of any person for payment of the indebtedness secured hereby, and without affecting the lien or priority of lien hereof on the Trust Property, Beneficiary may, at its option:

- a. Release and reconvey all or any part of the Trust Property;
- b. Consent to the making and/or recording of any map or plat of the Trust Property or any part thereof;
- c. Join in granting any easement on the Trust Property;
- d. Join in or consent to any extension agreement or any agreement subordinating the lien, encumbrance or charge hereof;
- e. Extend the time for payment for all or any part of the indebtedness secured hereby, accept a renewal note therefore, reduce the payments thereon, release any person liable for all or any part thereof or otherwise change the terms of all or any part of the obligation or Note secured hereby; or




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f. Take and hold other security for the payment and performance of the obligation and Note secured hereby, and enforce, exchange, substitute, subordinate, waive or release any such security.

Any of the foregoing actions by Beneficiary or the Trustee at Beneficiary's direction may be taken without the consent of any junior lienholder, and shall not affect the priority of this Deed of Trust over any junior lien.

9. SECURITY AGREEMENT AND FIXTURE FILING

This Deed of Trust shall cover, and the Trust Property shall include, all property now or hereafter affixed on, attached to or incorporated upon the Real Property which, to the fullest extent permitted by law, shall be deemed a "fixture." To the extent that the Trust Property consists of rights in action or personal property covered by the Uniform Commercial Code, this Deed of Trust shall also constitute a security agreement, and Trustor hereby grants to Beneficiary, as secured party, a security interest in such property, including all proceeds thereof, for the purpose of securing the obligations herein and the other Loan Documents. In addition, for the purpose of securing the obligations herein and the other Loan Documents, Trustor, as debtors, hereby grants to Beneficiary, as secured party, a security interest in the following:

a. All personal property (including all goods, supplies, equipment, furniture, furnishings, fixtures, machinery, inventory and construction materials) in which Trustor now or hereafter acquires an interest or right, which is now or hereafter located on or affixed to the Real Property or the Improvements, or used or useful in the operation, use, or occupancy thereof or in the construction of any additional improvements thereon, together with any interest of Trustor in and to such personal property which is leased by Trustor or is subject to any superior security interest, and all books, records, leases and other agreements, documents, and instruments of whatever kind or character, relating to the Real Property, the Improvements, or such personal property;

b. All fees, income, rents, issues, profits, earnings, receipts, royalties, and revenues that may accrue from the personal property described in clause (a) above or any part thereof, or from the Real Property or the Improvements, or that may be received or receivable by Trustor from any hiring, using, letting, leasing, subhiring, subletting, subleasing, occupancy, operation or use thereof;

c. All of Trustor's present and future rights to receive payments of money, services, or property, including rights to receive capital contributions or subscription payments from the members, partners, shareholders or principals of Trustor, amounts payable on account of the sale of ownership interests in Trustor or the capital stock of Trustor, accounts and other accounts receivable, security deposits, chattel paper, notes, drafts, contract rights, instruments, general intangibles, and principal, interest and payments due on account of goods sold or leased, services rendered, loans made or credit extended, together with title to or interest in all agreements, documents, and instruments, evidencing, securing or guarantying the same;

d. All other intangible property and rights relating to the Real Property, the Improvements, the personal property described in clause (a) above or the operation, occupancy, or use thereof including all governmental and non-governmental permits, licenses (including Trustor's interest in any liquor license related to business operations conducted on the Real Property), and all approvals relating to construction on or operation, occupancy, or use of the Real Property or the Improvements, all names under or by which the Real Property or the Improvements may at any time be operated or known, all rights to carry on business under any such names, or any variant thereof, all trade names and trademarks relating in any way to the Real Property or the Improvements, and all good will in any way relating to the Real Property or the Improvements;


e. Trustor's rights under all insurance policies covering the Real Property, the Improvements or the personal property described in clause (a) above, and any and all proceeds, loss payments, and unearned premiums payable or refundable regarding the same;

f. All reserves, deferred payments, deposits, impound accounts, refunds, cost savings, and payments of any kind relating to the construction of any improvements on the Real Property;

g. All water stock or water rights relating to the Real Property;

h. All architectural, structural, mechanical, and engineering plans and specifications prepared for construction of improvements on the Real Property, or extraction of minerals or gravel from the Real Property, and all studies, data, and drawings relating thereto; and also all contracts and agreements of Trustor relating to such plans and specifications or to such studies, data, and drawings, for the construction of improvements on or extraction of minerals or gravel from the Real Property;




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- i. All proceeds from the sale or other disposition of any of the collateral described above;
- j. All of Trustor's rights in proceeds of the loan made by Beneficiary to Trustor;
- k. All of Trustor's rights to security, cleaning, or other deposits from tenants relating to leases or occupancy agreements for any portion of the Real Property or the Improvements;
- l. All of Trustor's rights in any Impound account held by Trustor or Beneficiary on behalf of Trustor;
- m. All of Trustor's rights in any other deposit accounts of Trustor; and
- n. All wells, well equipment, rights to wells, permits and licenses, water rights and all other related property used in connection with the operation of any well on the Real Property or appurtenant to the Real Property.

Trustor acknowledges and agrees that Beneficiary may maintain certain deposit accounts (including a payment impound account and/or a construction impound account) in the name of Beneficiary for the benefit of Trustor and such accounts may include funds disbursed or to be disbursed with respect to the Loan. Trustor acknowledges and agrees that all such funds are the property of Beneficiary and Trustor hereby disclaims any interest therein.

Trustor shall promptly replace any personal property that is consumed or worn out in ordinary usage and such replacement shall be secured hereby. Trustor may sell or dispose of only that part of the personal property that Trustor is obligated to replace, and all proceeds from any such sale or disposition in excess of the amount expended for such replacements shall promptly be paid to Beneficiary to be applied according to the Loan Documents, whether or not then due. Trustor shall immediately notify Beneficiary of any change in the location of Trustor's chief executive office or residence (if Trustor is an individual without an office) in accordance with the terms of this Deed of Trust, and any change in location of the personal property encumbered hereby, except if replaced as permitted herein. All Trustor's representations, warranties and covenants contained in this Deed of Trust shall apply to the personal property encumbered hereby whether or not expressly referred to herein. Trustor's representations, warranties and covenants and warranties contained in this Section are in addition to, and not in limitation of, those contained in the other provisions of this Deed of Trust. Upon its recording in the real property records, this Deed of Trust shall be effective as a fixture filing. The filing of any other financing statement relating to any other personal property, rights or interests described herein shall not be construed to diminish any of Beneficiary's rights or priorities hereunder. Trustor hereby authorizes and empowers Beneficiary and irrevocably appoints Beneficiary its attorney-in-fact to execute and file, on Trustor's behalf, all financing statements and refilings and continuations thereof as Beneficiary deems necessary or advisable to create, preserve and protect the security interest created hereby.



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This Deed of Trust covers certain goods, which are or are to become fixtures related to the Real Property and CONSTITUTES A FIXTURE FILING with respect to such goods executed by Trustor, as debtor, in favor of Beneficiary, as secured party. For purposes of the Uniform Commercial Code, the following information is supplied:

Name and Address of Debtor: GP Properties Carefree Cave Creek, L.L.C., an Arizona limited liability company
P. O. Box 15195
Phoenix, AZ 85060

Name and Address of Record Owner: GP Properties Carefree Cave Creek, L.L.C., an Arizona limited liability company
P. O. Box 15195
Phoenix, AZ 85060

Description of Real Estate: See Exhibit A attached hereto.

Name and Address of Secured Party: Mortgages Ltd., as agent
55 E. Thomas Road
Phoenix, Arizona 85012

This Deed of Trust covers goods that are or are to become fixtures.

10. RELEASE AND RECONVEYANCE

a. The release provisions contained in this Deed of Trust are subject to subsequent modification by separate agreements, which include, but are not limited to, Equity-Flex® Advance Agreements and/or upon the subsequent funding of Delay-Flex® Mortgage Line advances.

b. **There are no partial release provisions (intentional).**

c. Upon payment in full and satisfaction of the Obligations, Beneficiary will surrender this Deed of Trust and the other Loan Documents to Trustee for cancellation, retention and payment of Trustee's fees, and Trustee shall release and reconvey, without covenant or warranty, express or implied, the Trust Property then held hereunder. The recitals in such reconveyance or any matters or facts shall be conclusive proof of the truthfulness thereof. The grantee in such reconveyance may be described as "the person or persons legally entitled thereto."

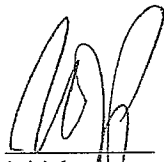
11. ASSIGNMENT OF RENTS, LEASES AND PROFITS

To facilitate payment and performance of the obligations under this Deed of Trust and the other Loan Documents, Trustor hereby absolutely sells, transfers and assigns to Beneficiary all right, title and interest of Trustor in and to the following:

a. All existing and future leases, subleases, licenses and other agreements for the use and occupancy of all or a portion of the Trust Property, whether written or oral and whether for a definite term or month-to-month, together with any and all extensions, modifications and renewals thereof (collectively, the "Leases"); and

b. All income, receipts, revenues, royalties, rents, issues, profits and benefits now or hereafter arising from or out of the Leases or from or out of the Trust Property or any part thereof (collectively, the "Rents").




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So long as there shall not have occurred an event of default under this Deed of Trust or any of the other Loan Documents, Trustor shall have the right to collect all Rents, and shall hold the same, in trust. Beneficiary may, at its option, upon default, at any time, without notice, either by person, by agent or by receiver appointed by a court, and without regard to the adequacy of any security for the indebtedness hereby secured or the solvency of Trustor, collect the Trust Property income (including the Rents) by any method authorized by law and apply the same, less costs and expenses of operation and collection, including attorneys' fees, Trustee's fees and Servicing Agent's administrative fees, upon any indebtedness secured hereby, Servicing Agent's administrative fees, upon any indebtedness secured hereby, and in such order as Beneficiary may determine. The entering upon and taking possession of the Trust Property, the collection of Trust Property income and the application thereof shall not cure or waive any default or notice of Trustee's sale or invalidate any act done pursuant to such notice. Beneficiary shall have the right to exercise all its rights as provided by A.R.S. §§ 33-702(B) and 33-807, which may be revised from time to time. It is expressly covenanted and agreed by the Trustor, that at the time of the execution and delivery of this Deed of Trust there has been no prepayment of any Rents by any of the tenants occupying the Trust Property or the Leases. It is further covenanted and agreed that Trustor, its successors or assigns, shall have no right, power or authority to alter, modify or amend the terms, or any of them, of the Lease in any particular whatsoever, without first obtaining the consent in writing of Beneficiary, its successors or assigns to such alteration, modification or amendment. Nothing herein contained shall be construed as making Beneficiary, or its successors or assigns, a mortgagee in possession, nor shall Beneficiary, or its successors or assigns be liable for laches, or failure to collect said rents, issues, profits, revenues, royalties, rights and benefits, and it is understood that Beneficiary, its successors or assigns, are to be account only for such sums as are actually collected.

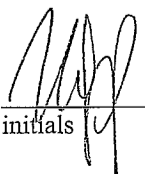
12. DEFAULT AND REMEDIES

a. Default. Among other things constituting a default under the provisions of the Loan Documents, Trustor shall be deemed in default upon the occurrence of any of the following events:

- (1) Trustor, third party borrower, any endorser or any guarantor fails to make payment of any indebtedness secured hereby in accordance with the Loan Documents;
- (2) Trustor, third party borrower, any endorser of the Note or any guarantor fails to perform any obligation required by and in accordance with the Loan Documents, or any representation by Trustor, third party borrower, any endorser of the Note or any guarantor in any of the Loan Documents is untrue;
- (3) The death, incapacity, dissolution, winding-up or termination of the existence of Trustor, third party borrower, any endorser of the Note or any guarantor;
- (4) The calling of a meeting of the creditors of Trustor, third party borrower, any endorser of the Note or any guarantor;
- (5) The making by Trustor, third party borrower, any endorser of the Note or any guarantor of an assignment for the benefit of any of its creditors;
- (6) Trustor, third party borrower, any endorser of the Note or any guarantor becomes insolvent;
- (7) Trustor, third party borrower, any endorser of the Note or any guarantor fails to pay its debts as they mature;
- (8) Trustor, third party borrower, any endorser of the Note or any guarantor admits in writing that such party is unable to pay such party's debts as they mature;
- (9) A receiver, trustee, custodian or conservator is appointed to manage over all or any part of the assets of Trustor, third party borrower, any endorser of the Note or any guarantor;
- (10) The occurrence of any material adverse change in the condition (financial or otherwise) of Trustor, third party Borrower, any endorser of the Note or any guarantor;
- (11) Beneficiary in good faith deems itself insecure or believes the prospect for payment or performance is impaired.

b. Acceleration. Upon the occurrence of any of the foregoing events of default, Beneficiary, without notice, may declare all sums secured hereby immediately due and payable and may apply or cause to be applied amounts in any Impound Account to the obligations secured by this Deed of Trust in any manner that Beneficiary elects. Notwithstanding anything in this Deed of Trust or any other Loan Document to the contrary: (a) it shall be a default under this Deed of Trust if Trustor, third party borrower, the Note's endorser or any guarantor becomes the subject of any bankruptcy or voluntary or involuntary insolvency proceeding, in or out of court, for the adjustment of debtor-creditor relations ("Insolvency Proceedings"); and (b) if the any Insolvency Proceedings occur, any obligation of Beneficiary to make further advances shall terminate, and all sums of principal and interest under the Note shall automatically become due and payable without notice of default, presentment or demand for payment, protest or notice of nonpayment or dishonor, or other notices or demands of any kind or character.




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**DEED OF TRUST, ASSIGNMENT OF RENTS AND LEASES,
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c. Trustee's Sale. Should Beneficiary elect to have the Trust Property sold by Trustee, Beneficiary shall deliver to Trustee written notice, setting forth the nature of the default, and of the election to cause the Trust Property to be sold. Beneficiary also shall deposit with Trustee this Deed of Trust, the Note and all other Loan Documents evidencing expenditures secured hereby. Trustee shall record and give notice of the Trustee's Sale in the manner required by law, and after the lapse of such time as may then be required by law, Trustee shall sell, in the manner required by law, the Trust Property at public auction, at the time and place fixed by the notice of Trustee's Sale to the highest bidder for cash in lawful money of the United States, payable at the time of sale. Notice to Trustor shall be given in accordance with the provisions of A.R.S. Sections 33-808 and 33-809. Trustee, at Trustee's discretion, may postpone or continue the sale from time to time by giving notice of postponement or continuance by public declaration at the time and place last appointed for the sale. Trustee shall deliver to the purchaser at the Trustee's Sale a Deed conveying the Trust Property, but without any covenant or warranty, expressed or implied. The recitals in such deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any persons, including Trustor, Trustee or Beneficiary, may purchase the Trust Property at the Trustee's Sale. Beneficiary may bid for and purchase the Trust Property and shall be entitled to apply all or any part of the indebtedness secured hereby as a credit against the purchase price. The purchaser at the Trustee's sale shall be entitled to immediate possession of the Trust Property as against the Trustee or other persons in possession and shall have a right to the summary proceedings to obtain possession provided in Title 12, Chapter 8, Article 4, Arizona Revised Statutes, together with costs and attorneys' fees accrued therefor. After deducting all Trustee's costs, fees and expenses and of this Deed of Trust, including the costs of evidence of title in connection with the sale, Beneficiary and Trustee's attorneys' fees and Servicing Agent's administrative fees, Trustee shall apply the sale proceeds to the payment of all sums then secured hereby and all other sums due under the terms hereof, with accrued interest, and then the remainder, if any, to the person or persons legally entitled thereto or as provided in A.R.S. § 33-812.

d. Deficiency Judgment. To the extent permitted by law, Beneficiary shall be entitled to a deficiency judgment against Trustor for any balance remaining due hereunder after a Trustee's sale of the Trust Property.

e. Foreclosure and Other Remedies. In lieu of a Trustee's sale, pursuant to the power of sale conferred hereby, this Deed of Trust may be foreclosed in the same manner provided by law for the foreclosure of mortgages on real property. Beneficiary shall also have the right to exercise any or all remedies available hereunder and at law or in equity, including all remedies of a secured party under the Uniform Commercial Code with respect to any personal property secured hereby, the appointment of a receiver, provisional remedies and injunctive relief. All Beneficiary's rights and remedies shall be cumulative.

f. Appointment of Receiver or Mortgagee in Possession. If an event of default is continuing or if Beneficiary shall have accelerated the indebtedness secured hereby, Beneficiary, upon application to a court of competent jurisdiction, shall be entitled as a matter of strict right, without notice, and without regard to the occupancy or value of any security for the indebtedness secured hereby or the insolvency of any party bound for its payment, to the appointment, at Beneficiary's option, of itself as mortgagee in possession, or of a receiver to take possession of and to operate the Trust Property, and to collect and apply the Rents. Beneficiary and such receiver and their representatives shall have no liability for any loss, damage, injury, cost or expense resulting from any action or omission which was taken or omitted in good faith.

13. SUCCESSOR TRUSTEE

Beneficiary may appoint a successor Trustee in the manner prescribed by law. A successor Trustee shall, without conveyance from the predecessor Trustee, succeed to all the predecessor's title, estate, rights, powers and duties. Trustee may resign at any time by complying with applicable law and by mailing or delivering notice thereof to Beneficiary and Trustor, and having so resigned shall be relieved of all liability and responsibility to Trustor, Beneficiary or otherwise hereunder. Any reference to "Trustee" herein shall include all successor trustees. Trustee shall not be liable for any action taken when acting in good faith, or upon any information supplied or direction given by Beneficiary.



**DEED OF TRUST, ASSIGNMENT OF RENTS AND LEASES,
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14. ALIENATION

The Trust Property and the obligations under this Deed of Trust are not alienable, assignable or transferable by Trustor. Upon the occurrence any of the following, without prior written consent of Beneficiary or its Servicing Agent:

a. Trustor sells, conveys, transfers, assigns, contracts for sale, leases with option to purchase or further encumbers the Trust Property or any part thereof, including any further assignment of the Trust Property's income, or a wraparound mortgage or purchase contract;

b. If Trustor is a corporation, the controlling interest in Trustor is sold, conveyed or transferred;

c. If Trustor is a limited liability company, any interest in Trustor is sold, conveyed or transferred;

or

d. If Trustor is a partnership, any general partnership interest, or the majority of limited parties interests, in Trustor is sold, conveyed or transferred, either voluntarily or involuntarily;

Beneficiary, without notice, shall have the right to accelerate all sums owed under the Loan Documents, which are secured by this Deed of Trust, and those sums shall become immediately due and payable to Beneficiary irrespective of their maturity date. This provision shall apply to each and every such sale, conveyance, transfer, lease, encumbrance or assignment, regardless as to whether Beneficiary has consented or waived its rights in connection with any previous sale, conveyance, transfer, lease, encumbrance or assignment.

15. THIRD PARTY BORROWER PROVISIONS.

The following provisions apply to the extent that a third party borrower has executed the Note:

a. Trustor waives each of the following:

(i) Any right to require Beneficiary to make presentments or demands or to give notices of any kind, including demand for performance, notice of non-performance, protest, notice of protest, notice of dishonor, notice of acceptance of this Deed of Trust, notice of the existence, creation or incurrence of existing or new debt, notice of modification, payment, default or change or action of any kind relating to the Obligations.

(ii) Any defense to liability on this Deed of Trust based on any disability or other defense of the third party borrower or based upon any cessation of the liability of the third party borrower to Beneficiary for any reason other than the payment of the Obligations in full.

(iii) Any right to require Beneficiary to proceed against the third party borrower.

(iv) Any right to require Beneficiary to proceed against any other security held from third party borrower or from Trustor.

(v) To the extent permitted by applicable law, the benefit of any statute of limitations pertaining to the Obligations or to this Deed of Trust or affecting Trustor's liability on this Deed of Trust or its enforcement.

(vi) Any defense based upon an election of remedies by Beneficiary, including any election to proceed against any collateral by judicial or nonjudicial foreclosure, whether real property or personal property, or by deed in lieu thereof, and whether or not every aspect of any foreclosure sale is commercially reasonable, and whether or not any such election of remedies destroys or otherwise impairs the subrogation rights of Trustor or the rights of Trustor to proceed against the third party borrower or any guarantor or Trustor for reimbursement, or both.

(vii) The benefits of any statutory provision limiting the liability of a surety, including the provisions of A.R.S Sections 12-1641 through 12-1644, A.R.S. Section 12-1566, A.R.S. Section 33-814, A.R.S. Section 44-142, A.R.S. Section 47-3605 and Rule 17(f) of the Arizona Rules of Civil Procedure.



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Handwritten initials in black ink, appearing to be 'APD', written over a horizontal line. Below the line, the word 'initials' is printed in a small, lowercase font.

**DEED OF TRUST, ASSIGNMENT OF RENTS AND LEASES,
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(viii) Any defense based upon the application by third party borrower of the proceeds of the loan evidenced by the Note for purposes other than the purposes represented by third party borrower to Beneficiary or intended or understood by Beneficiary or Trustor.

b. Trustor acknowledges and agrees that Beneficiary, without affecting Trustor's liability, may take any one or more of the following actions, at any one or more times:

(i) Renew, compromise, extend, accelerate or otherwise change the time for payment of, or the terms of, all or any part of the Obligations.

(ii) Take additional security for the payment of the Obligations, and exchange, enforce, alter or release all or any part of any security.

(iii) Add, release or substitute any one or more other third party trustors or guarantors.

(iv) Assign the Obligations in whole or part.

16. GENERAL

a. **Time.** Time is of the essence in all aspects of this Deed of Trust and the other Loan Documents.

b. **Liability.** This Deed of Trust applies to, inures to the benefit of and binds Trustor, Trustee and Beneficiary (collectively, the "Parties") and their heirs, personal representatives, successors, permitted assigns, beneficiaries and trustees. All liability created hereunder shall be joint and several.

c. **Assignability.** Beneficiary and Trustee may assign their rights and obligations under this Deed of Trust without prior notice to Trustor. "Beneficiary" shall include the owner and holder of the Note secured hereby, whether or not named as Beneficiary herein.

d. **Servicing Agent.** Trustor acknowledges that Mortgages Ltd. is the Servicing Agent and may enforce the terms of this Deed of Trust and the other Loan Documents on behalf of Beneficiary.

e. **Severability.** If any term or other provision of this Deed of Trust or any other Loan Document is declared invalid, illegal or incapable of being enforced by any rule of law or public policy, all other conditions and provisions of this Deed of Trust shall nevertheless remain in full force and effect.

f. **Law.** This Deed of Trust shall be governed by, construed and enforced in accordance with the laws of the State of Arizona, without regard to the choice of law rules of the State of Arizona. In the event any statute or law referred to herein is subsequently amended or renumbered, the statute as amended or renumbered shall be intended by the Parties to be referred to herein, thereafter, and should said statute or law be repealed, if law permits, that statute or law as it exists on the date hereof is intended to be a part hereof.

g. **Jurisdiction and Venue.** Trustor hereby submits to the jurisdiction and venue of any Arizona State or Federal Court sitting in the City of Phoenix in any action or proceeding arising out of or relating to this Deed of Trust. Trustor hereby waives the defense of an inconvenient forum.

h. **Jury Trial Waiver.** Trustor, and Beneficiary, by its acceptance of this Deed of Trust, hereby waive their respective rights to a trial by jury in any action or proceeding based upon, or related to, the subject matter of this Deed of Trust and the business relationship that is being established. This waiver is knowingly, intentionally, voluntarily and irrevocably made by Trustor and Beneficiary, and Trustor acknowledges that neither Beneficiary, nor any person acting on behalf of Beneficiary, has made any representations of fact to include this waiver of trial by jury or has taken any actions which in any way modify or nullify its effect. Trustor and Beneficiary acknowledge that this waiver is a material inducement to enter into a business relationship, that each of them has already relied on this waiver in entering into this Deed of Trust and that each of them will continue to rely on this waiver in their related future dealings.




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i. Promotional Information. Beneficiary shall have the right to release information related to this Deed of Trust and the other Loan Documents ("Promotional Information"), including photographs of the Trust Property, characteristics of the Trust Property, Loan characteristics, financing terms and aspects of underwriting, for advertising, marketing and other promotional purposes, such as commercials, advertising fliers, trade articles, Internet releases and public presentations. Beneficiary shall not be held liable to Trustor for the release of Promotional Information.

j. Modification. This Deed of Trust may be amended, modified, superseded, canceled, renewed or extended and the terms or covenants hereof may be waived only by a written instrument executed by all Parties.

k. Waiver. The failure of Beneficiary, at any time or times, to require performance of any provision of this Deed of Trust shall in no manner affect the right of Beneficiary at a later time to enforce that provision. Further, if payment of any sum secured hereby is accepted after its due date, Beneficiary does not waive its right either to require prompt payment when due of all other sums or to declare a default for failure to pay as required by the Loan Documents. No waiver by Beneficiary of the breach of any term or covenant contained in this Deed of Trust, whether by conduct or otherwise, in any one or more instances, shall be deemed to be, or construed as, a further or continuing waiver by Beneficiary of any such breach, or a waiver of the breach of any other term or covenant contained in this Deed of Trust.

l. Waiver of Statute of Limitations. To the extent permitted by applicable law, Trustor hereby waives the right to assert any statute of limitations as a bar to the enforcement of the lien created by any of the Loan Documents or to any action brought to enforce the Note or any other obligations secured by any of the Loan Documents.

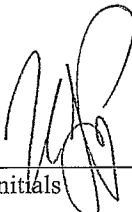
m. Waiver of Homestead and Redemption. Trustor hereby waives all right of homestead exemption in the Trust Property. Trustor hereby waives all right of redemption on behalf of Trustor and on behalf of all other persons acquiring any interest or title in the Trust Property subsequent to the date of this Deed of Trust, except decree or judgment creditors of Trustor.

n. Interpretation. As used in this Deed of Trust, the word "include(s)" means "include(s), without limitation," and the word "including" means "including, without limitation."

o. Variable Rate. THIS DEED OF TRUST MAY SECURE A VARIABLE INTEREST RATE LOAN.

SEE ATTACHED SIGNATURE PAGE




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DEED OF TRUST, ASSIGNMENT OF RENTS AND LEASES,
SECURITY AGREEMENT AND FIXTURE FILING

Loan No. 860206

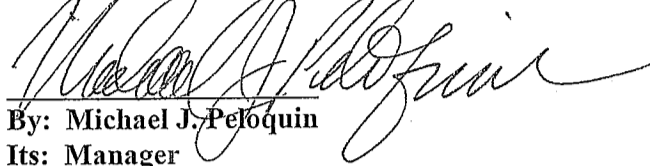
July 18, 2007

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IN WITNESS WHEREOF, this Deed of Trust has been executed as of the date set forth on the first page.

TRUSTOR:

GP Properties Carefree Cave Creek, L.L.C., an Arizona limited liability company

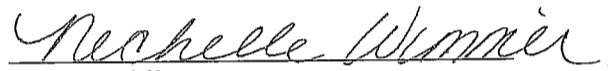


By: Michael J. Peloquin

Its: Manager

STATE OF AZ)
)ss
COUNTY OF MARICOPA)

The foregoing instrument was acknowledged before me 19 day of July, 2007 by Michael J. Peloquin of GP Properties Carefree Cave Creek, L.L.C., an Arizona limited liability company on behalf of the LLC


Notary Public

My Commission Expires:

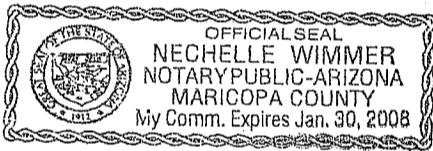


EXHIBIT "A"

Loan No.: 860206
Borrower: GP Properties Carefree Cave Creek, L.L.C., an Arizona limited liability company

That portion of Section 3, Township 5 North, Range 4 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, more particularly described as follows:

COMMENCING at the Southeast corner of said Section 3;

thence South 89 degrees 49 minutes 00 seconds West along the South line of said Section 3; a distance of 667.16 feet to the TRUE POINT OF BEGINNING;

thence North 00 degrees 07 minutes 00 seconds East, a distance of 772.63 feet;

thence South 89 degrees 49 minutes 00 seconds West, parallel with the South line of said Section 3, a distance of 677.16 feet;

thence South 00 degrees 07 minutes 00 seconds West parallel to the East line of the within described tract, a distance of 772.63 feet to a point on the South line of said Section 3;

thence North 89 degrees 49 minutes 00 seconds East along the South line of said Section 3 to the TRUE POINT OF BEGINNING.

APN: 216-32-008J / Maricopa

Ex. 21

SERVICING AGENT AGREEMENT

Loan No. 860206

July 18, 2007

“Borrower” (individually and collectively):

GP Properties Carefree Cave Creek, L.L.C., an Arizona limited liability company

“Lender”: Scott M. Coles or Christopher J. Olson, Trustees of the Mortgages Ltd. 401(k) Plan

“Servicing Agent”: Mortgages Ltd., an Arizona corporation.

In consideration of the reciprocal promises contained herein, Borrower, Lender and Servicing Agent (collectively, the “Parties”) hereby agree to the following.

1. APPOINTMENT AND AUTHORITY OF SERVICING AGENT

Trustor and Beneficiary hereby appoint Mortgages Ltd. to act as the Servicing Agent with regard to the Loan. Servicing Agent is authorized to perform any and all of the following tasks:

a. Hold the originals of the Promissory Note, Deed of Trust, Fee Schedule and all other documents executed by the Borrower or any other party in connection with the Loan (collectively, the “Loan Documents”).

b. Service and administer the Loan in any manner provided by the Loan Documents.

c. Process any and all Loan payments from Borrower or other payor.

d. Assess and process all fees and charges set forth in the Loan Documents including, but not limited to, administrative fees, notice fees and late charges.

e. Apply any funds received by Servicing Agent to the fees and costs incurred or assessed by Beneficiary before applying the funds to the amounts owing under the Loan Documents (including notice fees, service fees, administrative fees, inspection fees, appraisal fees, expert fees, attorneys’ fees, litigation costs, forced placed insurance premiums, late charges and guarantor collection expenses (*as described herein*)). Any insurance placed by Servicing Agent may be placed with an affiliate of servicing Agent or a captive insurance company.

f. Retain deposits received under the Loan Documents as impounds for the payment of the following:

- (1) Future payments due;
- (2) Taxes and assessments;
- (3) Construction;
- (4) Insurance premiums;
- (5) Extension fees;
- (6) Administration fees; **and**
- (7) Any other expenditure required under the Loan Documents.


(Any impound account may be held in the name of Servicing Agent for the benefit of Lender and others, and Servicing Agent may apply and/or disburse any such deposits in accordance with the Loan Documents).

g. Evaluate, effectuate and process an assumption of the Loan, and assess and receive an assumption fee and/or an interest rate increase.

h. Sign, file and record all documents which are reasonable or desirable to facilitate servicing or the loan, including:

- (1) deeds of release and reconveyance (full and partial);
- (2) endorsements and assignments of Loan Documents (including assignments of all or a portion of the beneficial interest of any deed of trust included in the Loan Documents);
- (3) corrections, amendments, **modifications** and extensions of Loan Documents;




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SERVICING AGENT AGREEMENT

Loan No. 860206

July 18, 2007

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- (4) disclaimers;
- (5) financing statements; and
- (6) assumptions and various certifications.

i. Incur all fees, costs and expenses deemed necessary by Servicing Agent to protect Beneficiary's interests under the Loan Documents;

j. Incur all fees, costs and expenses deemed necessary by Servicing Agent to protect the property securing the Loan (the "Trust Property"), including insurance premiums, receiver fees, property manager fees, maintenance expenses and security expenses.

k. Obtain forced placed insurance on any portion of the Trust Property in the event the Borrower fails to maintain insurance as required by the Loan Documents.

l. Sign, file and record any and all documents reasonable or desirable to protect Lender's interests and/or pursue Lender's remedies upon default, including:

- (1) a statement of breach or non-performance;
- (2) a substitution of trustee;
- (3) a notice of election to foreclose;
- (4) a notice of trustee's sale;
- (5) an affidavit of non-military service;
- (6) a notice of proposed disposition of collateral and various verifications.

m. In the event of default and at Servicing Agent's discretion, commence foreclosure of the Trust Property, initiate a trustee's sale and/or institute any proceeding necessary to collect the sums due under the Loan Documents or to enforce any provision therein, including:

- (1) pursuing an action against any borrower or guarantor of the Loan;
- (2) pursuing injunctive relief, the appointment of a receiver, provisional remedies or a deficiency judgment;
- (3) pursuing claims in bankruptcy court;
- (4) pursuing an appeal;
- (5) collecting rents; and
- (6) taking possession or operating the Trust Property).

n. In the event of default and at Servicing Agent's discretion effect a sale of Lender's interest, in whole or in part, in the Loan Documents at the expense of Trustor which expense shall be secured by the Deed of Trust.

o. Retain attorneys, trustees and other agents necessary to collect the sums due under the Loan Documents, to protect the Trust Property and/or to proceed with foreclosure of the Trust Property, initiate a trustee's sale and/or institute, defend, appear or otherwise participate in any proceeding (legal, administrative or otherwise) that Servicing Agent deems reasonable and desirable.

p. Incur and pay such costs, expenses and fees as Servicing Agent deems appropriate in undertaking and pursuing enforcement of the Loan Documents and/or collection of amounts owed thereunder, including attorney fees, receiver fees, trustee fees, expert fees and any fees, costs and expenses incurred in an effort to collect against any borrower or any guarantor of the Loan.

2. ACCOMMODATION.

Servicing Agent provides its services as an accommodation only, and shall incur no responsibility or liability to any person, including, Borrower and Lender for any act or omission by Servicing Agent or any person or entity active for Servicing Agent.




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SERVICING AGENT AGREEMENT

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3. ASSIGNMENT, RESIGNATION AND TERMINATION.

a. Servicing Agent shall have the right to assign the collection account or resign as Servicing Agent at any time, provided that Servicing Agent notifies Lender and Borrower of such assignment or resignation in writing.

(1) If Servicing Agent assigns the collection account, Servicing Agent will deliver all Loan Documents, directions and account records to assignee, at which time Servicing Agent will have no further duties or liabilities hereunder.

(2) If Servicing Agent resigns, Lender shall have the right to designate a new collection agent and Servicing Agent shall deliver to Lender all Loan Documents, directions and account records to Lender or the newly designated collection agent, at which time Servicing Agent will have no further duties or liabilities hereunder.

b. If that the ownership of the Trust Property becomes vested in the Lender by trustee's sale, judicial foreclosure or otherwise, then this Agreement shall automatically terminate and Servicing Agent will have no further duties or liabilities hereunder.

c. Upon Servicing Agent's assignment or resignation, or termination of this Agreement, Borrower shall immediately reimburse Lender for all fees, costs and expenses incurred hereunder. After such reimbursement and payment, Borrower shall remain obligated to indemnify, in accordance with Section 4 hereof, for liabilities which accrued prior to such resignation or termination.

4. INDEMNITY

a. Lender and Borrower shall immediately indemnify and hold Servicing Agent harmless for, from and against any and all liabilities incurred by Servicing Agent in performing under the terms of this Agreement or otherwise arising, directly or indirectly, from the Loan or Loan Documents, including all attorneys' fees, insurance premiums, expenses, costs, damages and expenses.

b. In the event that Servicing Agent requests that Lender and/or Borrower pay any amount owed hereunder, Lender and/or Borrower shall remit that amount to Servicing Agent within 5 business days of Servicing Agent's request.

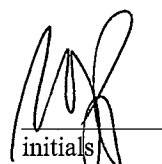
5. BORROWER'S OBLIGATIONS

a. **Standard Fees and Costs.** Borrower shall pay to Servicing Agent, for the account of Beneficiary, its current fees and costs, including those items set forth in the Fee Schedule received by Borrower. The Fee Schedule is subject to change without notice as to the amounts and items included therein. Borrower shall pay a servicing set-up fee of **\$1,500.00**, and a monthly servicing fee of **\$30.00**. When the Loan is paid in full, Borrower shall pay a Close Out Fee of **\$1,500.00**, which is in addition to the monthly servicing fee. There will be a **\$30.00** charge to Borrower for each payoff request.

b. **Late Fees and Notices.** In the event that a regular payment is not received by Servicing Agent on or before the fifth calendar day after the due date, a late charge of **35%** of the monthly Principal and Interest payment will be charged and Borrower shall pay that amount to Servicing Agent, for the account of Lender. The parties agree that this late payment charge is intended to compensate Lender for losses incurred as a result of the late payment and that such late payment charge does not constitute and shall not be construed as a penalty. Servicing Agent will charge **\$125.00**, plus postage, for each notice sent regarding late payments, nonpayment of taxes, assessments, insurance premiums or any other matter that affects the Trust Property. Servicing Agent will charge **\$25.00** for each notice sent regarding returned checks, plus any actual charges assessed by the financial institution of the Servicing Agent as a result of each returned check. These notice fees are subject to change at the Servicing Agent's discretion. In the event that the Loan is not paid in full by the maturity date, Borrower acknowledges that a late charge will be assessed, for the account of Lender, in the amount of **3%** of the remaining principal balance of the Loan on the first day after Borrower's failure to pay and on the same day each month thereafter, until the final payment is received by Servicing Agent. All fees and charges are independent of one another and any default interest assessed; thus, a matured loan shall accrue default interest, maturity late fees and any other applicable fees and charges.

c. **Payment Statements.** Servicing Agent, as a convenience only, will provide to Borrower a monthly payment statement. Borrower acknowledges and agrees that it is obligated to make all payments when due under the Loan Documents, whether or not such payment statement is received by Borrower.




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SERVICING AGENT AGREEMENT

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6. PARTIAL AND FINAL PAYMENTS

a. Partial Payments. In the event that Servicing Agent receives and processes a partial payment of any amount due under the Loan Documents, such act shall not constitute full payment, estoppel or a waiver of any right of Lender or Servicing Agent to recover the deficiency or to require future payments to be made in full.

b. Final Payment. In the event that the final sum to pay the principal balance in total is received by Servicing Agent **after 1:00 p.m.**, interest shall be charged through the next normal business day.

7. GENERAL PROVISIONS

a. This Agreement is binding on the Parties and their heirs, personal representatives, successors, permitted assigns, beneficiaries and trustees.

b. This Agreement and the benefits hereunder are **not** assignable or transferable by Borrower. Lender may assign Lender's rights and obligations under this Agreement without prior notice to Borrower. Lender, however, must give Servicing Agent prior written notice. After assignment, Lender shall have no further duties or liabilities to Borrower.

c. This Agreement shall be governed by, construed and enforced in accordance with the laws of the State of Arizona, without regard to the choice of law rules of the State of Arizona. The Parties hereby submit to the exclusive jurisdiction of any Arizona State or Federal Court sitting in the City of Phoenix in any action or proceeding arising out of or relating to this Agreement. The Parties waive the defense of an inconvenient forum.

d. The Parties voluntarily, knowingly, irrevocably and unconditionally waive the right to a jury trial on any contested matters arising from this Agreement or the Loan Documents.

e. This Agreement sets forth the entire agreement and understanding of the Parties with respect to the subject matter hereof and is to be read in consistency and accordance with the other Loan Documents.

f. This Agreement may be amended, modified, superseded, canceled, renewed or extended and the terms and covenants hereof may be waived only by a written instrument signed by all of the parties hereto. The failure of Servicing Agent or Beneficiary at any time or times to require performance of any provision of this Agreement shall in no manner affect the right of Servicing Agent at a later time to enforce the same. No waiver by Beneficiary or Servicing Agent of the breach of any term or covenant contained in this Agreement, whether by conduct or otherwise, in any one or more instances, shall be deemed to be, or construed as, a further or continuing waiver by Servicing Agent or Lender of any such breach, or a waiver of the breach of any other term or covenant contained in this Agreement.

g. If any term or other provision of this Agreement is declared invalid, illegal or incapable of being enforced by any rule of law or public policy, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect.

h. As used in this Agreement, the word "include(s)" means "Include(s), without limitation," and the word "Including" means "including, but without limitation."




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SERVICING AGENT AGREEMENT

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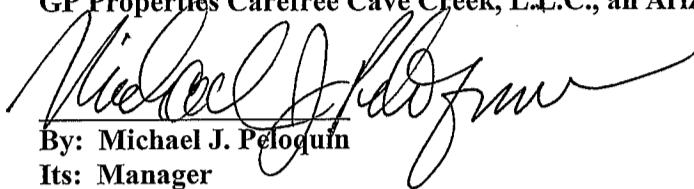
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i. No remedy herein conferred upon or reserved to Servicing Agent is intended to be exclusive of any other remedy herein or by law provided or permitted, but each shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by stature.

This Agreement is effective on the date set forth on the first page.

BORROWER:

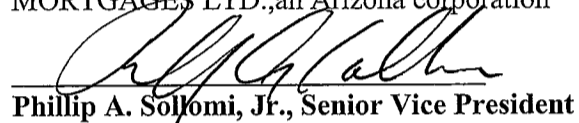
GP Properties Carefree Cave Creek, L.L.C., an Arizona limited liability company



By: Michael J. Pelouquin
Its: Manager

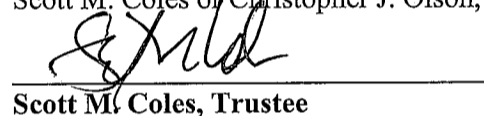
SERVICING AGENT:

MORTGAGES LTD., an Arizona corporation


Phillip A. Sollomi, Jr., Senior Vice President

LENDER:

Scott M. Coles or Christopher J. Olson, Trustees of the Mortgages Ltd. 401(k) Plan


Scott M. Coles, Trustee



Ex. 22

Delay-Flex® Mortgage Line
PROMISSORY NOTE
Interest Only/Commercial

Loan No. 859606

July 5, 2007

Loan Amount: \$11,000,000.00

“Maker” (individually and collectively):

Vanderbilt Farms, L.L.C., an Arizona limited liability company and Vistoso Partners, L.L.C., an Arizona limited liability company
1121 W. Warner Rd. Ste. 109
Tempe, AZ 85284

“Holder”:
Scott M. Coles or Christopher J. Olson, CPA, Trustees of the Mortgages Ltd. 401(k) Plan

1. PROMISE TO PAY

a. As consideration for the receipt of a loan and other value, Maker hereby promises to pay the outstanding balance of the Designated Loan Amount \$11,000,000.00 in United States currency (the "Principal"), plus interest, to the order of the Holder, **Scott M. Coles or Christopher J. Olson, CPA, Trustees of the Mortgages Ltd. 401(k) Plan**, or any subsequent holder of this Promissory Note (this "Note"). Maker understands and agrees that **Scott M. Coles or Christopher J. Olson, CPA, Trustees of the Mortgages Ltd. 401(k) Plan**, may subsequently transfer this Note, subject to the terms and conditions contained herein. **Scott M. Coles or Christopher J. Olson, CPA, Trustees of the Mortgages Ltd. 401(k) Plan**, or anyone who takes this Note by transfer and who is entitled to receive payments under this Note, is referred to hereinafter as the "Holder."

b. In connection with this Note and on the same date, Maker or a third party trustor executed a Deed of Trust, Assignment of Rents and Leases, Security Agreement and Fixture Filing (the "Deed of Trust") securing this Note (the "Deed of Trust") and a Servicing Agent Agreement. This Note, the Deed of Trust, the Servicing Agent Agreement and any other agreement, document or instrument evidencing, governing or securing the payment of the indebtedness evidenced by the Note are collectively referred to herein as the "Loan Documents". Maker understands and agrees that the Servicing Agent Agreement, which is incorporated herein by reference, authorizes the Servicing Agent appointed thereunder to, among other things, act on the Holder's behalf in accordance with this Note.

2. INTEREST

Interest will be charged on that portion of the Principal which has been committed by Holder, beginning, at Holder's discretion, on the Loan Funding Date or the Commitment Termination Date (in the event that the Loan closing was delayed for any reason other than one caused by Holder) continuing until the Principal has been paid in full. 'The Loan Funding Date' is the date upon which Lender allocates and designates sums sufficient to fund this Loan. The 'Commitment Termination Date' is the date upon which Lender's Loan commitment expires. Beginning on the Loan Funding Date or the Commitment Termination Date, as the case may be, and so long as no event of default exists, interest will accrue and be paid at the rate of 13.5% per annum. In the event of default, Maker agrees to pay the Default Interest Rate as set forth herein.

3. DELAY-FLEX® MORTGAGE LINE

a. **Purpose.** Under the Delay-Flex® Mortgage Line, Maker may, subject to the conditions set forth in the Loan Documents and described herein, obtain the Delay-Flex amount designated as such and in accordance to the portions set-forth in the Delay-Flex Funding Schedule outlined in the Delay-Flex Disbursement Summary executed in connection with this Loan.

b. **The Funding of each Delay-Flex portion is subject to Holder's discretionary approval and satisfaction of the following conditions:**



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PROMISSORY NOTE

Loan No. 859606

July 5, 2007

Page 2

- (1) There is no then-existing default under any of the Loan Documents and there exist no facts which, with the giving of notice or passage of time, would constitute a default under any of the Loan Documents;
- (2) Holder, or its agent, has conducted an inspection of the Trust Property and the present condition of the Trust Property has been approved;
- (3) The increased loan amount following the funding of each Delay-Flex portion, if made, will not exceed Holder's lending guidelines for the Trust Property;
- (4) Holder may further condition any delayed funding on endorsements to the Holders Title Policy insuring the continued validity and priority of the Deed of Trust, Holder's approval of Maker's proposed utilization of the Delay-Flex proceeds and any other reasonable assurances or conditions Holder may require or impose;
- (5) Beneficiary shall fund each Delay-Flex portion on a date set by Beneficiary at its sole and absolute discretion, which will occur no earlier than the 30th day prior to the Fund Date set forth in the Delay-Flex Funding Schedule and no later than the 30th consecutive day following the Fund Date set forth in the Delay-Flex Funding Schedule; **and**
- (6) **Funding the total Delay-Flex portion of the loan is not to exceed twelve (12) months from the date of Loan closing. The Delay-Flex Funding Schedule must be completed by Loan closing and included in the Disbursement Summary. Any modification to the Delay-Flex Funding Schedule requires written approval from Holder or Servicing Agent.**

c. **Deed of Trust.** The Deed of Trust secures the entire Designated Loan Amount regardless of the amount of the Initial Funding or any subsequent fundings on the Loan account. However, the payoff amount required to release the Deed of Trust shall be based on the actual outstanding balance of the Loan account at the time of payoff.

4. PAYMENTS

a. **Time of Payments.** Maker will pay **interest only** by making monthly payments on the **1st** day of each month beginning **September 1, 2007**. Maker will continue to make monthly payments until Maker has paid all of the Principal, interest and any other charges that Maker may owe under this Note or the other Loan Documents. Monthly payments received by Holder in advance will not be posted to Maker's account greater than 14 calendar days prior to the payment due date.

b. Maker's monthly payments will be applied to the following in such order as Holder, in its sole discretion, may determine

- (i) To the payment of any costs, fees or other charges incurred under this Note and the other Loan Documents;
- (ii) To the payment of accrued interest; **and**
- (iii) To the reduction of the Principal balance.

c. All remaining Principal, together with accrued unpaid interest and any other amounts due hereunder or under the Loan Documents (collectively, the "Maker's Liabilities") shall be due and payable in full on **July 11, 2008** (the "Maturity Date"), unless Maker's Liabilities become due and payable sooner because of acceleration, in which case Maker's Liabilities shall be due and payable in full on the date of such acceleration. Maker understands that the Maturity Date requires Maker to pay all Principal, interest and all other charges then due.

d. **Place of Payments.** Maker will make all monthly payments to Servicing Agent at 55 E. Thomas Road, Phoenix, Arizona 85012, or at a different address if Servicing Agent has given Maker written notice of a different address.

5. RIGHT TO PREPAY AND PREPAYMENT PREMIUM

a. Maker has the right to make payments of Principal at any time before they are due ("Prepayment") provided that:

- (1) All sums due under the Note are current;
- (2) Prepayment is made on a monthly payment due date;



PROMISSORY NOTE

Loan No. 859606

July 5, 2007

Page 3

(3) Payment of a prepayment premium equal to 5% of the Principal balance of the Note before reduction, if Prepayment is made before **July 11, 2007**; and

(4) At the time of making a Prepayment, Maker advises Servicing Agent, in writing that Maker is making a Prepayment.

b. Any payment of Principal only is considered a Prepayment. Holder will use all of Maker's Prepayments to reduce the amount of Principal that Maker owes under this Note. If Maker makes a partial Prepayment, there may be a change in the amount of Maker's monthly payment.

6. LOAN CHARGES

a. **Note Interest Rate.** If Holder charges or if Maker pays any fees, charges or other sums pursuant to this Note or any other Loan Documents which, under the law, may be deemed to be interest, then the interest rate set forth in Section 3 above shall be deemed to be increased to include such additional interest. Therefore, if it is determined that the rate of interest applicable to this Note is greater than the rate of interest stated in Section 3 above, then the actual rate thus determined shall become the agreed upon and contracted rate of interest for this Note.

b. **Interpretation and Remedy.** Notwithstanding any provision herein or in any of the Loan Documents, the total liability for payments in the nature of interest shall not exceed the limits now imposed by the usury laws of Arizona, if any. If a law, which applies to this Note and which sets maximum loan charges, is finally interpreted so that the interest or other loan charges collected or to be collected in connection with this Note exceed the permitted limits, then: (i) loan charges shall be reduced by Holder in an amount sufficient to reduce the loan charges to the permitted limit; and (ii) any sums already collected from Maker which exceeded permitted limits will be refunded to Maker. Holder may choose to make this refund by reducing the Principal Maker owes under this Note or by making a direct payment to Maker. If a refund reduces Principal, then the reduction will be treated as a partial Prepayment and the provisions of 5 will not apply.

7. MAKER'S FAILURE TO PAY AS REQUIRED

a. **Late Charge for Overdue Payments.** If Holder has not received the full amount of any of Maker's monthly payments by the close of business on a date which is five (5) calendar days after the date it is due, Maker will pay a late charge to **Holder**. The amount of the late charge will be 35% of the monthly Principal and Interest payment. In the event that this Note is not paid in full by the Maturity Date, Maker acknowledges that a late charge will be assessed in the amount of 3% of the remaining Principal balance on the next day following the Maturity Date and on the same day each month thereafter until the Note is paid in full.

b. **Default.** A default under this Note if exists if any of the following occurs:

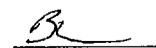
- (i) Maker Fails to pay the full amount of each monthly payment on or before the date it is due;
- (ii) Maker Fails to pay all sums due as of the Maturity Date;
- (iii) Maker Fails to pay all sums required by any other Loan Documents;
- (iv) Maker Fails to perform or observe any covenants or obligations set forth herein or in any other Loan Documents; or
- (v) Any default exists under and of the other Loan Documents.

c. **Cross Default.** In the event that Maker has secured or secures additional loans through Mortgages Ltd. (the "Additional Loans", including Loan Nos. 844006, 850206, 857306, 857406 and 858006), regardless as to whether Mortgages Ltd. has assigned its interests in the Additional Loans or this Loan, then a default in any Additional Loan shall constitute a default in this Loan and a default in this Loan shall constitute a default in the Additional Loans.

d. **Acceleration.** If a default exists, then Holder may accelerate the Maturity Date and declare that all sums owing under this Note and the other Loan Documents are immediately due and payable, without notice.

e. **No Waiver By Holder.** Failure of Holder, for any period of time or on more that one occasion, to exercise its option to accelerate the Maturity Date shall not constitute a waiver of the right to exercise the same at any time during the continued existence of an event of default or any subsequent event of default.




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PROMISSORY NOTE

Loan No. 859606

July 5, 2007

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f. **Payment of Holder's Costs and Expenses.** If an event of default occurs, Maker shall pay all costs of enforcement, collection and preparation therefor, whether or not any action or proceeding is commenced in any court and, if commenced, during all appeals, including attorneys' fees, guarantor collection expenses (as described in the Servicing Agent Agreement), appraisal fees, inspection fees, expert witness fees, foreclosure processing fees, litigation costs and all other related expenses (collectively, "Default Costs"). Maker, at the option of Holder, shall appear and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Holder and shall pay all costs and expenses of Holder, including the cost of evidence of title and attorneys' fees, in any such action or proceeding in which Holder may appear or be named, with interest thereon at the Default Interest Rate from the date incurred or expended until paid in full.

g. **Default Interest.** If a default exists, then (in addition to the late charge as stated in Section 7(a) above) the interest rate on the unpaid Principal shall be **increased to 27% per annum** (the "Default Interest Rate") commencing on the date through which interest was last paid, and shall continue, at the option of the Holder, until all payments have been made current, all sums due under this Note and the other Loan Documents have been paid in full and/or all non-monetary defaults under the Loan Documents have been cured to the Holder's satisfaction. Any advances made by Holder, pursuant to the terms of the Loan Documents, and all Default Costs shall accrue interest at the Default Interest Rate. In the event Maker files or is involuntarily placed in bankruptcy, Maker hereby agrees that Holder shall be entitled to interest on all Loan arrearages of whatever nature at the Default Interest Rate.

8. NOTICES

Unless applicable law requires a different method, any notice that must be given to Maker under this Note will be given by mailing it by first class mail or by delivering it to Maker at the address stated above or at a different address if Maker gives Servicing Agent written notice of a different address. Any notice that must be given to Holder shall be given by mailing it by first class mail to Servicing Agent, at 55 E. Thomas Road, Phoenix, Arizona 85012, or at a different address if Servicing Agent has given Maker written notice of a different address.

9. OBLIGATIONS OF PERSONS UNDER THIS NOTE

Any person who is a guarantor, surety or indorser of this Note is also obligated to perform under the terms of this Note. Any subsequent person who takes over Maker's rights under this Note by whatever means, including the obligations of a guarantor, surety or indorser of this Note, is also bound by all of the promises and liabilities created by this Note and the other Loan Documents. Holder may enforce its rights under this Note against each Maker or successor, jointly and severally. This means that each signer may be required to pay all sums owed under this Note irrespective of the type, value or ownership of the property securing the Note.

10. WAIVERS

Maker, for itself and all endorsers, guarantors and sureties of this Note, and their heirs, personal representatives, successors, assigns, beneficiaries and trustees, hereby waives presentment for payment, demand, notice of nonpayment, notice of dishonor, protest of any dishonor, notice of protest and protest of this Note, and all other notices in connection with the delivery, acceptance, performance, default or enforcement of the payment of this Note, and agrees that their respective liability shall be unconditional and without regard to the liability of any other party and shall not be in any manner affected by any indulgence, extension of time, renewal, waiver or modification granted or consented to by Holder. Maker, for itself and all endorsers, guarantors and sureties of the Note, and their heirs, personal representatives, successors, assigns, beneficiaries and trustees, hereby consents to every extension of time, renewal, waiver or modification that may be granted by Holder with respect to the payment or other provisions of this Note, and to the release of any makers, endorsers, guarantors or sureties, and of any collateral given to secure the payment hereof, or any part hereof, with or without substitution, and agrees that additional makers, endorsers, guarantors or sureties may become parties hereto without notice to Maker or to any endorser, guarantor or surety and without affecting the liability of any of them.

11. SECURITY

This Note and the other Loan Documents, including, among others, the Deed of Trust, were executed by Maker and, if necessary, various other parties to protect Holder from possible losses which might result if Maker does not perform the obligations set forth in this Note. The Loan Documents describe how, and under what conditions, Maker may be required to make immediate payment in full of all sums Maker owes under this Note. Some of those conditions, but not all, are described as follows:



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PROMISSORY NOTE

Loan No. 859606

July 5, 2007

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a. If Maker or another party, such as a third party trustor of the Deed of Trust securing this Note, sells, conveys, transfers, assigns, contracts for sale, leases with option to purchase or further encumbers the property securing the Note (the "Secured Property") or any part thereof, including, but not limited to, any further assignment of the Secured Property's income, wraparound mortgage or purchase contract;

b. If Maker is a limited liability company and any ownership interest in Maker is sold, conveyed or transferred;

c. If Maker is a partnership and any general partnership interest in Maker is sold, conveyed or transferred, either voluntarily or involuntarily without the prior written consent of Holder; or

d. If Maker is a corporation and the controlling interest in Maker is sold, conveyed or transferred.

Upon the occurrence of any of the above or any other triggering events set forth in the Loan Documents, Holder, at its option, shall have the right to accelerate the sums owing under the Note and those sums shall become immediately due and payable to Holder. This provision shall apply to each and every such sale, conveyance, transfer, lease, encumbrance or assignment, regardless as to whether Holder has consented or waived its rights in connection with any such previous sale, conveyance, transfer, lease, encumbrance or assignment by Maker.

12. TIME

Time is of the essence in all aspects of this Note and the Loan Documents.

13. GENERAL

a. This Note is binding on Maker and Maker's heirs, personal representatives, successors, permitted assigns, beneficiaries and trustees.

b. This Note and the benefits hereunder are not assignable or transferable by Maker. However, Holder may assign its rights under this Note and the other Loan Documents without prior notice to Maker.

c. Maker acknowledges that Mortgages Ltd. is Holder's Servicing Agent.

d. This Note shall be governed by, construed and enforced in accordance with the laws of the State of Arizona, without regard to the choice of law rules of the State of Arizona. Maker hereby submits to the jurisdiction of any Arizona State or Federal Court sitting in the City of Phoenix in any action or proceeding arising out of or relating to this Note. Maker hereby waives the defense of an inconvenient forum.

e. Maker, and Holder by its acceptance of this Note, hereby waive their respective rights to a trial by jury in any action or proceeding based upon, or related to, the subject matter of this Note and the business relationship that it being established. This waiver is knowingly, intentionally, voluntarily and irrevocably made by Maker and by Holder and Maker acknowledges that neither Holder nor any person acting on behalf of Holder has made any representations of fact to include this waiver of trial by jury or has taken any actions which in any way modify or nullify its effect. Maker and Holder acknowledge that this waiver is a material inducement to enter into a business relationship, that Maker and holder have already relied on this waiver in entering into this Note and that each of them will continue to rely on this wavier in their related future dealings.

f. This Note, together with the other Loan Documents, sets forth the entire agreement and understanding between Maker and Holder, and supersedes all prior agreements, arrangements and understandings, written or oral, between Maker and Holder.

g. This Note may be amended, modified, superseded, canceled, renewed or extended and the terms or covenants hereof may be waived only by a written instrument executed by Maker, Holder. The failure of Servicing Agent, at any time or times, to require performance of any provision of this Note shall in no manner affect the right of the Holder or Servicing Agent at a later time to enforce the same. No waiver by Holder or Servicing Agent of the breach of any term or covenant contained in this Note, whether by conduct or otherwise, in any one or more instances, shall be deemed to be, or construed as, a further or continuing waiver by Holder or Servicing Agent of any such breach, or a waiver of the breach of any other term or covenant contained in this Note.



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PROMISSORY NOTE

Loan No. **859606**

July 5, 2007

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h. If any term or other provision of this Note or any other Loan Document is declared invalid, illegal or incapable of being enforced by any rule of law or public policy, all other conditions and provisions of this Note shall nevertheless remain in full force and effect.

i. Notwithstanding any provision contained in this Note or any of the other Loan Documents to the contrary, including, without limitation, Maker's right to obtain advances or disbursements under the Loan, Holder may, in Holder's sole and absolute discretion, exercise Holder's rights and enforce Holder's remedies under and pursuant to Title 33, Chapter 7, Article 9 of Arizona Revised Statutes (including, without limitation, A.R.S. Section 33-1058), without any liability to Maker and without releasing Maker from any of Maker's obligations, duties and liabilities under the Loan Documents.

j. As used in this Note, the word "include(s)" means "include(s), without limitation," and the word "including" means "including, without limitation."

SEE ATTACHED SIGNATURE PAGE




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PROMISSORY NOTE

Loan No. 859606

July 5, 2007

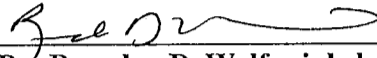
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PROMISSORY NOTE SIGNATURE PAGE

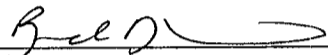
IN WITNESS WHEREOF, this Note has been executed as of the date set forth on the first page.

MAKER:

Vanderbilt Farms, L.L.C., an Arizona limited liability company



By: **Brandon D. Wolfswinkel**
Its: **Managing Member**

Vistoso Partners, L.L.C., an Arizona limited liability company

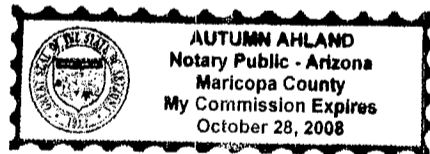

By: **Brandon D. Wolfswinkel**
Its: **Manager**

STATE OF AZ)
)ss
COUNTY OF MARICOPA)

The foregoing instrument was acknowledged before me 6th day of July, 2007 by **Brandon D. Wolfswinkel of Vanderbilt Farms, L.L.C., an Arizona limited liability company on behalf of the limited liability company and of Vistoso Partners, L.L.C., an Arizona limited liability company on behalf of the limited liability company**


Notary Public

My Commission Expires:



Ex. 23

When recorded return to:

MORTGAGES LTD.
55 E. Thomas Rd.
Phoenix, Arizona 85012

**DEED OF TRUST, ASSIGNMENT OF RENTS AND LEASES,
SECURITY AGREEMENT AND FIXTURE FILING**

Loan No. 859606 July 5, 2007

Secured Loan Amount: \$11,000,000.00

“Trustor” (individually and collectively):

Vanderbilt Farms, L.L.C., an Arizona limited liability company as to Parcel A, and Vistoso Partners, L.L.C., an Arizona limited liability company as to Parcel B
1121 W. Warner Rd. Ste. 109
Tempe, AZ 85284

“Trustee”: **Scott M. Coles, a licensed real estate broker**
55 E. Thomas Rd.
Phoenix, AZ 85012

“Beneficiary”: **Scott M. Coles or Christopher J. Olson, CPA, Trustees of the Mortgages Ltd. 401(k) Plan**
55 E. Thomas Rd.
Phoenix, Arizona 85012

This Deed of Trust, Assignment of Rents, Leases, Security Agreement, and Fixture Filing (this “Deed of Trust”), is executed by Trustor in favor of Trustee for the benefit of Beneficiary as of the date written above. In connection with this Deed of Trust and on the same date, Trustor or a third party borrower has executed a Promissory Note (the “Note”), a Servicing Agent Agreement and other related documents to evidence and secure the monetary and non-monetary obligations owed to Beneficiary by Trustor and related third parties. These documents, including this Deed of Trust, and any other agreement, document, or instrument evidencing governing or securing the payment of the indebtedness evidenced by the Note, are collectively referred to as the “Loan Documents.” Trustor understands and agrees that Servicing Agent Agreement, which is incorporated herein by reference, authorizes Servicing Agent appointed thereunder to, among other things, act on the Beneficiary’s behalf in accordance with this Deed of Trust.

1. TRUST PROPERTY

For good and valuable consideration, including the indebtedness referenced herein and the trust created hereby, the receipt and sufficiency of which is hereby acknowledged, Trustor irrevocably grants, transfers, conveys and assigns to Trustee, in trust, with the power of sale, for the benefit and security of Beneficiary, all of Trustor’s present and future estate, right, title and interest, under and subject to the terms and conditions set forth herein, in and to that certain real property located in **Maricopa County, Arizona**, and in **Pima County, Arizona**, more particularly described in **Exhibit A** attached hereto and incorporated herein by this reference (the “Real Property”), together with all of the following:

- a. Buildings, structures, fixtures or other improvements now or hereafter placed on the Real Property (collectively, the “Improvements”);
- b. All existing and future leases, subleases, licenses and other agreements for the use and occupancy of all or any portion of the Real Property;
- c. All rents, issues and profits and income generated by the Real Property (the “Property Income”);



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DEED OF TRUST, ASSIGNMENT OF RENTS AND LEASES, SECURITY AGREEMENT AND FIXTURE FILING

Loan No. 859606

July 5, 2007

Page 2

- d. All classes of property now or at any time hereafter attached to or used in any way in connection with the use, operation or occupancy of the Real Property;
- e. All property, rights, permits and privileges now or hereafter owned by Trustor or now or hereafter appurtenant to the Real Property, which entitle Trustor or the Real Property to receive all available utilities for use thereon;
- f. All awards resulting from eminent domain or condemnation in whole or in part, proceeds of insurance required on the Real Property and any other award for damage to or destruction of the Real Property or the Improvements;
- g. Any licenses, contracts, permits and agreements required or used in connection with the ownership, operation or maintenance of the Real Property, and the right to the use of any trade names, trademarks or service marks, now or hereafter associated with operation of any business conducted on the Real Property;
- h. All "Impounds," as defined herein, held by Beneficiary or its Servicing Agent for the benefit of Trustor, including, but not limited to, Impounds for taxes, assessments, insurance, homeowners' dues and construction;
- i. All easements, profits, rights of way and other rights now owned or hereafter assigned to Trustor; and
- j. All proceeds of the foregoing, including all proceeds of and all unearned premiums due from all insurance policies covering the Real Property.

All of the foregoing are collectively referred to hereinafter as the "Trust Property."

2. TRUSTOR'S REPRESENTATIONS AND WARRANTIES

Trustor hereby represents and warrants that Trustor has a good, marketable and insurable title to the Trust Property acceptable to Beneficiary and that Trustor holds fee simple title to the Real Property. Trustor forever warrants and shall defend title to the Trust Property for the Beneficiary, its successors and assigns, against all claims whatsoever; subject, however, to the following:

- a. The right, power and authority hereinafter given to and conferred upon Beneficiary to collect and apply such Property Income; and
- b. Any easements and restrictions approved by Beneficiary and listed in the schedule of exceptions to coverage in any title insurance policy insuring Beneficiary's interest in the Trust Property.


3. SECURITY

This Deed of Trust secures the following (the "Obligations"), in such order of priority as Beneficiary may elect:

- a. Strict performance of every obligation of Trustor and the third party borrower, if any, under all Loan Documents;
- b. Payment of all sums due under the Note including the principal amount of the 'Initial Funding' of \$11,000,000.00, interest thereon and all other charges assessed thereunder, such as late charges, notice fees and prepayment premiums;
- c. In the event that this Deed of Trust secures a Note with an Equity-Flex[®] Mortgage Line and "Advances," as defined therein, are made by Beneficiary, then payment of the aggregate amount of all Advances and all Equity-Flex Fees (as defined in said Note);
- d. In the event of default, payment of interest at the "Default Interest Rate," as defined by the Note;



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DEED OF TRUST, ASSIGNMENT OF RENTS AND LEASES, SECURITY AGREEMENT AND FIXTURE FILING

Loan No. 859606

July 5, 2007

Page 3

e. Payment of all sums incurred by Beneficiary or its Servicing Agent, with interest thereon, to protect, preserve, repair or maintain the Trust Property or to cure any senior or junior loans, trust deeds, mortgages or other security instruments, including taxes, assessments, homeowners' dues, ground rents, force placed insurance, attorneys' fees, litigation costs, appraisal fees, inspection fees, project manager fees, receiver fees and other expert or consulting fees;

f. Payment of all sums incurred by Beneficiary or its Servicing Agent, with interest thereon, in the event of Trustor or the third party borrower's default under the Loan Documents, including, without limitation, attorneys' fees, litigation costs and expenses, appellate costs and expenses, bankruptcy fees, foreclosure fees, trustee fees, receiver fees, expert fees and witness fees;

g. Payment of all sums incurred by Beneficiary or its Servicing Agent, with interest thereon, in the collection of amounts owed by any guarantor of the Note, including attorneys' fees, litigation costs and expenses, appellate costs and expenses, bankruptcy fees, foreclosure fees, trustee fees, receiver fees, expert fees and witness fees;

h. Strict performance of every obligation of Trustor and the third party borrower, if any, contained in any agreement, document or instrument, hereafter executed by Trustor or the third party borrower, reciting that the obligations thereunder are secured by this Deed of Trust, which includes Advance Agreements, forbearance agreements, extension agreements, payment plans and Note modifications;

i. Payment of all other sums, with interest thereon, that hereafter may be loaned to Trustor or the third party borrower, if any, or their successors or assigns, by Beneficiary or its successors or assigns when evidenced by an agreement or promissory note reciting that they are secured by this Deed of Trust, which includes, but is not limited to, Advance Agreements, forbearance agreements, extension agreements, payment plans and Note modifications;

j. Strict compliance with and performance of each and every provision of any declaration of covenants, conditions and restrictions, any maintenance, easement and party wall agreement or any other agreement, document or instrument by which the Trust Property is bound or may be affected; **and**

k. In the event of default, payment of any fees incurred by Beneficiary to Servicing Agent to effect a sale in whole or in part of Beneficiary's interest in the Loan Documents.

4. TRUSTOR'S OBLIGATIONS

a. **Trust Property.** Trustor shall keep the Trust Property in good condition and repair. Trustor shall not to remove or demolish any Improvements on the Real Property. Trustor shall complete or restore promptly and in good and workmanlike manner any Improvement which may be constructed, damaged or destroyed, and pay, when due, all claims for labor performed and materials furnished therefor. Trustor shall comply with all laws affecting the Trust Property or requiring any alterations or Improvements to be made thereon. Trustor shall not (i) commit or permit waste of the Trust Property or (ii) abandon the Trust Property. Trustor shall not initiate or acquiesce in a change in the zoning classification of the Real Property without Beneficiary's prior written consent. Trustor shall not commit, suffer or permit any act to or upon the Trust Property in violation of any law. Trustor shall do all acts which, from the character or use of the Trust Property, may be reasonably necessary.

b. **Appraisal.** If the Loan's principal exceeds \$250,000.00, then Trustor shall obtain, at Trustor's sole cost and expense, a MAI or equivalently certified appraisal of the Trust Property addressed to Beneficiary and prepared by an appraiser approved by Beneficiary. Trustor shall provide Beneficiary a copy of the appraisal and all relevant supporting documents within 90 days of the date of the Loan closing. If the appraisal is not received by Beneficiary within that 90 day period, then the Loan shall be in default and Beneficiary shall be entitled to pursue any and all remedies available under the Loan Documents. In addition, at the request of Beneficiary, Trustor shall provide an updated MAI or equivalently certified appraisal of the Trust Property within 30 days of such request. If such updated appraisal is not received by Beneficiary within that 30 day period, then the Loan shall be in default and Beneficiary shall be entitled to pursue any and all remedies available under the Loan Documents.



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c. **Insurance and Casualty.** Trustor shall keep all Improvements now or hereafter erected on the Real Property continuously insured against loss by fire or other hazards in an amount not less than the replacement cost of the Improvements, and shall maintain and evidence liability insurance in the minimum amount of \$1,000,000 or in such other amount required by Beneficiary. When requested by Beneficiary, Trustor shall provide and maintain insurance policies with annual premiums in amounts required by Beneficiary covering vandalism and malicious mischief, sprinkler leakage, rent abatement, business loss, flood damage and/or all other risks commonly insured against by persons owning like properties in the locality of the Property or commonly required by prudent institutional investors making loans secured by liens against such properties. All insurance policies or certificates shall be held by Beneficiary, shall be in such companies as Beneficiary may approve and shall name the Beneficiary as an additional insured with the proceeds payable first to Beneficiary, as its interest may appear, and then to Trustor. All insurance policies shall provide that Beneficiary is to receive 30 days notice prior to cancellation or non-renewal and shall otherwise be in the form and substance satisfactory to Beneficiary. All renewal policies shall be delivered to Beneficiary 30 days before the expiration of the then existing policies together with satisfactory proof that the premiums for renewal have been paid. The amount collected under any insurance policy may be applied in whole or in part by Beneficiary to any indebtedness hereby secured and in such order as Beneficiary may determine whether or not then due, or, at the option of Beneficiary, the entire amount so collected or any part thereof may be released to Trustor for restoration or repair of the Trust Property upon such terms and conditions as are acceptable to Beneficiary. Such application or release shall not cure or waive any default hereunder or cause discontinuance of any action that may have been or may thereafter be taken by Beneficiary or Trustee because of such default. In the event of loss, Trustor shall give immediate notice to Beneficiary. If Trustor has not given proof of loss, then Beneficiary may make proof of loss at any time. Each insurance company is hereby authorized and directed to make payment for any loss directly to Beneficiary, instead of to Trustor, or to Trustor and Beneficiary jointly. Beneficiary shall not be liable for any insurance, for the collection of any insurance proceeds or for the insolvency of any insurer. Any application of insurance proceeds to the outstanding Loan balance by Beneficiary shall not cure or waive any event of default. In the event of the sale of the Trust Property under the power of sale granted to Trustee, the judicial foreclosure of this Deed of Trust or the takeover of possession by a court appointed receiver or trustee, then all right, title and interest of Trustor to such policies of insurance shall inure to the benefit of and shall pass to the successor title-holder of the Trust Property (or to the receiver, if applicable).

d. **Litigation.** If an event of default occurs under the Loan Documents, Trustor shall pay all costs of enforcement, collection and preparation therefor, whether or not any action or proceeding is commenced in any court through all appeals, which includes Servicing Agent administration fees, attorneys' fees, appraisal fees, inspection fees, expert witness fees and foreclosure processing fees. Trustor, at the option of Beneficiary, shall appear and defend any action or proceeding purporting to affect the Trust Property or the rights or powers of Beneficiary and shall pay all costs and expenses of Beneficiary, including all costs of proving title and attorney's fees, with interest thereon at the Default Interest Rate from the date incurred or expended.

e. **Property Payments.** Trustor shall pay, when due, and before any interest, collection fees or penalties shall accrue, the following:

- (1) All taxes, assessments, homeowners' dues, owners' association fees, ground rents, and any other charges and obligations which may become a lien or charge against the Trust Property;
- (2) All encumbrances, charges and liens on the Trust Property or any part thereof; and
- (3) All costs, fees and expenses incurred under this Deed of Trust and the other Loan Documents, including all Trustee's fees for the issuance of any deed of partial or full release and partial or full reconveyance and all charges, costs and expenses incurred in the event of default or reinstatement.

f. **Right to Cure.** If Trustor fails to make any payment or to do any act as required hereby, Beneficiary or Trustee, but without obligation to do so and without prior notice or demand upon Trustor and without releasing Trustor from any obligation herein, may take such action in such manner and to such extent as either may deem necessary to protect the Trust Property. Beneficiary or Trustee may enter the Real Property for such purposes, appear in and defend any action or proceeding purporting to affect the Trust Property or the rights or powers of Beneficiary or Trustee and pay, purchase, contest or compromise any encumbrance, charge or lien, which in the judgment of either Beneficiary or Trustee appears to jeopardize Beneficiary's security hereunder, and, in exercising any such powers, pay necessary expenses, employ counsel and pay attorneys' fees.



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g. Expenditures. Trustor shall pay immediately all sums expended by Beneficiary or Trustee pursuant to the provisions of this Deed of Trust or the other Loan Documents, together with interest from date of such expenditure at the Default Interest Rate. Any amount paid by Beneficiary or Trustee to protect the Trust Property, together with interest thereon, shall become a part of the indebtedness secured by this Deed of Trust and a lien on the Trust Property, and shall be immediately due and payable to Beneficiary or Trustee.

h. Impounds. Whenever required by Beneficiary, Trustor shall pay with each monthly installment payment an additional sum equal to 1/12th of the annual real property taxes, special assessments, homeowners' or owners' association dues, ground rents, if any, and insurance premiums next due on the Trust Property ("Impounds"), as may be estimated by Beneficiary, which will be held by Beneficiary in a special account (the "Impound Account"). Impounds may be commingled with other Impounds held by Beneficiary or its Servicing Agent. Any interest on Impounds shall accrue to Beneficiary or its Servicing Agent. Impounds may be used to pay taxes, assessments, homeowners' or owners' association dues, ground rents, if any, and insurance premiums before delinquent or before the insurance expires. If any of the Impounds, in the opinion of Beneficiary, are insufficient to accumulate a fund with which to pay such items, Trustor shall pay Beneficiary upon demand the amount necessary to make up the deficiency. If the Impounds held by Beneficiary exceed the amount necessary, in the opinion of Beneficiary, to pay such items, such excess shall, at Beneficiary's option, be refunded to Trustor or shall be credited on any sums due Beneficiary under this Deed of Trust or the other Loan Documents. If there is a default under this Deed of Trust or the other Loan Documents, Beneficiary may apply, at its discretion, the amount then remaining in the Impound Account to any sums due under this Deed of Trust or the other Loan Documents. Any Impound amount is subject to change in the event that the county tax assessor increases or decreases the valuation of the Trust Property, or in the event that there is any other change of circumstances affecting the Trust Property. Any sums held in any construction loan account shall be considered an "Impound."

i. Financial Statements. Trustor shall provide in form and substance satisfactory to Beneficiary: (a) within 90 days after the end of each calendar year, a statement of income and expenses, relating to the Trust Property for such calendar year; (b) within 90 days after the end of each calendar year, financial statements for such year from Trustor and any Guarantor of the Loan; (c) within 30 days after the end of each calendar year, a rent roll for the Trust Property as of January 1 of the current year; (d) upon the request of Beneficiary, all filed Federal and State income tax returns for Trustor and any Guarantor of the Loan; and (e) such other financial information concerning the Trust Property, Trustor, or any Guarantor as Beneficiary may reasonably require from time to time. Beneficiary or its designated agent shall have the right to inspect the books and records with respect to the Trust Property at any time, upon reasonable notice to Trustor.



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j. Environmental Matters.

(i) Trustor represents and warrants to Beneficiary, to the best of Trustor's knowledge after all appropriate inquiry, and covenants that there are no, nor will there be, for so long as any of the indebtedness secured hereby remains outstanding, any Hazardous Materials (as defined below) generated, released, stored, buried, or deposited over, beneath, in or upon the Real Property or on or beneath the surface of adjacent property, except as such Hazardous Materials may be used, stored or transported in connection with the permitted uses of the Trust Property and then only in de minimus quantities and only to the extent permitted by law after obtaining all necessary permits and licenses therefor. "Hazardous Materials" shall mean and include any pollutants, flammables, explosives, petroleum (including crude oil) or any fraction thereof, radioactive materials, hazardous wastes, dangerous or toxic substances or related materials, including substances defined as or included within the definition of toxic or hazardous substances, wastes or materials under any federal, state or local laws, ordinances, regulations or guidelines which relate to pollution, the environment or the protection of public health and safety, or limiting, prohibiting or otherwise regulating the presence, sale, recycling, generation, manufacture, use, transportation, disposal, release, storage, treatment of, or response or exposure to, toxic or hazardous substances, wastes or materials. Such laws, ordinances and regulations are hereinafter collectively referred to as the "Hazardous Materials Laws."

(ii) Trustor shall, and Trustor shall cause all employees, agents, tenants, contractors and subcontractors of Trustor and any other persons from time to time present on or occupying the Trust Property to, keep and maintain the Trust Property in compliance with, and not cause or knowingly permit the Trust Property to be in violation of, any applicable Hazardous Materials Laws. Neither Trustor, nor any employees, agents, tenants, contractors or subcontractors of Trustor, nor any other persons occupying or present upon the Trust Property, shall use, generate, manufacture, store or dispose of on, under or about the Real Property, or transport to or from the Real Property any Hazardous Materials, except as such Hazardous Materials may be used, stored or transported in connection with the permitted uses of the Trust Property and then only in de minimus quantities and only to the extent permitted by law after obtaining all necessary permits and licenses therefor.

(iii) Trustor shall be solely responsible for, and shall indemnify, defend, protect and hold harmless Beneficiary, its directors, officers, employees, agents, successors and assigns for, from and against, any claim, demand, lawsuit, loss, damage, cost, expense or liability directly or indirectly arising out of or attributable to the use, generation, storage, release, threatened release, discharge, disposal or presence of Hazardous Materials on, under or about the Real Property (whether occurring prior to or during the pendency of the indebtedness secured hereby or otherwise and regardless of by whom caused, whether by Trustor or any predecessor in title or any owner of land adjacent to the Real Property or any other third party, or any employee, agent, tenant, contractor or subcontractor of Trustor or any predecessor in title or any such adjacent land owner or any third party) including: (i) claims of third parties (including governmental agencies) for injury or death to any person or for damage or destruction of any property; (ii) claims for response costs, clean-up costs, costs and expenses of removal and restoration, including fees of attorneys and experts, and costs of determining the existence of Hazardous Materials and reporting same to any governmental agency; (iii) any and all other claims for expenses or obligations, including attorneys' fees, costs and other expenses; (iv) any and all penalties threatened, sought or imposed on account of a violation of any Hazardous Materials Laws; (v) all fees of any consultants, attorneys and engineering firms retained in connection with monitoring the obligations of Trustor under this Deed of Trust; and (vi) any loss occasioned by diminution in the value of the Trust Property which results from any of the foregoing.


5. EQUITY-FLEX®/ DELAY FLEX® MORTGAGE LINE

a. Equity-Flex®. If that this Deed of Trust secures a Note with an Equity-Flex® Mortgage Line, Trustor may use, subject to the conditions set forth in the Note, the existing equity in the Trust Property in order to obtain additional funds beyond the amount of the Initial Funding of \$11,000,000.00 up to the Secured Loan Amount of \$11,000,000.00. This Deed of Trust secures the entire Secured Loan Amount regardless of the amount of the Initial Funding or any subsequent draws ('Advances') on the Loan account. The payoff amount required to release this Deed of Trust shall be based on the actual outstanding balance of the Loan account at the time of payoff.

Notice: If Beneficiary consents to alienation, assignment or transfer of the Trust Property or the obligations under this Deed of Trust in accordance with Section 14, all assignees, transferees and junior lien holders are hereby advised that this Deed of Trust provides for adjustable release provisions and fluctuating principal balances at Beneficiary's discretion.



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b. **Delay-Flex®.** If this Deed of Trust secures a Note with a Delay-Flex® Mortgage Line, Trustor may, subject to the conditions set forth in the Loan Documents and described herein, obtain the Delay-Flex amount designated as such and in accordance to the portions set-forth in the Delay-Flex Funding Schedule outlined in the Delay-Flex Disbursement Summary executed in connection with this Loan. This Deed of Trust secures the entire Designated Loan Amount regardless of the amount of the Initial Funding or any subsequent fundings on the Loan account. However, the payoff amount required to release the Deed of Trust shall be based on the actual outstanding balance of the Loan account at the time of payoff.

c. **The Funding of each Delay-Flex portion is subject to Beneficiary's discretionary approval and satisfaction of the following conditions:**

(i) There is no then-existing default under any of the Loan Documents and there exist no facts which, with the giving of notice or passage of time, would constitute a default under any of the Loan Documents;

(ii) Beneficiary, or its agent, has conducted an inspection of the Trust Property and the present condition of the Trust Property has been approved;

(iii) The increased loan amount following the funding of each Delay-Flex portion, if made, will not exceed Beneficiary's lending guidelines for the Trust Property;

(iv) Beneficiary may further condition any delayed funding on endorsements to Beneficiary's Title Policy insuring the continued validity and priority of this Deed of Trust, Beneficiary's approval of Trustor's proposed utilization of the Delay-Flex proceeds and any other reasonable assurances or conditions Beneficiary may require or impose;

(v) Beneficiary shall fund each Delay-Flex portion on a date set by Beneficiary at its sole and absolute discretion, which will occur no earlier than the thirtieth (30th) day prior to the Fund Date set forth in the Delay-Flex Funding Schedule and no later than the thirtieth (30th) consecutive day following the Fund Date set forth in the Delay-Flex Funding Schedule; and

(vi) **Funding the total Delay-Flex portion of the Loan is not to exceed 9 months from the date of Loan closing. The Delay-Flex Funding Schedule must be completed by Loan closing and included in the Disbursement Summary. Any modification to the Delay-Flex Funding Schedule requires written approval from Beneficiary or Servicing Agent.**

Notice: If Beneficiary consents to alienation, assignment or transfer of the Trust Property or the obligations under this Deed of Trust in accordance with Section 14, all assignees, transferees and junior lien holders are hereby advised that this Deed of Trust provides for adjustable release provisions and fluctuating principal balances at Beneficiary's discretion.

6. CONSTRUCTION MORTGAGE

This Deed of Trust may constitute a "construction mortgage" within the meaning of A.R.S. Section 47-9334 and is entitled to the benefits of A.R.S. Section 47-9334(H). If this Deed of Trust secures a construction loan, the proceeds of the obligations secured by this Deed of Trust are to be used by Trustor for the purpose of acquiring title to the Real Property and funding the acquisition, construction and improvement of the Improvements, or refinancing such secured obligations. If this Deed of Trust secures a construction loan, notice is hereby given that the proceeds of the Note secured hereby may be collaterally assigned to Beneficiary or its agent pursuant to the terms of the Construction Loan Agreement executed herewith.

7. CONDEMNATION

If any portion of the Trust Property is condemned or threatened to be condemned by the governing authority, Beneficiary, without notice, shall have the right to accelerate all sums owed under the Loan Documents, which are secured by this Deed of Trust, and those sums shall become immediately due and payable to Beneficiary irrespective of their maturity date. All awards of damages for any condemnation or taking, for injury to the Trust Property by reason of public use or for damages from private trespass or injury to the Trust Property, are hereby assigned, transferred and conveyed to Beneficiary and shall be paid to Beneficiary as further security for the Loan. Upon receipt of such monies, Beneficiary may hold the same as such further security, or apply or release the same in the same manner and with the same effect as herein provided for the disposition of proceeds of fire or other insurance.



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8. BENEFICIARY'S OPTIONS

Without affecting the obligation of Trustor to pay and perform as required herein, without affecting the personal liability of any person for payment of the indebtedness secured hereby, and without affecting the lien or priority of lien hereof on the Trust Property, Beneficiary may, at its option:

- a. Release and reconvey all or any part of the Trust Property;
- b. Consent to the making and/or recording of any map or plat of the Trust Property or any part thereof;
- c. Join in granting any easement on the Trust Property;
- d. Join in or consent to any extension agreement or any agreement subordinating the lien, encumbrance or charge hereof;
- e. Extend the time for payment for all or any part of the indebtedness secured hereby, accept a renewal note therefore, reduce the payments thereon, release any person liable for all or any part thereof or otherwise change the terms of all or any part of the obligation or Note secured hereby; or
- f. Take and hold other security for the payment and performance of the obligation and Note secured hereby, and enforce, exchange, substitute, subordinate, waive or release any such security.

Any of the foregoing actions by Beneficiary or the Trustee at Beneficiary's direction may be taken without the consent of any junior lienholder, and shall not affect the priority of this Deed of Trust over any junior lien.

9. SECURITY AGREEMENT AND FIXTURE FILING

This Deed of Trust shall cover, and the Trust Property shall include, all property now or hereafter affixed on, attached to or incorporated upon the Real Property which, to the fullest extent permitted by law, shall be deemed a "fixture." To the extent that the Trust Property consists of rights in action or personal property covered by the Uniform Commercial Code, this Deed of Trust shall also constitute a security agreement, and Trustor hereby grants to Beneficiary, as secured party, a security interest in such property, including all proceeds thereof, for the purpose of securing the obligations herein and the other Loan Documents. In addition, for the purpose of securing the obligations herein and the other Loan Documents, Trustor, as debtors, hereby grants to Beneficiary, as secured party, a security interest in the following:

- a. All personal property (including all goods, supplies, equipment, furniture, furnishings, fixtures, machinery, inventory and construction materials) in which Trustor now or hereafter acquires an interest or right, which is now or hereafter located on or affixed to the Real Property or the Improvements, or used or useful in the operation, use, or occupancy thereof or in the construction of any additional improvements thereon, together with any interest of Trustor in and to such personal property which is leased by Trustor or is subject to any superior security interest, and all books, records, leases and other agreements, documents, and instruments of whatever kind or character, relating to the Real Property, the Improvements, or such personal property;
- b. All fees, income, rents, issues, profits, earnings, receipts, royalties, and revenues that may accrue from the personal property described in clause (a) above or any part thereof, or from the Real Property or the Improvements, or that may be received or receivable by Trustor from any hiring, using, letting, leasing, subhiring, subletting, subleasing, occupancy, operation or use thereof;
- c. All of Trustor's present and future rights to receive payments of money, services, or property, including rights to receive capital contributions or subscription payments from the members, partners, shareholders or principals of Trustor, amounts payable on account of the sale of ownership interests in Trustor or the capital stock of Trustor, accounts and other accounts receivable, security deposits, chattel paper, notes, drafts, contract rights, instruments, general intangibles, and principal, interest and payments due on account of goods sold or leased, services rendered, loans made or credit extended, together with title to or interest in all agreements, documents, and instruments, evidencing, securing or guarantying the same;



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d. All other intangible property and rights relating to the Real Property, the Improvements, the personal property described in clause (a) above or the operation, occupancy, or use thereof including all governmental and non-governmental permits, licenses (including Trustor's interest in any liquor license related to business operations conducted on the Real Property), and all approvals relating to construction on or operation, occupancy, or use of the Real Property or the Improvements, all names under or by which the Real Property or the Improvements may at any time be operated or known, all rights to carry on business under any such names, or any variant thereof, all trade names and trademarks relating in any way to the Real Property or the Improvements, and all good will in any way relating to the Real Property or the Improvements;

e. Trustor's rights under all insurance policies covering the Real Property, the Improvements or the personal property described in clause (a) above, and any and all proceeds, loss payments, and unearned premiums payable or refundable regarding the same;

f. All reserves, deferred payments, deposits, impound accounts, refunds, cost savings, and payments of any kind relating to the construction of any improvements on the Real Property;

g. All water stock or water rights relating to the Real Property;

h. All architectural, structural, mechanical, and engineering plans and specifications prepared for construction of improvements on the Real Property, or extraction of minerals or gravel from the Real Property, and all studies, data, and drawings relating thereto; and also all contracts and agreements of Trustor relating to such plans and specifications or to such studies, data, and drawings, for the construction of improvements on or extraction of minerals or gravel from the Real Property;

i. All proceeds from the sale or other disposition of any of the collateral described above;

j. All of Trustor's rights in proceeds of the loan made by Beneficiary to Trustor;

k. All of Trustor's rights to security, cleaning, or other deposits from tenants relating to leases or occupancy agreements for any portion of the Real Property or the Improvements;

l. All of Trustor's rights in any Impound account held by Trustor or Beneficiary on behalf of Trustor;

m. All of Trustor's rights in any other deposit accounts of Trustor; and

n. All wells, well equipment, rights to wells, permits and licenses, water rights and all other related property used in connection with the operation of any well on the Real Property or appurtenant to the Real Property.

Trustor acknowledges and agrees that Beneficiary may maintain certain deposit accounts (including a payment impound account and/or a construction impound account) in the name of Beneficiary for the benefit of Trustor and such accounts may include funds disbursed or to be disbursed with respect to the Loan. Trustor acknowledges and agrees that all such funds are the property of Beneficiary and Trustor hereby disclaims any interest therein.



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Trustor shall promptly replace any personal property that is consumed or worn out in ordinary usage and such replacement shall be secured hereby. Trustor may sell or dispose of only that part of the personal property that Trustor is obligated to replace, and all proceeds from any such sale or disposition in excess of the amount expended for such replacements shall promptly be paid to Beneficiary to be applied according to the Loan Documents, whether or not then due. Trustor shall immediately notify Beneficiary of any change in the location of Trustor's chief executive office or residence (if Trustor is an individual without an office) in accordance with the terms of this Deed of Trust, and any change in location of the personal property encumbered hereby, except if replaced as permitted herein. All Trustor's representations, warranties and covenants contained in this Deed of Trust shall apply to the personal property encumbered hereby whether or not expressly referred to herein. Trustor's representations, warranties and covenants and warranties contained in this Section are in addition to, and not in limitation of, those contained in the other provisions of this Deed of Trust. Upon its recording in the real property records, this Deed of Trust shall be effective as a fixture filing. The filing of any other financing statement relating to any other personal property, rights or interests described herein shall not be construed to diminish any of Beneficiary's rights or priorities hereunder. Trustor hereby authorizes and empowers Beneficiary and irrevocably appoints Beneficiary its attorney-in-fact to execute and file, on Trustor's behalf, all financing statements and refilings and continuations thereof as Beneficiary deems necessary or advisable to create, preserve and protect the security interest created hereby.

This Deed of Trust covers certain goods, which are or are to become fixtures related to the Real Property and CONSTITUTES A FIXTURE FILING with respect to such goods executed by Trustor, as debtor, in favor of Beneficiary, as secured party. For purposes of the Uniform Commercial Code, the following information is supplied:

Name and Address of Debtor: Vanderbilt Farms, L.L.C., an Arizona limited liability company and Vistoso Partners, L.L.C., an Arizona limited liability company
1121 W. Warner Rd. Ste. 109
Tempe, AZ 85284

Name and Address of Record Owner: Vanderbilt Farms, L.L.C., an Arizona limited liability company as to Parcel A, and Vistoso Partners, L.L.C., an Arizona limited liability company as to Parcel B
1121 W. Warner Rd. Ste. 109
Tempe, AZ 85284

Description of Real Estate: See Exhibit A attached hereto.

Name and Address of Secured Party: Mortgages Ltd., as agent
55 E. Thomas Road
Phoenix, Arizona 85012

This Deed of Trust covers goods that are or are to become fixtures.

10. RELEASE AND RECONVEYANCE

a. The release provisions contained in this Deed of Trust are subject to subsequent modification by separate agreements, which include, but are not limited to, Equity-Flex® Advance Agreements and/or upon the subsequent funding of Delay-Flex® Mortgage Line advances.

b. At any time, when Trustor is not in default under the Loan Documents, Beneficiary will execute or direct the Trustee to execute and deliver a Partial Deed of Release and Reconveyance, subject to any prepayment provisions contained in the Note, as follows: (i) There is no partial release provision on Parcel A. Parcel B will be given a free release upon the full payoff of the First Lien from Loan #858006 on the "Real Property" known as the Rancho Vistoso Neighborhoods G, H, I, K, M, O and Q and described as approx. 143 acres located on Moore Rd and Rancho Vistoso Blvd, Oro Valley, AZ, (ii) Upon payment of a Release Fee of \$75.00 per lot released, (iii) Upon payment of any prepayment penalties, if any, due pursuant to the Note, (iv) Upon Mortgages Ltd.'s receipt and approval of a Partial Release Endorsement to title policy if required by Beneficiary, (v) Upon payment of all applicable ALTA title policy endorsement and recording costs.



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c. Upon payment in full and satisfaction of the Obligations, Beneficiary will surrender this Deed of Trust and the other Loan Documents to Trustee for cancellation, retention and payment of Trustee's fees, and Trustee shall release and reconvey, without covenant or warranty, express or implied, the Trust Property then held hereunder. The recitals in such reconveyance or any matters or facts shall be conclusive proof of the truthfulness thereof. The grantee in such reconveyance may be described as "the person or persons legally entitled thereto."

11. ASSIGNMENT OF RENTS, LEASES AND PROFITS

To facilitate payment and performance of the obligations under this Deed of Trust and the other Loan Documents, Trustor hereby absolutely sells, transfers and assigns to Beneficiary all right, title and interest of Trustor in and to the following:

a. All existing and future leases, subleases, licenses and other agreements for the use and occupancy of all or a portion of the Trust Property, whether written or oral and whether for a definite term or month-to-month, together with any and all extensions, modifications and renewals thereof (collectively, the "Leases"); and

b. All income, receipts, revenues, royalties, rents, issues, profits and benefits now or hereafter arising from or out of the Leases or from or out of the Trust Property or any part thereof (collectively, the "Rents").

So long as there shall not have occurred an event of default under this Deed of Trust or any of the other Loan Documents, Trustor shall have the right to collect all Rents, and shall hold the same, in trust. Beneficiary may, at its option, upon default, at any time, without notice, either by person, by agent or by receiver appointed by a court, and without regard to the adequacy of any security for the indebtedness hereby secured or the solvency of Trustor, collect the Trust Property income (including the Rents) by any method authorized by law and apply the same, less costs and expenses of operation and collection, including attorneys' fees, Trustee's fees and Servicing Agent's administrative fees, upon any indebtedness secured hereby, Servicing Agent's administrative fees, upon any indebtedness secured hereby, and in such order as Beneficiary may determine. The entering upon and taking possession of the Trust Property, the collection of Trust Property income and the application thereof shall not cure or waive any default or notice of Trustee's sale or invalidate any act done pursuant to such notice. Beneficiary shall have the right to exercise all its rights as provided by A.R.S. §§ 33-702(B) and 33-807, which may be revised from time to time. It is expressly covenanted and agreed by the Trustor, that at the time of the execution and delivery of this Deed of Trust there has been no prepayment of any Rents by any of the tenants occupying the Trust Property or the Leases. It is further covenanted and agreed that Trustor, its successors or assigns, shall have no right, power or authority to alter, modify or amend the terms, or any of them, of the Lease in any particular whatsoever, without first obtaining the consent in writing of Beneficiary, its successors or assigns to such alteration, modification or amendment. Nothing herein contained shall be construed as making Beneficiary, or its successors or assigns, a mortgagee in possession, nor shall Beneficiary, or its successors or assigns be liable for laches, or failure to collect said rents, issues, profits, revenues, royalties, rights and benefits, and it is understood that Beneficiary, its successors or assigns, are to be account only for such sums as are actually collected.

12. DEFAULT AND REMEDIES

a. **Default.** Among other things constituting a default under the provisions of the Loan Documents, Trustor shall be deemed in default upon the occurrence of any of the following events:

(1) Trustor, third party borrower, any endorser or any guarantor fails to make payment of any indebtedness secured hereby in accordance with the Loan Documents;

(2) Trustor, third party borrower, any endorser of the Note or any guarantor fails to perform any obligation required by and in accordance with the Loan Documents, or any representation by Trustor, third party borrower, any endorser of the Note or any guarantor in any of the Loan Documents is untrue;

(3) The death, incapacity, dissolution, winding-up or termination of the existence of Trustor, third party borrower, any endorser of the Note or any guarantor;

(4) The calling of a meeting of the creditors of Trustor, third party borrower, any endorser of the Note or any guarantor;

(5) The making by Trustor, third party borrower, any endorser of the Note or any guarantor of an assignment for the benefit of any of its creditors;

(6) Trustor, third party borrower, any endorser of the Note or any guarantor becomes insolvent;



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- (7) Trustor, third party borrower, any endorser of the Note or any guarantor fails to pay its debts as they mature;
- (8) Trustor, third party borrower, any endorser of the Note or any guarantor admits in writing that such party is unable to pay such party's debts as they mature;
- (9) A receiver, trustee, custodian or conservator is appointed to manage over all or any part of the assets of Trustor, third party borrower, any endorser of the Note or any guarantor;
- (10) The occurrence of any material adverse change in the condition (financial or otherwise) of Trustor, third party Borrower, any endorser of the Note or any guarantor;
- (11) In the event that Trustor has secured or secures additional loans through Mortgages Ltd. (the "Additional Loans", including Loan No(s). 844006, 850206, 857306, 857406 and 858006), regardless as to whether Mortgages Ltd. has assigned its interests in the Additional Loans or this Loan, then a default under any Additional Loan shall constitute a default under this Loan and a default under this Loan shall constitute a default under the Additional Loans; or
- (12) Beneficiary in good faith deems itself insecure or believes the prospect for payment or performance is impaired.

b. Acceleration. Upon the occurrence of any of the foregoing events of default, Beneficiary, without notice, may declare all sums secured hereby immediately due and payable and may apply or cause to be applied amounts in any Impound Account to the obligations secured by this Deed of Trust in any manner that Beneficiary elects. Notwithstanding anything in this Deed of Trust or any other Loan Document to the contrary: (a) it shall be a default under this Deed of Trust if Trustor, third party borrower, the Note's endorser or any guarantor becomes the subject of any bankruptcy or voluntary or involuntary insolvency proceeding, in or out of court, for the adjustment of debtor-creditor relations ("Insolvency Proceedings"); and (b) if the any Insolvency Proceedings occur, any obligation of Beneficiary to make further advances shall terminate, and all sums of principal and interest under the Note shall automatically become due and payable without notice of default, presentment or demand for payment, protest or notice of nonpayment or dishonor, or other notices or demands of any kind or character.

c. Trustee's Sale. Should Beneficiary elect to have the Trust Property sold by Trustee, Beneficiary shall deliver to Trustee written notice, setting forth the nature of the default, and of the election to cause the Trust Property to be sold. Beneficiary also shall deposit with Trustee this Deed of Trust, the Note and all other Loan Documents evidencing expenditures secured hereby. Trustee shall record and give notice of the Trustee's Sale in the manner required by law, and after the lapse of such time as may then be required by law, Trustee shall sell, in the manner required by law, the Trust Property at public auction, at the time and place fixed by the notice of Trustee's Sale to the highest bidder for cash in lawful money of the United States, payable at the time of sale. Notice to Trustor shall be given in accordance with the provisions of A.R.S. Sections 33-808 and 33-809. Trustee, at Trustee's discretion, may postpone or continue the sale from time to time by giving notice of postponement or continuance by public declaration at the time and place last appointed for the sale. Trustee shall deliver to the purchaser at the Trustee's Sale a Deed conveying the Trust Property, but without any covenant or warranty, expressed or implied. The recitals in such deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any persons, including Trustor, Trustee or Beneficiary, may purchase the Trust Property at the Trustee's Sale. Beneficiary may bid for and purchase the Trust Property and shall be entitled to apply all or any part of the indebtedness secured hereby as a credit against the purchase price. The purchaser at the Trustee's sale shall be entitled to immediate possession of the Trust Property as against the Trustee or other persons in possession and shall have a right to the summary proceedings to obtain possession provided in Title 12, Chapter 8, Article 4, Arizona Revised Statutes, together with costs and attorneys' fees accrued therefor. After deducting all Trustee's costs, fees and expenses and of this Deed of Trust, including the costs of evidence of title in connection with the sale, Beneficiary and Trustee's attorneys' fees and Servicing Agent's administrative fees, Trustee shall apply the sale proceeds to the payment of all sums then secured hereby and all other sums due under the terms hereof, with accrued interest, and then the remainder, if any, to the person or persons legally entitled thereto or as provided in A.R.S. § 33-812.

d. Deficiency Judgment. To the extent permitted by law, Beneficiary shall be entitled to a deficiency judgment against Trustor for any balance remaining due hereunder after a Trustee's sale of the Trust Property.

e. Foreclosure and Other Remedies. In lieu of a Trustee's sale, pursuant to the power of sale conferred hereby, this Deed of Trust may be foreclosed in the same manner provided by law for the foreclosure of mortgages on real property. Beneficiary shall also have the right to exercise any or all remedies available hereunder and at law or in equity, including all remedies of a secured party under the Uniform Commercial Code with respect to any personal property secured hereby, the appointment of a receiver, provisional remedies and injunctive relief. All Beneficiary's rights and remedies shall be cumulative.



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f. **Appointment of Receiver or Mortgagee in Possession.** If an event of default is continuing or if Beneficiary shall have accelerated the indebtedness secured hereby, Beneficiary, upon application to a court of competent jurisdiction, shall be entitled as a matter of strict right, without notice, and without regard to the occupancy or value of any security for the indebtedness secured hereby or the insolvency of any party bound for its payment, to the appointment, at Beneficiary's option, of itself as mortgagee in possession, or of a receiver to take possession of and to operate the Trust Property, and to collect and apply the Rents. Beneficiary and such receiver and their representatives shall have no liability for any loss, damage, injury, cost or expense resulting from any action or omission which was taken or omitted in good faith.

13. SUCCESSOR TRUSTEE

Beneficiary may appoint a successor Trustee in the manner prescribed by law. A successor Trustee shall, without conveyance from the predecessor Trustee, succeed to all the predecessor's title, estate, rights, powers and duties. Trustee may resign at any time by complying with applicable law and by mailing or delivering notice thereof to Beneficiary and Trustor, and having so resigned shall be relieved of all liability and responsibility to Trustor, Beneficiary or otherwise hereunder. Any reference to "Trustee" herein shall include all successor trustees. Trustee shall not be liable for any action taken when acting in good faith, or upon any information supplied or direction given by Beneficiary.

14. ALIENATION

The Trust Property and the obligations under this Deed of Trust are not alienable, assignable or transferable by Trustor. Upon the occurrence any of the following, without prior written consent of Beneficiary or its Servicing Agent:

a. Trustor sells, conveys, transfers, assigns, contracts for sale, leases with option to purchase or further encumbers the Trust Property or any part thereof, including any further assignment of the Trust Property's income, or a wraparound mortgage or purchase contract;

b. If Trustor is a corporation, the controlling interest in Trustor is sold, conveyed or transferred;

c. If Trustor is a limited liability company, any interest in Trustor is sold, conveyed or transferred;

or

d. If Trustor is a partnership, any general partnership interest, or the majority of limited parties interests, in Trustor is sold, conveyed or transferred, either voluntarily or involuntarily;

Beneficiary, without notice, shall have the right to accelerate all sums owed under the Loan Documents, which are secured by this Deed of Trust, and those sums shall become immediately due, and payable to Beneficiary irrespective of their maturity date. This provision shall apply to each and every such sale, conveyance, transfer, lease, encumbrance or assignment, regardless as to whether Beneficiary has consented or waived its rights in connection with any previous sale, conveyance, transfer, lease, encumbrance or assignment.

15. THIRD PARTY BORROWER PROVISIONS.

The following provisions apply to the extent that a third party borrower has executed the Note:

a. Trustor waives each of the following:

(i) Any right to require Beneficiary to make presentments or demands or to give notices of any kind, including demand for performance, notice of non-performance, protest, notice of protest, notice of dishonor, notice of acceptance of this Deed of Trust, notice of the existence, creation or incurrence of existing or new debt, notice of modification, payment, default or change or action of any kind relating to the Obligations.

(ii) Any defense to liability on this Deed of Trust based on any disability or other defense of the third party borrower or based upon any cessation of the liability of the third party borrower to Beneficiary for any reason other than the payment of the Obligations in full.

(iii) Any right to require Beneficiary to proceed against the third party borrower.

(iv) Any right to require Beneficiary to proceed against any other security held from third party borrower or from Trustor.



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(v) To the extent permitted by applicable law, the benefit of any statute of limitations pertaining to the Obligations or to this Deed of Trust or affecting Trustor's liability on this Deed of Trust or its enforcement.

(vi) Any defense based upon an election of remedies by Beneficiary, including any election to proceed against any collateral by judicial or nonjudicial foreclosure, whether real property or personal property, or by deed in lieu thereof, and whether or not every aspect of any foreclosure sale is commercially reasonable, and whether or not any such election of remedies destroys or otherwise impairs the subrogation rights of Trustor or the rights of Trustor to proceed against the third party borrower or any guarantor or Trustor for reimbursement, or both.

(vii) The benefits of any statutory provision limiting the liability of a surety, including the provisions of A.R.S. Sections 12-1641 through 12-1644, A.R.S. Section 12-1566, A.R.S. Section 33-814, A.R.S. Section 44-142, A.R.S. Section 47-3605 and Rule 17(f) of the Arizona Rules of Civil Procedure.

(viii) Any defense based upon the application by third party borrower of the proceeds of the loan evidenced by the Note for purposes other than the purposes represented by third party borrower to Beneficiary or intended or understood by Beneficiary or Trustor.

b. Trustor acknowledges and agrees that Beneficiary, without affecting Trustor's liability, may take any one or more of the following actions, at any one or more times:

(i) Renew, compromise, extend, accelerate or otherwise change the time for payment of, or the terms of, all or any part of the Obligations.

(ii) Take additional security for the payment of the Obligations, and exchange, enforce, alter or release all or any part of any security.

(iii) Add, release or substitute any one or more other third party trustors or guarantors.

(iv) Assign the Obligations in whole or part.

16. GENERAL

a. **Time.** Time is of the essence in all aspects of this Deed of Trust and the other Loan Documents.

b. **Liability.** This Deed of Trust applies to, inures to the benefit of and binds Trustor, Trustee and Beneficiary (collectively, the "Parties") and their heirs, personal representatives, successors, permitted assigns, beneficiaries and trustees. All liability created hereunder shall be joint and several.

c. **Assignability.** Beneficiary and Trustee may assign their rights and obligations under this Deed of Trust without prior notice to Trustor. "Beneficiary" shall include the owner and holder of the Note secured hereby, whether or not named as Beneficiary herein.

d. **Servicing Agent.** Trustor acknowledges that Mortgages Ltd. is the Servicing Agent and may enforce the terms of this Deed of Trust and the other Loan Documents on behalf of Beneficiary.

e. **Severability.** If any term or other provision of this Deed of Trust or any other Loan Document is declared invalid, illegal or incapable of being enforced by any rule of law or public policy, all other conditions and provisions of this Deed of Trust shall nevertheless remain in full force and effect.

f. **Law.** This Deed of Trust shall be governed by, construed and enforced in accordance with the laws of the State of Arizona, without regard to the choice of law rules of the State of Arizona. In the event any statute or law referred to herein is subsequently amended or renumbered, the statute as amended or renumbered shall be intended by the Parties to be referred to herein, thereafter, and should said statute or law be repealed, if law permits, that statute or law as it exists on the date hereof is intended to be a part hereof.

g. **Jurisdiction and Venue.** Trustor hereby submits to the jurisdiction and venue of any Arizona State or Federal Court sitting in the City of Phoenix in any action or proceeding arising out of or relating to this Deed of Trust. Trustor hereby waives the defense of an inconvenient forum.



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h. Jury Trial Waiver. Trustor, and Beneficiary, by its acceptance of this Deed of Trust, hereby waive their respective rights to a trial by jury in any action or proceeding based upon, or related to, the subject matter of this Deed of Trust and the business relationship that is being established. This waiver is knowingly, intentionally, voluntarily and irrevocably made by Trustor and Beneficiary, and Trustor acknowledges that neither Beneficiary, nor any person acting on behalf of Beneficiary, has made any representations of fact to include this waiver of trial by jury or has taken any actions which in any way modify or nullify its effect. Trustor and Beneficiary acknowledge that this waiver is a material inducement to enter into a business relationship, that each of them has already relied on this waiver in entering into this Deed of Trust and that each of them will continue to rely on this waiver in their related future dealings.

i. Promotional Information. Beneficiary shall have the right to release information related to this Deed of Trust and the other Loan Documents ("Promotional Information"), including photographs of the Trust Property, characteristics of the Trust Property, Loan characteristics, financing terms and aspects of underwriting, for advertising, marketing and other promotional purposes, such as commercials, advertising fliers, trade articles, Internet releases and public presentations. Beneficiary shall not be held liable to Trustor for the release of Promotional Information.

j. Modification. This Deed of Trust may be amended, modified, superseded, canceled, renewed or extended and the terms or covenants hereof may be waived only by a written instrument executed by all Parties.

k. Waiver. The failure of Beneficiary, at any time or times, to require performance of any provision of this Deed of Trust shall in no manner affect the right of Beneficiary at a later time to enforce that provision. Further, if payment of any sum secured hereby is accepted after its due date, Beneficiary does not waive its right either to require prompt payment when due of all other sums or to declare a default for failure to pay as required by the Loan Documents. No waiver by Beneficiary of the breach of any term or covenant contained in this Deed of Trust, whether by conduct or otherwise, in any one or more instances, shall be deemed to be, or construed as, a further or continuing waiver by Beneficiary of any such breach, or a waiver of the breach of any other term or covenant contained in this Deed of Trust.

l. Waiver of Statute of Limitations. To the extent permitted by applicable law, Trustor hereby waives the right to assert any statute of limitations as a bar to the enforcement of the lien created by any of the Loan Documents or to any action brought to enforce the Note or any other obligations secured by any of the Loan Documents.

m. Waiver of Homestead and Redemption. Trustor hereby waives all right of homestead exemption in the Trust Property. Trustor hereby waives all right of redemption on behalf of Trustor and on behalf of all other persons acquiring any interest or title in the Trust Property subsequent to the date of this Deed of Trust, except decree or judgment creditors of Trustor.

n. Interpretation. As used in this Deed of Trust, the word "include(s)" means "include(s), without limitation," and the word "including" means "including, without limitation."

o. Variable Rate. THIS DEED OF TRUST MAY SECURE A VARIABLE INTEREST RATE LOAN.

SEE ATTACHED SIGNITURE PAGE



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IN WITNESS WHEREOF, this Deed of Trust has been executed as of the date set forth on the first page.

TRUSTOR:

As to Parcel A:

Vanderbilt Farms, L.L.C., an Arizona limited liability company

Brandon D. Wolfswinkel
By: Brandon D. Wolfswinkel
Its: Managing Member

As to Parcel B:

Vistoso Partners, L.L.C., an Arizona limited liability company

Brandon D. Wolfswinkel
By: Brandon D. Wolfswinkel
Its: Manager

STATE OF AZ)
)ss
COUNTY OF MARICOPA)

The foregoing instrument was acknowledged before me this 5th day of July, 2007 by **Brandon D. Wolfswinkel of Vanderbilt Farms, L.L.C., an Arizona limited liability company on behalf of the limited liability company and of Vistoso Partners, L.L.C., an Arizona limited liability company on behalf of the limited liability company**

Autumn Ahland
Notary Public

My Commission Expires:

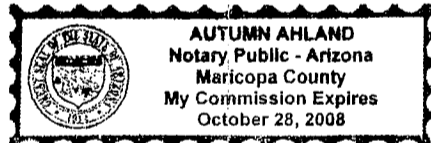


EXHIBIT "A"

Loan No.: 858006
Borrower: Vanderbilt Farms, L.L.C., an Arizona limited liability company as to Parcel A, and Vistoso Partners, L.L.C., an Arizona limited liability company as to Parcel B

Parcel A:

That certain tract of land located in the West half of Section 10, Township 2 South, Range 7 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, and being more particularly described as follows:

BEGINNING at the Southeast corner of the property herein described, said point being a 3" Maricopa County DOT brass cap marking the South quarter corner of said Section 10;

THENCE along the South line of said Section 10, North 89 degrees, 32 minutes, 41 seconds West 2627.81 feet to a 3" Maricopa County DOT brass cap marking the Southwest corner of said Section 10;

THENCE along the West line of said Section 10, North 00 degrees, 32 minutes, 13 seconds West, 2647.08 feet to a 3: Maricopa County DOT brass cap marking the West quarter corner of said Section 10;

THENCE continuing along said West line North 00 degrees, 33 minutes 33 seconds West, 11.77 feet;

THENCE leaving said West line, South 89 degrees, 16 minutes, 19 seconds East, 2628.16 feet to the East line of the West half of said Section 10;

THENCE along said East line, South 00 degrees, 32 minutes, 06 seconds East, 2646.34 feet to the POINT OF BEGINNING;

EXCEPT the North 1320.00 feet of the East 1320.00 feet thereof.

APNs:

Parcel A: 304-62-019F/Maricopa

When recorded return to:

MORTGAGES LTD.
55 E. Thomas Rd.
Phoenix, Arizona 85012

**DEED OF TRUST, ASSIGNMENT OF RENTS AND LEASES,
SECURITY AGREEMENT AND FIXTURE FILING**

Loan No. 859606 **July 5, 2007**

Secured Loan Amount: \$11,000,000.00

“Trustor” (individually and collectively):

Vanderbilt Farms, L.L.C., an Arizona limited liability company as to Parcel A, and Vistoso Partners, L.L.C., an Arizona limited liability company as to Parcel B
1121 W. Warner Rd. Ste. 109
Tempe, AZ 85284

“Trustee”: **Scott M. Coles**, a licensed real estate broker
55 E. Thomas Rd.
Phoenix, AZ 85012

“Beneficiary”: **Scott M. Coles or Christopher J. Olson, CPA, Trustees of the Mortgages Ltd. 401(k) Plan**
55 E. Thomas Rd.
Phoenix, Arizona 85012

This Deed of Trust, Assignment of Rents, Leases, Security Agreement, and Fixture Filing (this “Deed of Trust”), is executed by Trustor in favor of Trustee for the benefit of Beneficiary as of the date written above. In connection with this Deed of Trust and on the same date, Trustor or a third party borrower has executed a Promissory Note (the “Note”), a Servicing Agent Agreement and other related documents to evidence and secure the monetary and non-monetary obligations owed to Beneficiary by Trustor and related third parties. These documents, including this Deed of Trust, and any other agreement, document, or instrument evidencing, governing or securing the payment of the indebtedness evidenced by the Note, are collectively referred to as the “Loan Documents.” Trustor understands and agrees that Servicing Agent Agreement, which is incorporated herein by reference, authorizes Servicing Agent appointed thereunder to, among other things, act on the Beneficiary’s behalf in accordance with this Deed of Trust.

1. TRUST PROPERTY

For good and valuable consideration, including the indebtedness referenced herein and the trust created hereby, the receipt and sufficiency of which is hereby acknowledged, Trustor irrevocably grants, transfers, conveys and assigns to Trustee, in trust, with the power of sale, for the benefit and security of Beneficiary, all of Trustor’s present and future estate, right, title and interest, under and subject to the terms and conditions set forth herein, in and to that certain real property located in **Maricopa County**, Arizona, and in **Pima County**, Arizona, more particularly described in **Exhibit A** attached hereto and incorporated herein by this reference (the “Real Property”), together with all of the following:

- a. Buildings, structures, fixtures or other improvements now or hereafter placed on the Real Property (collectively, the “Improvements”);
- b. All existing and future leases, subleases, licenses and other agreements for the use and occupancy of all or any portion of the Real Property;
- c. All rents, issues and profits and income generated by the Real Property (the “Property Income”);



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- d. All classes of property now or at any time hereafter attached to or used in any way in connection with the use, operation or occupancy of the Real Property;
- e. All property, rights, permits and privileges now or hereafter owned by Trustor or now or hereafter appurtenant to the Real Property, which entitle Trustor or the Real Property to receive all available utilities for use thereon;
- f. All awards resulting from eminent domain or condemnation in whole or in part, proceeds of insurance required on the Real Property and any other award for damage to or destruction of the Real Property or the Improvements;
- g. Any licenses, contracts, permits and agreements required or used in connection with the ownership, operation or maintenance of the Real Property, and the right to the use of any trade names, trademarks or service marks, now or hereafter associated with operation of any business conducted on the Real Property;
- h. All "Impounds," as defined herein, held by Beneficiary or its Servicing Agent for the benefit of Trustor, including, but not limited to, Impounds for taxes, assessments, insurance, homeowners' dues and construction;
- i. All easements, profits, rights of way and other rights now owned or hereafter assigned to Trustor; and
- j. All proceeds of the foregoing, including all proceeds of and all unearned premiums due from all insurance policies covering the Real Property.

All of the foregoing are collectively referred to hereinafter as the "Trust Property."

2. TRUSTOR'S REPRESENTATIONS AND WARRANTIES

Trustor hereby represents and warrants that Trustor has a good, marketable and insurable title to the Trust Property acceptable to Beneficiary and that Trustor holds fee simple title to the Real Property. Trustor forever warrants and shall defend title to the Trust Property for the Beneficiary, its successors and assigns, against all claims whatsoever; subject, however, to the following:

- a. The right, power and authority hereinafter given to and conferred upon Beneficiary to collect and apply such Property Income; and
- b. Any easements and restrictions approved by Beneficiary and listed in the schedule of exceptions to coverage in any title insurance policy insuring Beneficiary's interest in the Trust Property.

3. SECURITY

This Deed of Trust secures the following (the "Obligations"), in such order of priority as Beneficiary may elect:

- a. Strict performance of every obligation of Trustor and the third party borrower, if any, under all Loan Documents;
- b. Payment of all sums due under the Note including the principal amount of the 'Initial Funding' of **\$11,000,000.00**, interest thereon and all other charges assessed thereunder, such as late charges, notice fees and prepayment premiums;
- c. In the event that this Deed of Trust secures a Note with an Equity-Flex[®] Mortgage Line and "Advances," as defined therein, are made by Beneficiary, then payment of the aggregate amount of all Advances and all Equity-Flex Fees (as defined in said Note);
- d. In the event of default, payment of interest at the "Default Interest Rate," as defined by the Note;



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e. Payment of all sums incurred by Beneficiary or its Servicing Agent, with interest thereon, to protect, preserve, repair or maintain the Trust Property or to cure any senior or junior loans, trust deeds, mortgages or other security instruments, including taxes, assessments, homeowners' dues, ground rents, force placed insurance, attorneys' fees, litigation costs, appraisal fees, inspection fees, project manager fees, receiver fees and other expert or consulting fees;

f. Payment of all sums incurred by Beneficiary or its Servicing Agent, with interest thereon, in the event of Trustor or the third party borrower's default under the Loan Documents, including, without limitation, attorneys' fees, litigation costs and expenses, appellate costs and expenses, bankruptcy fees, foreclosure fees, trustee fees, receiver fees, expert fees and witness fees;

g. Payment of all sums incurred by Beneficiary or its Servicing Agent, with interest thereon, in the collection of amounts owed by any guarantor of the Note, including attorneys' fees, litigation costs and expenses, appellate costs and expenses, bankruptcy fees, foreclosure fees, trustee fees, receiver fees, expert fees and witness fees;

h. Strict performance of every obligation of Trustor and the third party borrower, if any, contained in any agreement, document or instrument, hereafter executed by Trustor or the third party borrower, reciting that the obligations thereunder are secured by this Deed of Trust, which includes Advance Agreements, forbearance agreements, extension agreements, payment plans and Note modifications;

i. Payment of all other sums, with interest thereon, that hereafter may be loaned to Trustor or the third party borrower, if any, or their successors or assigns, by Beneficiary or its successors or assigns when evidenced by an agreement or promissory note reciting that they are secured by this Deed of Trust, which includes, but is not limited to, Advance Agreements, forbearance agreements, extension agreements, payment plans and Note modifications;

j. Strict compliance with and performance of each and every provision of any declaration of covenants, conditions and restrictions, any maintenance, easement and party wall agreement or any other agreement, document or instrument by which the Trust Property is bound or may be affected; **and**

k. In the event of default, payment of any fees incurred by Beneficiary to Servicing Agent to effect a sale in whole or in part of Beneficiary's interest in the Loan Documents.

4. TRUSTOR'S OBLIGATIONS

a. **Trust Property.** Trustor shall keep the Trust Property in good condition and repair. Trustor shall not to remove or demolish any Improvements on the Real Property. Trustor shall complete or restore promptly and in good and workmanlike manner any Improvement which may be constructed, damaged or destroyed, and pay, when due, all claims for labor performed and materials furnished therefor. Trustor shall comply with all laws affecting the Trust Property or requiring any alterations or Improvements to be made thereon. Trustor shall not (i) commit or permit waste of the Trust Property or (ii) abandon the Trust Property. Trustor shall not initiate or acquiesce in a change in the zoning classification of the Real Property without Beneficiary's prior written consent. Trustor shall not commit, suffer or permit any act to or upon the Trust Property in violation of any law. Trustor shall do all acts which, from the character or use of the Trust Property, may be reasonably necessary.

b. **Appraisal.** If the Loan's principal exceeds \$250,000.00, then Trustor shall obtain, at Trustor's sole cost and expense, a MAI or equivalently certified appraisal of the Trust Property addressed to Beneficiary and prepared by an appraiser approved by Beneficiary. Trustor shall provide Beneficiary a copy of the appraisal and all relevant supporting documents within 90 days of the date of the Loan closing. If the appraisal is not received by Beneficiary within that 90 day period, then the Loan shall be in default and Beneficiary shall be entitled to pursue any and all remedies available under the Loan Documents. In addition, at the request of Beneficiary, Trustor shall provide an updated MAI or equivalently certified appraisal of the Trust Property within 30 days of such request. If such updated appraisal is not received by Beneficiary within that 30 day period, then the Loan shall be in default and Beneficiary shall be entitled to pursue any and all remedies available under the Loan Documents.



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c. **Insurance and Casualty.** Trustor shall keep all Improvements now or hereafter erected on the Real Property continuously insured against loss by fire or other hazards in an amount not less than the replacement cost of the Improvements, and shall maintain and evidence liability insurance in the minimum amount of **\$1,000,000** or in such other amount required by Beneficiary. When requested by Beneficiary, Trustor shall provide and maintain insurance policies with annual premiums in amounts required by Beneficiary covering vandalism and malicious mischief, sprinkler leakage, rent abatement, business loss, flood damage and/or all other risks commonly insured against by persons owning like properties in the locality of the Property or commonly required by prudent institutional investors making loans secured by liens against such properties. All insurance policies or certificates shall be held by Beneficiary, shall be in such companies as Beneficiary may approve and shall name the Beneficiary as an additional insured with the proceeds payable first to Beneficiary, as its interest may appear, and then to Trustor. All insurance policies shall provide that Beneficiary is to receive 30 days notice prior to cancellation or non-renewal and shall otherwise be in the form and substance satisfactory to Beneficiary. All renewal policies shall be delivered to Beneficiary 30 days before the expiration of the then existing policies together with satisfactory proof that the premiums for renewal have been paid. The amount collected under any insurance policy may be applied in whole or in part by Beneficiary to any indebtedness hereby secured and in such order as Beneficiary may determine whether or not then due, or, at the option of Beneficiary, the entire amount so collected or any part thereof may be released to Trustor for restoration or repair of the Trust Property upon such terms and conditions as are acceptable to Beneficiary. Such application or release shall not cure or waive any default hereunder or cause discontinuance of any action that may have been or may thereafter be taken by Beneficiary or Trustee because of such default. In the event of loss, Trustor shall give immediate notice to Beneficiary. If Trustor has not given proof of loss, then Beneficiary may make proof of loss at any time. Each insurance company is hereby authorized and directed to make payment for any loss directly to Beneficiary, instead of to Trustor, or to Trustor and Beneficiary jointly. Beneficiary shall not be liable for any insurance, for the collection of any insurance proceeds or for the insolvency of any insurer. Any application of insurance proceeds to the outstanding Loan balance by Beneficiary shall not cure or waive any event of default. In the event of the sale of the Trust Property under the power of sale granted to Trustee, the judicial foreclosure of this Deed of Trust or the takeover of possession by a court appointed receiver or trustee, then all right, title and interest of Trustor to such policies of insurance shall inure to the benefit of and shall pass to the successor title-holder of the Trust Property (or to the receiver, if applicable).

d. **Litigation.** If an event of default occurs under the Loan Documents, Trustor shall pay all costs of enforcement, collection and preparation therefor, whether or not any action or proceeding is commenced in any court through all appeals, which includes Servicing Agent administration fees, attorneys' fees, appraisal fees, inspection fees, expert witness fees and foreclosure processing fees. Trustor, at the option of Beneficiary, shall appear and defend any action or proceeding purporting to affect the Trust Property or the rights or powers of Beneficiary and shall pay all costs and expenses of Beneficiary, including all costs of proving title and attorney's fees, with interest thereon at the Default Interest Rate from the date incurred or expended.

e. **Property Payments.** Trustor shall pay, when due, and before any interest, collection fees or penalties shall accrue, the following:

- (1) All taxes, assessments, homeowners' dues, owners' association fees, ground rents, and any other charges and obligations which may become a lien or charge against the Trust Property;
- (2) All encumbrances, charges and liens on the Trust Property or any part thereof; **and**
- (3) All costs, fees and expenses incurred under this Deed of Trust and the other Loan Documents, including all Trustee's fees for the issuance of any deed of partial or full release and partial or full reconveyance and all charges, costs and expenses incurred in the event of default or reinstatement.

f. **Right to Cure.** If Trustor fails to make any payment or to do any act as required hereby, Beneficiary or Trustee, but without obligation to do so and without prior notice or demand upon Trustor and without releasing Trustor from any obligation herein, may take such action in such manner and to such extent as either may deem necessary to protect the Trust Property. Beneficiary or Trustee may enter the Real Property for such purposes, appear in and defend any action or proceeding purporting to affect the Trust Property or the rights or powers of Beneficiary or Trustee and pay, purchase, contest or compromise any encumbrance, charge or lien, which in the judgment of either Beneficiary or Trustee appears to jeopardize Beneficiary's security hereunder, and, in exercising any such powers, pay necessary expenses, employ counsel and pay attorneys' fees.



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g. Expenditures. Trustor shall pay immediately all sums expended by Beneficiary or Trustee pursuant to the provisions of this Deed of Trust or the other Loan Documents, together with interest from date of such expenditure at the Default Interest Rate. Any amount paid by Beneficiary or Trustee to protect the Trust Property, together with interest thereon, shall become a part of the indebtedness secured by this Deed of Trust and a lien on the Trust Property, and shall be immediately due and payable to Beneficiary or Trustee.

h. Impounds. Whenever required by Beneficiary, Trustor shall pay with each monthly installment payment an additional sum equal to 1/12th of the annual real property taxes, special assessments, homeowners' or owners' association dues, ground rents, if any, and insurance premiums next due on the Trust Property ("Impounds"), as may be estimated by Beneficiary, which will be held by Beneficiary in a special account (the "Impound Account"). Impounds may be commingled with other Impounds held by Beneficiary or its Servicing Agent. Any interest on Impounds shall accrue to Beneficiary or its Servicing Agent. Impounds may be used to pay taxes, assessments, homeowners' or owners' association dues, ground rents, if any, and insurance premiums before delinquent or before the insurance expires. If any of the Impounds, in the opinion of Beneficiary, are insufficient to accumulate a fund with which to pay such items, Trustor shall pay Beneficiary upon demand the amount necessary to make up the deficiency. If the Impounds held by Beneficiary exceed the amount necessary, in the opinion of Beneficiary, to pay such items, such excess shall, at Beneficiary's option, be refunded to Trustor or shall be credited on any sums due Beneficiary under this Deed of Trust or the other Loan Documents. If there is a default under this Deed of Trust or the other Loan Documents, Beneficiary may apply, at its discretion, the amount then remaining in the Impound Account to any sums due under this Deed of Trust or the other Loan Documents. Any Impound amount is subject to change in the event that the county tax assessor increases or decreases the valuation of the Trust Property, or in the event that there is any other change of circumstances affecting the Trust Property. Any sums held in any construction loan account shall be considered an "Impound."

i. Financial Statements. Trustor shall provide in form and substance satisfactory to Beneficiary: (a) within 90 days after the end of each calendar year, a statement of income and expenses, relating to the Trust Property for such calendar year; (b) within 90 days after the end of each calendar year, financial statements for such year from Trustor and any Guarantor of the Loan; (c) within 30 days after the end of each calendar year, a rent roll for the Trust Property as of January 1 of the current year; (d) upon the request of Beneficiary, all filed Federal and State income tax returns for Trustor and any Guarantor of the Loan; and (e) such other financial information concerning the Trust Property, Trustor, or any Guarantor as Beneficiary may reasonably require from time to time. Beneficiary or its designated agent shall have the right to inspect the books and records with respect to the Trust Property at any time, upon reasonable notice to Trustor.



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j. Environmental Matters.

(i) Trustor represents and warrants to Beneficiary, to the best of Trustor's knowledge after all appropriate inquiry, and covenants that there are no, nor will there be, for so long as any of the indebtedness secured hereby remains outstanding, any Hazardous Materials (as defined below) generated, released, stored, buried, or deposited over, beneath, in or upon the Real Property or on or beneath the surface of adjacent property, except as such Hazardous Materials may be used, stored or transported in connection with the permitted uses of the Trust Property and then only in de minimus quantities and only to the extent permitted by law after obtaining all necessary permits and licenses therefor. "Hazardous Materials" shall mean and include any pollutants, flammables, explosives, petroleum (including crude oil) or any fraction thereof, radioactive materials, hazardous wastes, dangerous or toxic substances or related materials, including substances defined as or included within the definition of toxic or hazardous substances, wastes or materials under any federal, state or local laws, ordinances, regulations or guidelines which relate to pollution, the environment or the protection of public health and safety, or limiting, prohibiting or otherwise regulating the presence, sale, recycling, generation, manufacture, use, transportation, disposal, release, storage, treatment of, or response or exposure to, toxic or hazardous substances, wastes or materials. Such laws, ordinances and regulations are hereinafter collectively referred to as the "Hazardous Materials Laws."

(ii) Trustor shall, and Trustor shall cause all employees, agents, tenants, contractors and subcontractors of Trustor and any other persons from time to time present on or occupying the Trust Property to, keep and maintain the Trust Property in compliance with, and not cause or knowingly permit the Trust Property to be in violation of, any applicable Hazardous Materials Laws. Neither Trustor, nor any employees, agents, tenants, contractors or subcontractors of Trustor, nor any other persons occupying or present upon the Trust Property, shall use, generate, manufacture, store or dispose of on, under or about the Real Property, or transport to or from the Real Property any Hazardous Materials, except as such Hazardous Materials may be used, stored or transported in connection with the permitted uses of the Trust Property and then only in de minimus quantities and only to the extent permitted by law after obtaining all necessary permits and licenses therefor.

(iii) Trustor shall be solely responsible for, and shall indemnify, defend, protect and hold harmless Beneficiary, its directors, officers, employees, agents, successors and assigns for, from and against, any claim, demand, lawsuit, loss, damage, cost, expense or liability directly or indirectly arising out of or attributable to the use, generation, storage, release, threatened release, discharge, disposal or presence of Hazardous Materials on, under or about the Real Property (whether occurring prior to or during the pendency of the indebtedness secured hereby or otherwise and regardless of by whom caused, whether by Trustor or any predecessor in title or any owner of land adjacent to the Real Property or any other third party, or any employee, agent, tenant, contractor or subcontractor of Trustor or any predecessor in title or any such adjacent land owner or any third party) including: (i) claims of third parties (including governmental agencies) for injury or death to any person or for damage or destruction of any property; (ii) claims for response costs, clean-up costs, costs and expenses of removal and restoration, including fees of attorneys and experts, and costs of determining the existence of Hazardous Materials and reporting same to any governmental agency; (iii) any and all other claims for expenses or obligations, including attorneys' fees, costs and other expenses; (iv) any and all penalties threatened, sought or imposed on account of a violation of any Hazardous Materials Laws; (v) all fees of any consultants, attorneys and engineering firms retained in connection with monitoring the obligations of Trustor under this Deed of Trust; and (vi) any loss occasioned by diminution in the value of the Trust Property which results from any of the foregoing.

5. EQUITY-FLEX®/ DELAY FLEX® MORTGAGE LINE

a. **Equity-Flex®.** If that this Deed of Trust secures a Note with an Equity-Flex® Mortgage Line, Trustor may use, subject to the conditions set forth in the Note, the existing equity in the Trust Property in order to obtain additional funds beyond the amount of the Initial Funding of \$11,000,000.00 up to the Secured Loan Amount of \$11,000,000.00. This Deed of Trust secures the entire Secured Loan Amount regardless of the amount of the Initial Funding or any subsequent draws ('Advances') on the Loan account. The payoff amount required to release this Deed of Trust shall be based on the actual outstanding balance of the Loan account at the time of payoff.

Notice: If Beneficiary consents to alienation, assignment or transfer of the Trust Property or the obligations under this Deed of Trust in accordance with Section 14, all assignees, transferees and junior lien holders are hereby advised that this Deed of Trust provides for adjustable release provisions and fluctuating principal balances at Beneficiary's discretion.



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b. **Delay-Flex[®].** If this Deed of Trust secures a Note with a Delay-Flex[®] Mortgage Line, Trustor may, subject to the conditions set forth in the Loan Documents and described herein, obtain the Delay-Flex amount designated as such and in accordance to the portions set-forth in the Delay-Flex Funding Schedule outlined in the Delay-Flex Disbursement Summary executed in connection with this Loan. This Deed of Trust secures the entire Designated Loan Amount regardless of the amount of the Initial Funding or any subsequent fundings on the Loan account. However, the payoff amount required to release the Deed of Trust shall be based on the actual outstanding balance of the Loan account at the time of payoff.

c. **The Funding of each Delay-Flex portion is subject to Beneficiary's discretionary approval and satisfaction of the following conditions:**

(i) There is no then-existing default under any of the Loan Documents and there exist no facts which, with the giving of notice or passage of time, would constitute a default under any of the Loan Documents;

(ii) Beneficiary, or its agent, has conducted an inspection of the Trust Property and the present condition of the Trust Property has been approved;

(iii) The increased loan amount following the funding of each Delay-Flex portion, if made, will not exceed Beneficiary's lending guidelines for the Trust Property;

(iv) Beneficiary may further condition any delayed funding on endorsements to Beneficiary's Title Policy insuring the continued validity and priority of this Deed of Trust, Beneficiary's approval of Trustor's proposed utilization of the Delay-Flex proceeds and any other reasonable assurances or conditions Beneficiary may require or impose;

(v) Beneficiary shall fund each Delay-Flex portion on a date set by Beneficiary at its sole and absolute discretion, which will occur no earlier than the thirtieth (30th) day prior to the Fund Date set forth in the Delay-Flex Funding Schedule and no later than the thirtieth (30th) consecutive day following the Fund Date set forth in the Delay-Flex Funding Schedule; and

(vi) **Funding the total Delay-Flex portion of the Loan is not to exceed 9 months from the date of Loan closing. The Delay-Flex Funding Schedule must be completed by Loan closing and included in the Disbursement Summary. Any modification to the Delay-Flex Funding Schedule requires written approval from Beneficiary or Servicing Agent.**

Notice: If Beneficiary consents to alienation, assignment or transfer of the Trust Property or the obligations under this Deed of Trust in accordance with Section 14, all assignees, transferees and junior lien holders are hereby advised that this Deed of Trust provides for adjustable release provisions and fluctuating principal balances at Beneficiary's discretion.

6. CONSTRUCTION MORTGAGE

This Deed of Trust may constitute a "construction mortgage" within the meaning of A.R.S. Section 47-9334 and is entitled to the benefits of A.R.S. Section 47-9334(H). If this Deed of Trust secures a construction loan, the proceeds of the obligations secured by this Deed of Trust are to be used by Trustor for the purpose of acquiring title to the Real Property and funding the acquisition, construction and improvement of the Improvements, or refinancing such secured obligations. If this Deed of Trust secures a construction loan, notice is hereby given that the proceeds of the Note secured hereby may be collaterally assigned to Beneficiary or its agent pursuant to the terms of the Construction Loan Agreement executed herewith.

7. CONDEMNATION

If any portion of the Trust Property is condemned or threatened to be condemned by the governing authority, Beneficiary, without notice, shall have the right to accelerate all sums owed under the Loan Documents, which are secured by this Deed of Trust, and those sums shall become immediately due and payable to Beneficiary irrespective of their maturity date. All awards of damages for any condemnation or taking, for injury to the Trust Property by reason of public use or for damages from private trespass or injury to the Trust Property, are hereby assigned, transferred and conveyed to Beneficiary and shall be paid to Beneficiary as further security for the Loan. Upon receipt of such monies, Beneficiary may hold the same as such further security, or apply or release the same in the same manner and with the same effect as herein provided for the disposition of proceeds of fire or other insurance.



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8. BENEFICIARY'S OPTIONS

Without affecting the obligation of Trustor to pay and perform as required herein, without affecting the personal liability of any person for payment of the indebtedness secured hereby, and without affecting the lien or priority of lien hereof on the Trust Property, Beneficiary may, at its option:

- a. Release and reconvey all or any part of the Trust Property;
- b. Consent to the making and/or recording of any map or plat of the Trust Property or any part thereof;
- c. Join in granting any easement on the Trust Property;
- d. Join in or consent to any extension agreement or any agreement subordinating the lien, encumbrance or charge hereof;
- e. Extend the time for payment for all or any part of the indebtedness secured hereby, accept a renewal note therefore, reduce the payments thereon, release any person liable for all or any part thereof or otherwise change the terms of all or any part of the obligation or Note secured hereby; or
- f. Take and hold other security for the payment and performance of the obligation and Note secured hereby, and enforce, exchange, substitute, subordinate, waive or release any such security.

Any of the foregoing actions by Beneficiary or the Trustee at Beneficiary's direction may be taken without the consent of any junior lienholder, and shall not affect the priority of this Deed of Trust over any junior lien.

9. SECURITY AGREEMENT AND FIXTURE FILING

This Deed of Trust shall cover, and the Trust Property shall include, all property now or hereafter affixed on, attached to or incorporated upon the Real Property which, to the fullest extent permitted by law, shall be deemed a "fixture." To the extent that the Trust Property consists of rights in action or personal property covered by the Uniform Commercial Code, this Deed of Trust shall also constitute a security agreement, and Trustor hereby grants to Beneficiary, as secured party, a security interest in such property, including all proceeds thereof, for the purpose of securing the obligations herein and the other Loan Documents. In addition, for the purpose of securing the obligations herein and the other Loan Documents, Trustor, as debtors, hereby grants to Beneficiary, as secured party, a security interest in the following:

- a. All personal property (including all goods, supplies, equipment, furniture, furnishings, fixtures, machinery, inventory and construction materials) in which Trustor now or hereafter acquires an interest or right, which is now or hereafter located on or affixed to the Real Property or the Improvements, or used or useful in the operation, use, or occupancy thereof or in the construction of any additional improvements thereon, together with any interest of Trustor in and to such personal property which is leased by Trustor or is subject to any superior security interest, and all books, records, leases and other agreements, documents, and instruments of whatever kind or character, relating to the Real Property, the Improvements, or such personal property;
- b. All fees, income, rents, issues, profits, earnings, receipts, royalties, and revenues that may accrue from the personal property described in clause (a) above or any part thereof, or from the Real Property or the Improvements, or that may be received or receivable by Trustor from any hiring, using, letting, leasing, subhiring, subletting, subleasing, occupancy, operation or use thereof;
- c. All of Trustor's present and future rights to receive payments of money, services, or property, including rights to receive capital contributions or subscription payments from the members, partners, shareholders or principals of Trustor, amounts payable on account of the sale of ownership interests in Trustor or the capital stock of Trustor, accounts and other accounts receivable, security deposits, chattel paper, notes, drafts, contract rights, instruments, general intangibles, and principal, interest and payments due on account of goods sold or leased, services rendered, loans made or credit extended, together with title to or interest in all agreements, documents, and instruments, evidencing, securing or guarantying the same;



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d. All other intangible property and rights relating to the Real Property, the Improvements, the personal property described in clause (a) above or the operation, occupancy, or use thereof including all governmental and non-governmental permits, licenses (including Trustor's interest in any liquor license related to business operations conducted on the Real Property), and all approvals relating to construction on or operation, occupancy, or use of the Real Property or the Improvements, all names under or by which the Real Property or the Improvements may at any time be operated or known, all rights to carry on business under any such names, or any variant thereof, all trade names and trademarks relating in any way to the Real Property or the Improvements, and all good will in any way relating to the Real Property or the Improvements;

e. Trustor's rights under all insurance policies covering the Real Property, the Improvements or the personal property described in clause (a) above, and any and all proceeds, loss payments, and unearned premiums payable or refundable regarding the same;

f. All reserves, deferred payments, deposits, impound accounts, refunds, cost savings, and payments of any kind relating to the construction of any improvements on the Real Property;

g. All water stock or water rights relating to the Real Property;

h. All architectural, structural, mechanical, and engineering plans and specifications prepared for construction of improvements on the Real Property, or extraction of minerals or gravel from the Real Property, and all studies, data, and drawings relating thereto; and also all contracts and agreements of Trustor relating to such plans and specifications or to such studies, data, and drawings, for the construction of improvements on or extraction of minerals or gravel from the Real Property;

i. All proceeds from the sale or other disposition of any of the collateral described above;

j. All of Trustor's rights in proceeds of the loan made by Beneficiary to Trustor;

k. All of Trustor's rights to security, cleaning, or other deposits from tenants relating to leases or occupancy agreements for any portion of the Real Property or the Improvements;

l. All of Trustor's rights in any Impound account held by Trustor or Beneficiary on behalf of Trustor;

m. All of Trustor's rights in any other deposit accounts of Trustor; and

n. All wells, well equipment, rights to wells, permits and licenses, water rights and all other related property used in connection with the operation of any well on the Real Property or appurtenant to the Real Property.

Trustor acknowledges and agrees that Beneficiary may maintain certain deposit accounts (including a payment impound account and/or a construction impound account) in the name of Beneficiary for the benefit of Trustor and such accounts may include funds disbursed or to be disbursed with respect to the Loan. Trustor acknowledges and agrees that all such funds are the property of Beneficiary and Trustor hereby disclaims any interest therein.




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Trustor shall promptly replace any personal property that is consumed or worn out in ordinary usage and such replacement shall be secured hereby. Trustor may sell or dispose of only that part of the personal property that Trustor is obligated to replace, and all proceeds from any such sale or disposition in excess of the amount expended for such replacements shall promptly be paid to Beneficiary to be applied according to the Loan Documents, whether or not then due. Trustor shall immediately notify Beneficiary of any change in the location of Trustor's chief executive office or residence (if Trustor is an individual without an office) in accordance with the terms of this Deed of Trust, and any change in location of the personal property encumbered hereby, except if replaced as permitted herein. All Trustor's representations, warranties and covenants contained in this Deed of Trust shall apply to the personal property encumbered hereby whether or not expressly referred to herein. Trustor's representations, warranties and covenants and warranties contained in this Section are in addition to, and not in limitation of, those contained in the other provisions of this Deed of Trust. Upon its recording in the real property records, this Deed of Trust shall be effective as a fixture filing. The filing of any other financing statement relating to any other personal property, rights or interests described herein shall not be construed to diminish any of Beneficiary's rights or priorities hereunder. Trustor hereby authorizes and empowers Beneficiary and irrevocably appoints Beneficiary its attorney-in-fact to execute and file, on Trustor's behalf, all financing statements and refilings and continuations thereof as Beneficiary deems necessary or advisable to create, preserve and protect the security interest created hereby.

This Deed of Trust covers certain goods, which are or are to become fixtures related to the Real Property and CONSTITUTES A FIXTURE FILING with respect to such goods executed by Trustor, as debtor, in favor of Beneficiary, as secured party. For purposes of the Uniform Commercial Code, the following information is supplied:

Name and Address of Debtor: Vanderbilt Farms, L.L.C., an Arizona limited liability company and Vistoso Partners, L.L.C., an Arizona limited liability company
1121 W. Warner Rd. Ste. 109
Tempe, AZ 85284

Name and Address of Record Owner: Vanderbilt Farms, L.L.C., an Arizona limited liability company as to Parcel A, and Vistoso Partners, L.L.C., an Arizona limited liability company as to Parcel B
1121 W. Warner Rd. Ste. 109
Tempe, AZ 85284

Description of Real Estate: See Exhibit A attached hereto.

Name and Address of Secured Party: Mortgages Ltd., as agent
55 E. Thomas Road
Phoenix, Arizona 85012

This Deed of Trust covers goods that are or are to become fixtures.


10. RELEASE AND RECONVEYANCE

a. The release provisions contained in this Deed of Trust are subject to subsequent modification by separate agreements, which include, but are not limited to, Equity-Flex® Advance Agreements and/or upon the subsequent funding of Delay-Flex[®] Mortgage Line advances.

b. At any time, when Trustor is not in default under the Loan Documents, Beneficiary will execute or direct the Trustee to execute and deliver a Partial Deed of Release and Reconveyance, subject to any prepayment provisions contained in the Note, as follows: (i) There is no partial release provision on Parcel A. Parcel B will be given a free release upon the full payoff of the First Lien from Loan #858006 on the "Real Property" known as the Rancho Vistoso Neighborhoods G, H, I, K, M, O and Q and described as approx. 143 acres located on Moore Rd and Rancho Vistoso Blvd, Oro Valley, AZ, (ii) Upon payment of a Release Fee of \$75.00 per lot released, (iii) Upon payment of any prepayment penalties, if any, due pursuant to the Note, (iv) Upon Mortgages Ltd.'s receipt and approval of a Partial Release Endorsement to title policy if required by Beneficiary, (v) Upon payment of all applicable ALTA title policy endorsement and recording costs.



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c. Upon payment in full and satisfaction of the Obligations, Beneficiary will surrender this Deed of Trust and the other Loan Documents to Trustee for cancellation, retention and payment of Trustee's fees, and Trustee shall release and reconvey, without covenant or warranty, express or implied, the Trust Property then held hereunder. The recitals in such reconveyance or any matters or facts shall be conclusive proof of the truthfulness thereof. The grantee in such reconveyance may be described as "the person or persons legally entitled thereto."

11. ASSIGNMENT OF RENTS, LEASES AND PROFITS

To facilitate payment and performance of the obligations under this Deed of Trust and the other Loan Documents, Trustor hereby absolutely sells, transfers and assigns to Beneficiary all right, title and interest of Trustor in and to the following:

a. All existing and future leases, subleases, licenses and other agreements for the use and occupancy of all or a portion of the Trust Property, whether written or oral and whether for a definite term or month-to-month, together with any and all extensions, modifications and renewals thereof (collectively, the "Leases"); and

b. All income, receipts, revenues, royalties, rents, issues, profits and benefits now or hereafter arising from or out of the Leases or from or out of the Trust Property or any part thereof (collectively, the "Rents").


So long as there shall not have occurred an event of default under this Deed of Trust or any of the other Loan Documents, Trustor shall have the right to collect all Rents, and shall hold the same, in trust. Beneficiary may, at its option, upon default, at any time, without notice, either by person, by agent or by receiver appointed by a court, and without regard to the adequacy of any security for the indebtedness hereby secured or the solvency of Trustor, collect the Trust Property income (including the Rents) by any method authorized by law and apply the same, less costs and expenses of operation and collection, including attorneys' fees, Trustee's fees and Servicing Agent's administrative fees, upon any indebtedness secured hereby, Servicing Agent's administrative fees, upon any indebtedness secured hereby, and in such order as Beneficiary may determine. The entering upon and taking possession of the Trust Property, the collection of Trust Property income and the application thereof shall not cure or waive any default or notice of Trustee's sale or invalidate any act done pursuant to such notice. Beneficiary shall have the right to exercise all its rights as provided by A.R.S. §§ 33-702(B) and 33-807, which may be revised from time to time. It is expressly covenanted and agreed by the Trustor, that at the time of the execution and delivery of this Deed of Trust there has been no prepayment of any Rents by any of the tenants occupying the Trust Property or the Leases. It is further covenanted and agreed that Trustor, its successors or assigns, shall have no right, power or authority to alter, modify or amend the terms, or any of them, of the Lease in any particular whatsoever, without first obtaining the consent in writing of Beneficiary, its successors or assigns to such alteration, modification or amendment. Nothing herein contained shall be construed as making Beneficiary, or its successors or assigns, a mortgagee in possession, nor shall Beneficiary, or its successors or assigns be liable for laches, or failure to collect said rents, issues, profits, revenues, royalties, rights and benefits, and it is understood that Beneficiary, its successors or assigns, are to be account only for such sums as are actually collected.

12. DEFAULT AND REMEDIES

a. **Default.** Among other things constituting a default under the provisions of the Loan Documents, Trustor shall be deemed in default upon the occurrence of any of the following events:

- (1) Trustor, third party borrower, any endorser or any guarantor fails to make payment of any indebtedness secured hereby in accordance with the Loan Documents;
- (2) Trustor, third party borrower, any endorser of the Note or any guarantor fails to perform any obligation required by and in accordance with the Loan Documents, or any representation by Trustor, third party borrower, any endorser of the Note or any guarantor in any of the Loan Documents is untrue;
- (3) The death, incapacity, dissolution, winding-up or termination of the existence of Trustor, third party borrower, any endorser of the Note or any guarantor;
- (4) The calling of a meeting of the creditors of Trustor, third party borrower, any endorser of the Note or any guarantor;
- (5) The making by Trustor, third party borrower, any endorser of the Note or any guarantor of an assignment for the benefit of any of its creditors;
- (6) Trustor, third party borrower, any endorser of the Note or any guarantor becomes insolvent;




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- (7) Trustor, third party borrower, any endorser of the Note or any guarantor fails to pay its debts as they mature;
- (8) Trustor, third party borrower, any endorser of the Note or any guarantor admits in writing that such party is unable to pay such party's debts as they mature;
- (9) A receiver, trustee, custodian or conservator is appointed to manage over all or any part of the assets of Trustor, third party borrower, any endorser of the Note or any guarantor;
- (10) The occurrence of any material adverse change in the condition (financial or otherwise) of Trustor, third party Borrower, any endorser of the Note or any guarantor;
- (11) In the event that Trustor has secured or secures additional loans through Mortgages Ltd. (the "Additional Loans", including Loan No(s). 844006, 850206, 857306, 857406 and 858006), regardless as to whether Mortgages Ltd. has assigned its interests in the Additional Loans or this Loan, then a default under any Additional Loan shall constitute a default under this Loan and a default under this Loan shall constitute a default under the Additional Loans; or
- (12) Beneficiary in good faith deems itself insecure or believes the prospect for payment or performance is impaired.

b. Acceleration. Upon the occurrence of any of the foregoing events of default, Beneficiary, without notice, may declare all sums secured hereby immediately due and payable and may apply or cause to be applied amounts in any Impound Account to the obligations secured by this Deed of Trust in any manner that Beneficiary elects. Notwithstanding anything in this Deed of Trust or any other Loan Document to the contrary: (a) it shall be a default under this Deed of Trust if Trustor, third party borrower, the Note's endorser or any guarantor becomes the subject of any bankruptcy or voluntary or involuntary insolvency proceeding, in or out of court, for the adjustment of debtor-creditor relations ("Insolvency Proceedings"); and (b) if the any Insolvency Proceedings occur, any obligation of Beneficiary to make further advances shall terminate, and all sums of principal and interest under the Note shall automatically become due and payable without notice of default, presentment or demand for payment, protest or notice of nonpayment or dishonor, or other notices or demands of any kind or character.

c. Trustee's Sale. Should Beneficiary elect to have the Trust Property sold by Trustee, Beneficiary shall deliver to Trustee written notice, setting forth the nature of the default, and of the election to cause the Trust Property to be sold. Beneficiary also shall deposit with Trustee this Deed of Trust, the Note and all other Loan Documents evidencing expenditures secured hereby. Trustee shall record and give notice of the Trustee's Sale in the manner required by law, and after the lapse of such time as may then be required by law, Trustee shall sell, in the manner required by law, the Trust Property at public auction, at the time and place fixed by the notice of Trustee's Sale to the highest bidder for cash in lawful money of the United States, payable at the time of sale. Notice to Trustor shall be given in accordance with the provisions of A.R.S. Sections 33-808 and 33-809. Trustee, at Trustee's discretion, may postpone or continue the sale from time to time by giving notice of postponement or continuance by public declaration at the time and place last appointed for the sale. Trustee shall deliver to the purchaser at the Trustee's Sale a Deed conveying the Trust Property, but without any covenant or warranty, expressed or implied. The recitals in such deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any persons, including Trustor, Trustee or Beneficiary, may purchase the Trust Property at the Trustee's Sale. Beneficiary may bid for and purchase the Trust Property and shall be entitled to apply all or any part of the indebtedness secured hereby as a credit against the purchase price. The purchaser at the Trustee's sale shall be entitled to immediate possession of the Trust Property as against the Trustee or other persons in possession and shall have a right to the summary proceedings to obtain possession provided in Title 12, Chapter 8, Article 4, Arizona Revised Statutes, together with costs and attorneys' fees accrued therefor. After deducting all Trustee's costs, fees and expenses and of this Deed of Trust, including the costs of evidence of title in connection with the sale, Beneficiary and Trustee's attorneys' fees and Servicing Agent's administrative fees, Trustee shall apply the sale proceeds to the payment of all sums then secured hereby and all other sums due under the terms hereof, with accrued interest, and then the remainder, if any, to the person or persons legally entitled thereto or as provided in A.R.S. § 33-812.

d. Deficiency Judgment. To the extent permitted by law, Beneficiary shall be entitled to a deficiency judgment against Trustor for any balance remaining due hereunder after a Trustee's sale of the Trust Property.

e. Foreclosure and Other Remedies. In lieu of a Trustee's sale, pursuant to the power of sale conferred hereby, this Deed of Trust may be foreclosed in the same manner provided by law for the foreclosure of mortgages on real property. Beneficiary shall also have the right to exercise any or all remedies available hereunder and at law or in equity, including all remedies of a secured party under the Uniform Commercial Code with respect to any personal property secured hereby, the appointment of a receiver, provisional remedies and injunctive relief. All Beneficiary's rights and remedies shall be cumulative.




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f. **Appointment of Receiver or Mortgagee in Possession.** If an event of default is continuing or if Beneficiary shall have accelerated the indebtedness secured hereby, Beneficiary, upon application to a court of competent jurisdiction, shall be entitled as a matter of strict right, without notice, and without regard to the occupancy or value of any security for the indebtedness secured hereby or the insolvency of any party bound for its payment, to the appointment, at Beneficiary's option, of itself as mortgagee in possession, or of a receiver to take possession of and to operate the Trust Property, and to collect and apply the Rents. Beneficiary and such receiver and their representatives shall have no liability for any loss, damage, injury, cost or expense resulting from any action or omission which was taken or omitted in good faith.

13. SUCCESSOR TRUSTEE

Beneficiary may appoint a successor Trustee in the manner prescribed by law. A successor Trustee shall, without conveyance from the predecessor Trustee, succeed to all the predecessor's title, estate, rights, powers and duties. Trustee may resign at any time by complying with applicable law and by mailing or delivering notice thereof to Beneficiary and Trustor, and having so resigned shall be relieved of all liability and responsibility to Trustor, Beneficiary or otherwise hereunder. Any reference to "Trustee" herein shall include all successor trustees. Trustee shall not be liable for any action taken when acting in good faith, or upon any information supplied or direction given by Beneficiary.

14. ALIENATION

The Trust Property and the obligations under this Deed of Trust are not alienable, assignable or transferable by Trustor. Upon the occurrence any of the following, without prior written consent of Beneficiary or its Servicing Agent:

- a. Trustor sells, conveys, transfers, assigns, contracts for sale, leases with option to purchase or further encumbers the Trust Property or any part thereof, including any further assignment of the Trust Property's income, or a wraparound mortgage or purchase contract;
 - b. If Trustor is a corporation, the controlling interest in Trustor is sold, conveyed or transferred;
 - c. If Trustor is a limited liability company, any interest in Trustor is sold, conveyed or transferred;
- or
- d. If Trustor is a partnership, any general partnership interest, or the majority of limited parties interests, in Trustor is sold, conveyed or transferred, either voluntarily or involuntarily;

Beneficiary, without notice, shall have the right to accelerate all sums owed under the Loan Documents, which are secured by this Deed of Trust, and those sums shall become immediately due and payable to Beneficiary irrespective of their maturity date. This provision shall apply to each and every such sale, conveyance, transfer, lease, encumbrance or assignment, regardless as to whether Beneficiary has consented or waived its rights in connection with any previous sale, conveyance, transfer, lease, encumbrance or assignment.

15. THIRD PARTY BORROWER PROVISIONS.

The following provisions apply to the extent that a third party borrower has executed the Note:

- a. Trustor waives each of the following:
 - (i) Any right to require Beneficiary to make presentments or demands or to give notices of any kind, including demand for performance, notice of non-performance, protest, notice of protest, notice of dishonor, notice of acceptance of this Deed of Trust, notice of the existence, creation or incurrence of existing or new debt, notice of modification, payment, default or change or action of any kind relating to the Obligations.
 - (ii) Any defense to liability on this Deed of Trust based on any disability or other defense of the third party borrower or based upon any cessation of the liability of the third party borrower to Beneficiary for any reason other than the payment of the Obligations in full.
 - (iii) Any right to require Beneficiary to proceed against the third party borrower.
 - (iv) Any right to require Beneficiary to proceed against any other security held from third party borrower or from Trustor.



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(v) To the extent permitted by applicable law, the benefit of any statute of limitations pertaining to the Obligations or to this Deed of Trust or affecting Trustor's liability on this Deed of Trust or its enforcement.

(vi) Any defense based upon an election of remedies by Beneficiary, including any election to proceed against any collateral by judicial or nonjudicial foreclosure, whether real property or personal property, or by deed in lieu thereof, and whether or not every aspect of any foreclosure sale is commercially reasonable, and whether or not any such election of remedies destroys or otherwise impairs the subrogation rights of Trustor or the rights of Trustor to proceed against the third party borrower or any guarantor or Trustor for reimbursement, or both.

(vii) The benefits of any statutory provision limiting the liability of a surety, including the provisions of A.R.S. Sections 12-1641 through 12-1644, A.R.S. Section 12-1566, A.R.S. Section 33-814, A.R.S. Section 44-142, A.R.S. Section 47-3605 and Rule 17(f) of the Arizona Rules of Civil Procedure.

(viii) Any defense based upon the application by third party borrower of the proceeds of the loan evidenced by the Note for purposes other than the purposes represented by third party borrower to Beneficiary or intended or understood by Beneficiary or Trustor.

b. Trustor acknowledges and agrees that Beneficiary, without affecting Trustor's liability, may take any one or more of the following actions, at any one or more times:

(i) Renew, compromise, extend, accelerate or otherwise change the time for payment of, or the terms of, all or any part of the Obligations.

(ii) Take additional security for the payment of the Obligations, and exchange, enforce, alter or release all or any part of any security.

(iii) Add, release or substitute any one or more other third party trustors or guarantors.

(iv) Assign the Obligations in whole or part.

16. GENERAL

a. **Time.** Time is of the essence in all aspects of this Deed of Trust and the other Loan Documents.

b. **Liability.** This Deed of Trust applies to, inures to the benefit of and binds Trustor, Trustee and Beneficiary (collectively, the "Parties") and their heirs, personal representatives, successors, permitted assigns, beneficiaries and trustees. All liability created hereunder shall be joint and several.

c. **Assignability.** Beneficiary and Trustee may assign their rights and obligations under this Deed of Trust without prior notice to Trustor. "Beneficiary" shall include the owner and holder of the Note secured hereby, whether or not named as Beneficiary herein.

d. **Servicing Agent.** Trustor acknowledges that Mortgages Ltd. is the Servicing Agent and may enforce the terms of this Deed of Trust and the other Loan Documents on behalf of Beneficiary.

e. **Severability.** If any term or other provision of this Deed of Trust or any other Loan Document is declared invalid, illegal or incapable of being enforced by any rule of law or public policy, all other conditions and provisions of this Deed of Trust shall nevertheless remain in full force and effect.

f. **Law.** This Deed of Trust shall be governed by, construed and enforced in accordance with the laws of the State of Arizona, without regard to the choice of law rules of the State of Arizona. In the event any statute or law referred to herein is subsequently amended or renumbered, the statute as amended or renumbered shall be intended by the Parties to be referred to herein, thereafter, and should said statute or law be repealed, if law permits, that statute or law as it exists on the date hereof is intended to be a part hereof.

g. **Jurisdiction and Venue.** Trustor hereby submits to the jurisdiction and venue of any Arizona State or Federal Court sitting in the City of Phoenix in any action or proceeding arising out of or relating to this Deed of Trust. Trustor hereby waives the defense of an inconvenient forum.



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h. Jury Trial Waiver. Trustor, and Beneficiary, by its acceptance of this Deed of Trust, hereby waive their respective rights to a trial by jury in any action or proceeding based upon, or related to, the subject matter of this Deed of Trust and the business relationship that is being established. This waiver is knowingly, intentionally, voluntarily and irrevocably made by Trustor and Beneficiary, and Trustor acknowledges that neither Beneficiary, nor any person acting on behalf of Beneficiary, has made any representations of fact to include this waiver of trial by jury or has taken any actions which in any way modify or nullify its effect. Trustor and Beneficiary acknowledge that this waiver is a material inducement to enter into a business relationship, that each of them has already relied on this waiver in entering into this Deed of Trust and that each of them will continue to rely on this waiver in their related future dealings.

i. Promotional Information. Beneficiary shall have the right to release information related to this Deed of Trust and the other Loan Documents ("Promotional Information"), including photographs of the Trust Property, characteristics of the Trust Property, Loan characteristics, financing terms and aspects of underwriting, for advertising, marketing and other promotional purposes, such as commercials, advertising fliers, trade articles, Internet releases and public presentations. Beneficiary shall not be held liable to Trustor for the release of Promotional Information.

j. Modification. This Deed of Trust may be amended, modified, superseded, canceled, renewed or extended and the terms or covenants hereof may be waived only by a written instrument executed by all Parties.

k. Waiver. The failure of Beneficiary, at any time or times, to require performance of any provision of this Deed of Trust shall in no manner affect the right of Beneficiary at a later time to enforce that provision. Further, if payment of any sum secured hereby is accepted after its due date, Beneficiary does not waive its right either to require prompt payment when due of all other sums or to declare a default for failure to pay as required by the Loan Documents. No waiver by Beneficiary of the breach of any term or covenant contained in this Deed of Trust, whether by conduct or otherwise, in any one or more instances, shall be deemed to be, or construed as, a further or continuing waiver by Beneficiary of any such breach, or a waiver of the breach of any other term or covenant contained in this Deed of Trust.

l. Waiver of Statute of Limitations. To the extent permitted by applicable law, Trustor hereby waives the right to assert any statute of limitations as a bar to the enforcement of the lien created by any of the Loan Documents or to any action brought to enforce the Note or any other obligations secured by any of the Loan Documents.

m. Waiver of Homestead and Redemption. Trustor hereby waives all right of homestead exemption in the Trust Property. Trustor hereby waives all right of redemption on behalf of Trustor and on behalf of all other persons acquiring any interest or title in the Trust Property subsequent to the date of this Deed of Trust, except decree or judgment creditors of Trustor.

n. Interpretation. As used in this Deed of Trust, the word "include(s)" means "include(s), without limitation," and the word "including" means "including, without limitation."

o. Variable Rate. THIS DEED OF TRUST MAY SECURE A VARIABLE INTEREST RATE LOAN.

SEE ATTACHED SIGNATURE PAGE



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DEED OF TRUST, ASSIGNMENT OF RENTS AND LEASES, SECURITY AGREEMENT AND FIXTURE FILING

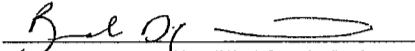
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IN WITNESS WHEREOF, this Deed of Trust has been executed as of the date set forth on the first page.

TRUSTOR:


As to Parcel A:

Vanderbilt Farms, L.L.C., an Arizona limited liability company


By: Brandon D. Wolfswinkel
Its: Managing Member

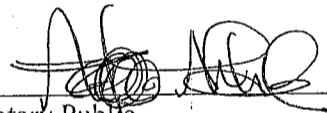
As to Parcel B:

Vistoso Partners, L.L.C., an Arizona limited liability company


By: Brandon D. Wolfswinkel
Its: Manager

STATE OF AZ)
)ss
COUNTY OF MARICOPA)

The foregoing instrument was acknowledged before me this 6th day of July, 2007 by Brandon D. Wolfswinkel of Vanderbilt Farms, L.L.C., an Arizona limited liability company on behalf of the limited liability company and of Vistoso Partners, L.L.C., an Arizona limited liability company on behalf of the limited liability company


Notary Public

My Commission Expires:

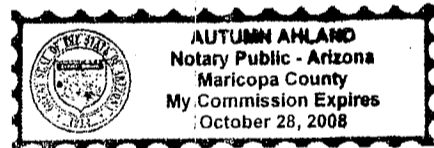


EXHIBIT "A"

Loan No.: 858006
Borrower: Vanderbilt Farms, L.L.C., an Arizona limited liability company as to Parcel A, and Vistoso Partners, L.L.C., an Arizona limited liability company as to Parcel B

PARCEL B:

RANCHO VISTOSO NEIGHBORHOOD 5, REVISED PARCEL 5-K

That portion of Section 25, Township 11 South, Range 13 East, Gila and Salt River Meridian, Pima County, Arizona, described as follows:

COMMENCING at the East Quarter corner of said Section 25;

THENCE South 00 degrees 08 minutes 50 seconds East, along the East Line of the Southeast Quarter (SE 1/4) of said Section 25, a distance of 242.79 feet;

THENCE South 89 degrees 51 minutes 10 seconds West, a distance of 320.21 feet to the POINT OF BEGINNING, on the Westerly right-of-way line of the easement as recorded in Book 75 of Miscellaneous Records, at Page 354, Pima County Recorder's Office, Pima County, Arizona;

THENCE South 15 degrees 47 minutes 58 seconds West, a distance of 375.12 feet;

THENCE North 54 degrees 47 minutes 03 seconds West, a distance of 1,853.31 feet to a point on the arc of a non tangent curve concave to the Southeast, a radial line of said curve through said point having a bearing of North 52 degrees 31 minutes 52 seconds West;

THENCE Northeasterly along the arc of said curve, to the right, having a radius of 630.00 feet and a central angle of 03 degrees 31 minutes 45 seconds for an arc distance of 38.81 feet to a point of tangency;

THENCE North 40 degrees 59 minutes 53 seconds East, a distance of 224.83 feet to a point on the arc of a tangent curve concave the Northwest;

THENCE Northeasterly along the arc of said curve, to the left, having a radius of 1,190.00 feet and a central angle of 16 degrees 37 minutes 25 seconds for an arc distance of 345.26 feet to a point;

THENCE South 48 degrees 00 minutes 00 seconds East, a distance of 305.67 feet;

THENCE South 64 degrees 00 minutes 00 seconds East, a distance of 600.00 feet;

THENCE South 34 degrees 00 minutes 00 seconds East, a distance of 880.11 feet to the POINT OF BEGINNING.

RANCHO VISTOSO NEIGHBORHOOD 5, PARCEL M

That portion of Section 25, Township 11 South, Range 13 East; and Section 30, Township 11 South, Range 14 East, Gila and Salt River Base and Meridian, Pima County, Arizona, described as follows:

COMMENCING at the Southeast corner of said Section 25;

THENCE North 00 degrees 08 minutes 50 seconds West, along the East line of the Southeast One-Quarter (SE 1/4) of said Section 25, a distance of 30.00 feet to the POINT OF BEGINNING on a line 30.00 feet North of and parallel with the South line of said Southeast One-Quarter (SE 1/4);

THENCE South 89 degrees 50 minutes 40 seconds West, along the said parallel line, a distance of 569.35 feet to the Easterly line of the parcel described in Docket 8645 at Page 1974;

THENCE North 15 degrees 47 minutes 58 seconds East, along said Easterly line, a distance of 331.20 feet to the Northerly line of said parcel;

THENCE North 81 degrees 14 minutes 04 seconds West, along said Northerly line, a distance of 310.01 feet to the Westerly line of said parcel;

THENCE South 15 degrees 47 minutes 58 seconds West, along said Westerly line, a distance of 381.20 feet to a line 30.00 feet North of and parallel with the South line of said Southeast One-Quarter (SE 1/4);

THENCE South 89 degrees 50 minutes 40 seconds West, along the said parallel line, a distance of 104.01 feet;

THENCE North 15 degrees 47 minutes 58 seconds East, a distance of 2,450.12 feet;

THENCE South 45 degrees 00 minutes 00 seconds East, a distance of 943.61 feet;

THENCE South 32 degrees 00 minutes 00 seconds East, a distance of 547.26 feet;

THENCE South 04 degrees 00 minutes 00 seconds East, a distance of 985.00 feet;

THENCE South 71 degrees 00 minutes 00 seconds West, a distance of 740.00 feet to the POINT OF BEGINNING.

RANCHO VISTOSO NEIGHBORHOOD 5, PARCEL 5-G

That portion of Section 25, Township 11 South, Range 13 East, Gila and Salt River Meridian, Pima County, Arizona, described as follows:

COMMENCING at the Northeast corner of said Section 25;

THENCE South 00 degrees 04 minutes 48 seconds West, along the East line of the Northeast One-Quarter (NE 1/4) of said Section 25, a distance of 839.59 feet;

THENCE North 89 degrees 55 minutes 12 seconds West, a distance of 334.97 feet to the POINT OF BEGINNING;

THENCE North 26 degrees 00 minutes 00 seconds West, a distance of 175.00 feet;

THENCE South 67 degrees 00 minutes 00 seconds West, a distance of 760.85 feet;

THENCE South 34 degrees 00 minutes 00 seconds East, a distance of 150.16 feet;

THENCE South 31 degrees 00 minutes 00 seconds West, a distance of 606.01 feet;

THENCE East, a distance of 379.22 feet;

THENCE South 43 degrees 00 minutes 00 seconds East, a distance of 270.00 feet;

THENCE North, a distance of 350.00 feet;

THENCE North 20 degrees 00 minutes 00 seconds East, a distance of 275.00 feet;

THENCE North 43 degrees 00 minutes 00 seconds East, a distance of 510.00 feet to the POINT OF BEGINNING.

RANCHO VISTOSO NEIGHBORHOOD 5, PARCEL 5-O

That portion of Sections 25 and 36, Township 11 South, Range 13 East; and Sections 30 and 31, Township 11 South, Range 14 East, Gila and Salt River Meridian, Pima County, Arizona, described as follows:

COMMENCING at the Northeast corner of said Section 36;

THENCE S 89 degrees 50 minutes 40 seconds West, along the North line of the Northeast One-Quarter (NE 1/4) of said Section 36, a distance of 577.93 feet to the POINT OF BEGINNING;

THENCE South 15 degrees 47 minutes 58 seconds West, a distance of 1,100.90 feet;

THENCE South 51 degrees 49 minutes 27 seconds East, a distance of 615.15 feet;

THENCE North 05 degrees 47 minutes 50 seconds East, a distance of 614.97 feet to a point of curvature of a tangent curve concave to the Southeast;

THENCE Northeasterly along the arc of said curve, to the right having a radius of 660.00 feet and a central angle of 39 degrees 12 minutes 10 seconds for an arc distance of 451.59 feet to a point of tangency;

THENCE North 45 degrees 00 minutes 00 seconds East, a distance of 167.05 feet to a point of curvature of a tangent curve concave to the Northwest;

THENCE Northeasterly along the arc of said curve, to the left, having a radius of 720.00 feet and a central angle of 36 degrees 30 minutes 34 seconds for an arc distance of 458.79 feet to a non-tangent line;

THENCE South 71 degrees 00 minutes 00 seconds West, a distance of 189.48 feet to a line 30.00 feet North of and parallel with the South line of the Southeast One-Quarter (SE 1/4) of said Section 25;

THENCE South 89 degrees 50 minutes 40 seconds West, along the said parallel line, a distance of 569.35 feet to the Easterly line of the parcel described in Docket 8645 at Page 1974, Pima County Recorder's Office, Pima County, Arizona;

THENCE South 15 degrees 47 minutes 58 seconds West, along said Easterly line, distance of 31.20 feet to the POINT OF BEGINNING.

RANCHO VISTOSO-NEIGHBORHOOD 5, PARCEL 5Q

That portion of Section 36, Township 11 South, Range 13 East; and Section 31, Township 11 South, Range 14 East, Gila and Salt River Meridian, Pima County, Arizona, described as follows:

COMMENCING at the Northwest corner of said Section 31;

THENCE South 89 degrees 31 minutes 12 seconds East, along the North line of the Northwest One-Quarter (NW 1/4) of said Section 31, a distance of 435.36 feet to the POINT OF BEGINNING;

THENCE continue South 89 degrees 31 minutes 12 seconds East, along said North line, a distance of 150.00 feet;

THENCE South 05 degrees 00 minutes 00 seconds East, a distance of 458.61 feet;

THENCE South 13 degrees 00 minutes 00 seconds West, a distance of 177.69 feet;

THENCE West a distance of 110.00 feet;

THENCE South 23 degrees 00 minutes 00 seconds West, a distance of 275.00 feet;

THENCE South 13 degrees 00 minutes 00 seconds East, a distance of 515.00 feet;

THENCE South 01 degrees 30 minutes 00 seconds East, a distance of 660.00 feet;

THENCE North 83 degrees 30 minutes 00 seconds West, a distance of 230.00 feet;

THENCE North 59 degrees 30 minutes 00 seconds West, a distance of 551.46 feet;

THENCE North 11 degrees 00 minutes 00 seconds East, a distance of 1,063.23 feet;

THENCE North 32 degrees 00 minutes 00 seconds East, a distance of 821.12 feet to the POINT OF BEGINNING.

RANCHO VISTOSO NEIGHBORHOOD 5, PARCEL H

That portion of Section 30, Township 11 South, Range 14 East, Gila and Salt River Meridian, Pima County, Arizona, described as follows:

BEGINNING at the North One-Quarter corner of said Section 30;

Thence South 89 degrees 16 minutes 32 seconds East, along the North line of the Northeast One-Quarter of said Section 30, a distance of 285.00 feet;

Thence South 00 degrees 08 minutes 03 seconds West, a distance of 1,325.63 feet;

Thence South 89 degrees 22 minutes 51 seconds East, a distance of 1,677.30 feet;

Thence South 28 degrees 17 minutes 31 seconds West, a distance of 322.44 feet to a point of curvature of a tangent curve concave to the Northwest;

Thence Southwesterly along the arc of said curve, to the right, having a radius of 975.00 feet and a central angle of 76 degrees 45 minutes 00 seconds for an arc distance of 1,306.05 feet to a point of tangency;

Thence North 74 degrees 57 minutes 29 seconds West, a distance of 675.31 feet to a point of curvature of a tangent curve concave to the Northeast;

Thence Northwesterly along the arc of said curve, to the right, having a radius of 1,560.00 feet, and a central angle of 24 degrees 00 minutes 00 seconds for an arc distance of 653.45 feet to a point of tangency;

Thence North 50 degrees 57 minutes 29 seconds West, a distance of 425.00 feet to a point of curvature of a tangent curve concave to the Southwest;

Thence Northwesterly along the arc of said curve, to the left, having a radius of 2,165.00 feet and a central angle of 17 degrees 28 minutes 00 seconds for an arc distance of 660.00 feet to a point of tangency;

Thence North 68 degrees 25 minutes 29 seconds West, a distance of 130.00 feet;

Thence North 21 degrees 34 minutes 31 seconds East, a distance of 550.00 feet;

Thence North 26 degrees 00 minutes 00 seconds East, a distance of 542.44 feet to the North line of the Northwest One-Quarter of said Section 30;

Thence South 89 degrees 42 minutes 18 seconds East, along said North line, a distance of 1,113.81 feet to the POINT OF BEGINNING.

RANCHO VISTOSO NEIGHBORHOOD 5, PARCEL I

That portion of Section 30, Township 11 South, Range 14 East, Gila and Salt River Meridian, Pima County, Arizona, described as follows:

COMMENCING at the North One-Quarter corner of said Section 30;

Thence North 89 degrees 42 minutes 18 seconds West, along the North line of the Northwest One-Quarter of said Section 30, a distance of 1,113.81 feet;

Thence South 26 degrees 00 minutes 00 seconds West, a distance of 542.44 feet;

Thence South 21 degrees 34 minutes 31 seconds West, a distance of 630.00 feet to the POINT OF BEGINNING;

Thence South 68 degrees 25 minutes 29 seconds East, a distance of 130.00 feet to a point of curvature of a tangent curve concave to the Southwest;

Thence Southeasterly along the arc of said curve, to the right, having a radius of 2,085.00 feet and a central angle of 17 degrees 28 minutes 00 seconds for an arc distance of 635.61 feet to a point of tangency;

Thence South 50 degrees 57 minutes 29 seconds East, a distance of 425.00 feet to a point of curvature of a tangent curve concave to the Northeast;

Thence Southeasterly along the arc of said curve, to the left, having a radius of 1,640.00 feet and a central angle of 24 degrees 00 minutes 00 seconds for an arc distance of 686.96 feet to a point of tangency;

Thence South 74 degrees 57 minutes 29 seconds East, a distance of 130.00 feet;

Thence South 10 degrees 00 minutes 00 seconds West, a distance of 1,405.24 feet;

Thence South 82 degrees 00 minutes 00 seconds West, a distance of 787.45 feet;

Thence North 30 degrees 15 minutes 00 seconds West, a distance of 1,992.47 feet;

Thence North 21 degrees 34 minutes 31 seconds East, a distance of 807.73 feet to the POINT OF BEGINNING.

APNs:

Parcel B: 5M: a portion of 219-21-627K4; 5G and 5K: a portion of 219-21-627G1; 5O and 5Q: a portion of 219-54-006A0 and a portion of 219-20-052Q5; 5H: a portion of 223-02-010A1 and 223-02-010B0 and a portion of 219-20-052Q5; 5I: a portion of 219-20-052Q5/Pima

Ex. 24

SERVICING AGENT AGREEMENT

Loan No. 859606

July 5, 2007

“Borrower” (individually and collectively):

Vanderbilt Farms, L.L.C., an Arizona limited liability company and Vistoso Partners, L.L.C., an Arizona limited liability company

“Lender”:
Scott M. Coles or Christopher J. Olson, CPA, Trustees of the Mortgages Ltd. 401(k) Plan

“Servicing Agent”:
Mortgages Ltd., an Arizona corporation.

In consideration of the reciprocal promises contained herein, Borrower, Lender and Servicing Agent (collectively, the “Parties”) hereby agree to the following.

1. APPOINTMENT AND AUTHORITY OF SERVICING AGENT

Trustor and Beneficiary hereby appoint Mortgages Ltd. to act as the Servicing Agent with regard to the Loan. Servicing Agent is authorized to perform any and all of the following tasks:

- a. Hold the originals of the Promissory Note, Deed of Trust, Fee Schedule and all other documents executed by the Borrower or any other party in connection with the Loan (collectively, the “Loan Documents”).
- b. Service and administer the Loan in any manner provided by the Loan Documents.
- c. Process any and all Loan payments from Borrower or other payor.
- d. Assess and process all fees and charges set forth in the Loan Documents including, but not limited to, administrative fees, notice fees and late charges.
- e. Apply any funds received by Servicing Agent to the fees and costs incurred or assessed by Beneficiary before applying the funds to the amounts owing under the Loan Documents (including notice fees, service fees, administrative fees, inspection fees, appraisal fees, expert fees, attorneys’ fees, litigation costs, forced placed insurance premiums, late charges and guarantor collection expenses (*as described herein*)). Any insurance placed by Servicing Agent may be placed with an affiliate of servicing Agent or a captive insurance company.
- f. Retain deposits received under the Loan Documents as impounds for the payment of the following:
 - (1) Future payments due;
 - (2) Taxes and assessments;
 - (3) Construction;
 - (4) Insurance premiums;
 - (5) Extension fees;
 - (6) Administration fees; **and**
 - (7) Any other expenditure required under the Loan Documents.

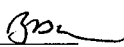
(Any impound account may be held in the name of Servicing Agent for the benefit of Lender and others, and Servicing Agent may apply and/or disburse any such deposits in accordance with the Loan Documents).

g. Evaluate, effectuate and process an assumption of the Loan, and assess and receive an assumption fee and/or an interest rate increase.

h. Sign, file and record all documents which are reasonable or desirable to facilitate servicing or the loan, including:

- (1) deeds of release and reconveyance (full and partial);
- (2) endorsements and assignments of Loan Documents (including assignments of all or a portion of the beneficial interest of any deed of trust included in the Loan Documents);




initials

SERVICING AGENT AGREEMENT

Loan No. 859606

July 5, 2007

Page 2

- (3) corrections, amendments, **modifications** and extensions of Loan Documents;
- (4) disclaimers;
- (5) financing statements; and
- (6) assumptions and various certifications.

i. Incur all fees, costs and expenses deemed necessary by Servicing Agent to protect Beneficiary's interests under the Loan Documents;

j. Incur all fees, costs and expenses deemed necessary by Servicing Agent to protect the property securing the Loan (the "Trust Property"), including insurance premiums, receiver fees, property manager fees, maintenance expenses and security expenses.

k. Obtain forced placed insurance on any portion of the Trust Property in the event the Borrower fails to maintain insurance as required by the Loan Documents.

l. Sign, file and record any and all documents reasonable or desirable to protect Lender's interests and/or pursue Lender's remedies upon default, including:

- (1) a statement of breach or non-performance;
- (2) a substitution of trustee;
- (3) a notice of election to foreclose;
- (4) a notice of trustee's sale;
- (5) an affidavit of non-military service;
- (6) a notice of proposed disposition of collateral and various verifications.

m. In the event of default and at Servicing Agent's discretion, commence foreclosure of the Trust Property, initiate a trustee's sale and/or institute any proceeding necessary to collect the sums due under the Loan Documents or to enforce any provision therein, including:

- (1) pursuing an action against any borrower or guarantor of the Loan;
- (2) pursuing injunctive relief, the appointment of a receiver, provisional remedies or a deficiency judgment;
- (3) pursuing claims in bankruptcy court;
- (4) pursuing an appeal;
- (5) collecting rents; and
- (6) taking possession or operating the Trust Property).

n. In the event of default and at Servicing Agent's discretion effect a sale of Lender's interest, in whole or in part, in the Loan Documents at the expense of Trustor which expense shall be secured by the Deed of Trust.

o. Retain attorneys, trustees and other agents necessary to collect the sums due under the Loan Documents, to protect the Trust Property and/or to proceed with foreclosure of the Trust Property, initiate a trustee's sale and/or institute, defend, appear or otherwise participate in any proceeding (legal, administrative or otherwise) that Servicing Agent deems reasonable and desirable.

p. Incur and pay such costs, expenses and fees as Servicing Agent deems appropriate in undertaking and pursuing enforcement of the Loan Documents and/or collection of amounts owed thereunder, including attorney fees, receiver fees, trustee fees, expert fees and any fees, costs and expenses incurred in an effort to collect against any borrower or any guarantor of the Loan.

2. ACCOMMODATION.

Servicing Agent provides its services as an accommodation only, and shall incur no responsibility or liability to any person, including, Borrower and Lender for any act or omission by Servicing Agent or any person or entity active for Servicing Agent.



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SERVICING AGENT AGREEMENT

Loan No. 859606

July 5, 2007

Page 3

3. ASSIGNMENT, RESIGNATION AND TERMINATION.

a. Servicing Agent shall have the right to assign the collection account or resign as Servicing Agent at any time, provided that Servicing Agent notifies Lender and Borrower of such assignment or resignation in writing.

(1) If Servicing Agent assigns the collection account, Servicing Agent will deliver all Loan Documents, directions and account records to assignee, at which time Servicing Agent will have no further duties or liabilities hereunder.

(2) If Servicing Agent resigns, Lender shall have the right to designate a new collection agent and Servicing Agent shall deliver to Lender all Loan Documents, directions and account records to Lender or the newly designated collection agent, at which time Servicing Agent will have no further duties or liabilities hereunder.

b. If that the ownership of the Trust Property becomes vested in the Lender by trustee's sale, judicial foreclosure or otherwise, then this Agreement shall automatically terminate and Servicing Agent will have no further duties or liabilities hereunder.

c. Upon Servicing Agent's assignment or resignation, or termination of this Agreement, Borrower shall immediately reimburse Lender for all fees, costs and expenses incurred hereunder. After such reimbursement and payment, Borrower shall remain obligated to indemnify, in accordance with Section 4 hereof, for liabilities which accrued prior to such resignation or termination.

4. INDEMNITY

a. Lender and Borrower shall immediately indemnify and hold Servicing Agent harmless for, from and against any and all liabilities incurred by Servicing Agent in performing under the terms of this Agreement or otherwise arising, directly or indirectly, from the Loan or Loan Documents, including all attorneys' fees, insurance premiums, expenses, costs, damages and expenses.

b. In the event that Servicing Agent requests that Lender and/or Borrower pay any amount owed hereunder, Lender and/or Borrower shall remit that amount to Servicing Agent within 5 business days of Servicing Agent's request.

5. BORROWER'S OBLIGATIONS

a. **Standard Fees and Costs.** Borrower shall pay to Servicing Agent, for the account of Beneficiary, its current fees and costs, including those items set forth in the Fee Schedule received by Borrower. The Fee Schedule is subject to change without notice as to the amounts and items included therein. Borrower shall pay a servicing set-up fee of **\$1,500.00**, and a monthly servicing fee of **\$30.00**. When the Loan is paid in full, Borrower shall pay a Close Out Fee of **\$1,500.00**, which is in addition to the monthly servicing fee. There will be a **\$30.00** charge to Borrower for each payoff request.

b. **Late Fees and Notices.** In the event that a regular payment is not received by Servicing Agent on or before the fifth calendar day after the due date, a late charge of **35%** of the monthly Principal and Interest payment will be charged and Borrower shall pay that amount to Servicing Agent, for the account of Lender. The parties agree that this late payment charge is intended to compensate Lender for losses incurred as a result of the late payment and that such late payment charge does not constitute and shall not be construed as a penalty. Servicing Agent will charge **\$125.00**, plus postage, for each notice sent regarding late payments, nonpayment of taxes, assessments, insurance premiums or any other matter that affects the Trust Property. Servicing Agent will charge **\$25.00** for each notice sent regarding returned checks, plus any actual charges assessed by the financial institution of the Servicing Agent as a result of each returned check. These notice fees are subject to change at the Servicing Agent's discretion. In the event that the Loan is not paid in full by the maturity date, Borrower acknowledges that a late charge will be assessed, for the account of Lender, in the amount of **3%** of the remaining principal balance of the Loan on the first day after Borrower's failure to pay and on the same day each month thereafter, until the final payment is received by Servicing Agent. All fees and charges are independent of one another and any default interest assessed; thus, a matured loan shall accrue default interest, maturity late fees and any other applicable fees and charges.

c. **Payment Statements.** Servicing Agent, as a convenience only, will provide to Borrower a monthly payment statement. Borrower acknowledges and agrees that it is obligated to make all payments when due under the Loan Documents, whether or not such payment statement is received by Borrower.



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SERVICING AGENT AGREEMENT

Loan No. 859606

July 5, 2007

Page 4

6. PARTIAL AND FINAL PAYMENTS

a. Partial Payments. In the event that Servicing Agent receives and processes a partial payment of any amount due under the Loan Documents, such act shall not constitute full payment, estoppel or a waiver of any right of Lender or Servicing Agent to recover the deficiency or to require future payments to be made in full.

b. Final Payment. In the event that the final sum to pay the principal balance in total is received by Servicing Agent **after 1:00 p.m.**, interest shall be charged through the next normal business day.

7. GENERAL PROVISIONS

a. This Agreement is binding on the Parties and their heirs, personal representatives, successors, permitted assigns, beneficiaries and trustees.

b. This Agreement and the benefits hereunder are **not** assignable or transferable by Borrower. Lender may assign Lender's rights and obligations under this Agreement without prior notice to Borrower. Lender, however, must give Servicing Agent prior written notice. After assignment, Lender shall have no further duties or liabilities to Borrower.

c. This Agreement shall be governed by, construed and enforced in accordance with the laws of the State of Arizona, without regard to the choice of law rules of the State of Arizona. The Parties hereby submit to the exclusive jurisdiction of any Arizona State or Federal Court sitting in the City of Phoenix in any action or proceeding arising out of or relating to this Agreement. The Parties waive the defense of an inconvenient forum.

d. The Parties voluntarily, knowingly, irrevocably and unconditionally waive the right to a jury trial on any contested matters arising from this Agreement or the Loan Documents.

e. This Agreement sets forth the entire agreement and understanding of the Parties with respect to the subject matter hereof and is to be read in consistency and accordance with the other Loan Documents.

f. This Agreement may be amended, modified, superseded, canceled, renewed or extended and the terms and covenants hereof may be waived only by a written instrument signed by all of the parties hereto. The failure of Servicing Agent or Beneficiary at any time or times to require performance of any provision of this Agreement shall in no manner affect the right of Servicing Agent at a later time to enforce the same. No waiver by Beneficiary or Servicing Agent of the breach of any term or covenant contained in this Agreement, whether by conduct or otherwise, in any one or more instances, shall be deemed to be, or construed as, a further or continuing waiver by Servicing Agent or Lender of any such breach, or a waiver of the breach of any other term or covenant contained in this Agreement.

g. If any term or other provision of this Agreement is declared invalid, illegal or incapable of being enforced by any rule of law or public policy, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect.

h. As used in this Agreement, the word "include(s)" means "Include(s), without limitation," and the word "Including" means "including, but without limitation."



SERVICING AGENT AGREEMENT

Loan No. 859606

July 5, 2007

Page 5

i. No remedy herein conferred upon or reserved to Servicing Agent is intended to be exclusive of any other remedy herein or by law provided or permitted, but each shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute.

This Agreement is effective on the date set forth on the first page.

BORROWER:

Vanderbilt Farms, L.L.C., an Arizona limited liability company



By: Brandon D. Wolfswinkel

Its: Managing Member

Vistoso Partners, L.L.C., an Arizona limited liability company

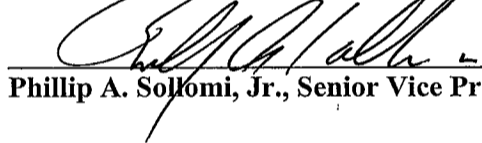


By: Brandon D. Wolfswinkel

Its: Manager

SERVICING AGENT:

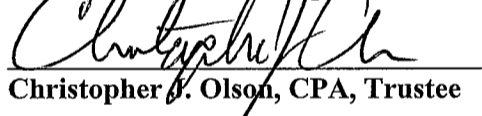
MORTGAGES LTD., an Arizona corporation



Phillip A. Sollomi, Jr., Senior Vice President

LENDER:

Scott M. Coles or Christopher J. Olson, CPA, Trustees of the Mortgages Ltd. 401(k) Plan



Christopher J. Olson, CPA, Trustee



Ex. 25

EMPIRE WEST TITLE AGENCY



OFFICIAL RECORDS OF
PINAL COUNTY RECORDER
LAURA DEAN-LYLTLE

When recorded mail to:

2 Christopher J. Olson, Trustee
Mortgages Ltd. 401(k) Plan
55 E. Thomas Road
Phoenix, AZ 85012

DATE/TIME: 02/12/09 1353
FEE: \$14.00
PAGES: 2
FEE NUMBER: 2009-014040

Exempt per 11-1134(B)(1)

TRUSTEE'S DEED

Trustee Sale No: 26320

Phoenix Settlement Services LLC, as the duly appointed Trustee of the Deed of Trust hereinafter-described, does hereby grant and convey, but without covenant or warranty, express or implied, to Christopher J. Olson, CPA, Trustee of the Mortgages Ltd. 401 (k) Plan (herein called Grantee), the real property, situated in the County of Pinal State of Arizona described as follows:

That part of the West half of the Northeast quarter of Section 11, Township 1 North, Range 8 East of the Gila and Salt River Base and Meridian, Pinal County, Arizona lying South of Arizona Highway 88 as it existed June 22, 1992, more particularly described as follows:

COMMENCING at the Northeast corner of said West half of the Northeast quarter;

THENCE South 00 degrees 03 minutes 36 seconds East, along the East line thereof, a distance of 404.06 feet to the POINT OF BEGINNING;

THENCE continuing South 00 degrees 03 minutes 36 seconds East, a distance of 1407.06 feet;

THENCE North 62 degrees 00 minutes 00 seconds West, a distance of 1137.09 feet to the centerline of the easement recorded in Docket 1689, Page 609;

THENCE North 36 degrees 48 minutes 12 seconds West, a distance of 5.00 feet to the North line of said easement;

THENCE along said North line North 53 degrees 11 minutes 48 seconds East, a distance of 309.19 feet;

THENCE along said North line North 50 degrees 20 minutes 29 seconds East, a distance of 302.20 feet;

THENCE along said North line 46 degrees 48 minutes 48 seconds East, a distance of 314.19 feet;

THENCE along said North line North 46 degrees 54 minutes 37 seconds East, a distance of 299.71 feet;

THENCE North 47 degrees 21 minutes 31 seconds East, a distance of 105.62 feet to the East line of the West half of the Northeast quarter of said Section 11 and the POINT OF BEGINNING;

EXCEPT all uranium, thorium, or other material which is or may be determined to be peculiarly essential to the production of fissionable materials whether or not of commercial value pursuant to the provisions of the Act of August 1, 1946 (60 Stat, 755) as set forth in the Patent on said land.

Ex. 26

Magnus Title Agency

When recorded return to:

Mortgages Ltd.
Attention: Nechelle Wimmer
4455 E. Camelback Road
Phoenix, AZ 85018

4000206B-5-2-1--
fraustoj

4000206-711/VE

TRUSTEE'S DEED AND AFFIDAVIT OF SALE

Christopher M. McNichol, a member of the State Bar of Arizona, of Gust Rosenfeld P.L.C., 201 East Washington, Suite 800, Phoenix, Arizona 85004-2327 ("Trustee"), as the duly appointed successor trustee of the Deed of Trust, Assignment of Rents and Leases, Security Agreement and Fixture Filing described below, does hereby grant and convey, without covenant or warranty, express or implied, to Christopher J. Olson, Trustee of the Mortgages Ltd. 401K Plan as to an undivided 93.522% interest and Mortgages Ltd., an Arizona corporation, as agent for the principals Bighi & Associates, an Arizona limited partnership, as to an undivided 1.176% interest, Bruce Dennis Buckley and Alivia Virginia Buckley, Trustees of the Bruce Dennis Buckley and Alivia Virginia Buckley Revocable Living Trust dated June 4, 1985 and Amended December 7, 1994, as to an undivided 2.948% interest, and Gerald Gross, Trustee of the T & J Gross Trust Agreement dated May 20, 1993, and any amendments thereto, as to an undivided 2.354% interest ("Grantees"), the real property in Maricopa County, Arizona, described on **Exhibit A** attached hereto (the "Real Property"), and does hereby give notice of the sale to Grantee, without covenant or warranty as to title, quiet enjoyment or possession, of that personal property described on **Exhibit B** attached hereto (the "Personal Property"). The Real Property and the Personal Property are hereinafter collectively referred to as the "Property."

Trustee states that:

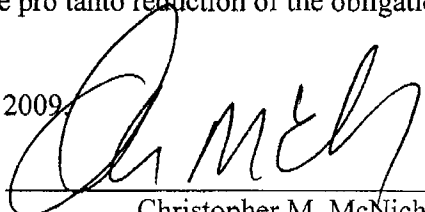
This conveyance of the Property is made pursuant to the powers, including the power of sale, conferred upon Trustee by the Deed of Trust, Assignment of Rents and Leases, Security Agreement and Fixture Filing (the "Deed of Trust") made by James T. Hurst and Linda L. Hurst, husband and wife, as community property with right of survivorship, as Trustors, recorded on August 31, 2007 at Recording No. 20070981634, in the Official Records of the Maricopa County Recorder, Arizona.

This disposition of the Personal Property is pursuant to the Notice of Our Plan to Sell Property dated September 17, 2008 filed with Arizona Secretary of State on September 19, 2008 at Filing No. 200714983069 and recorded on September 18, 2008 at Recording No. 20080809813, in the Official Records of Maricopa County Recorder, Arizona and the documents and instruments referenced therein.

**THIS DEED IS EXEMPT FROM AFFIDAVIT AND FEE PURSUANT TO
A.R.S. § 11-1134 B-1.**

Said Property was sold by Trustee at public auction on April 9, 2009, at the offices of Gust Rosenfeld P.L.C., 201 East Washington Street, Suite 800, Phoenix, Arizona 85004, in Maricopa County, Arizona, in which the Property is situated. Grantees, being the highest bidders at such sale, became the purchasers of the Property and made payment therefor to Trustee in the amount bid, namely Four Million Three Hundred Thousand Dollars and 00/00 (\$4,300,000.00), which payment was made by the pro tanto reduction of the obligations secured by the Deed of Trust.

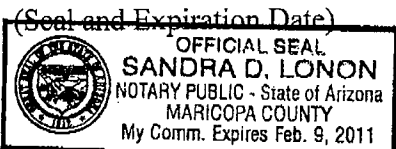
Dated as of this 13th day of April 2009


Christopher M. McNichol
Successor Trustee

State of Arizona

County of Maricopa

The foregoing instrument was acknowledged before me this 13th day of April 2009, by Christopher M. McNichol, Successor Trustee.



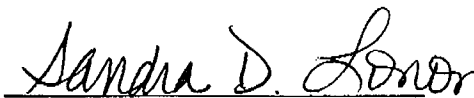

Notary Public

EXHIBIT A

Lot 2, of Lot Line Adjustment of the Replat of Lot 2 and 3 Vista Camello, according to the plat of record in the office of the County Recorder of Maricopa County, Arizona, recorded in Book 494 of Maps, Page 44.

PARCEL NO. 2:

An Easement for Pool equipment and Wall and rights incident thereto as set forth in the Declaration of Covenants, Conditions and Restrictions recorded February 26, 1999 in Document NO. 99-187168.

EXHIBIT B

1. All personal property (including, without limitation, all goods, supplies, equipment, furniture, furnishings, fixtures, machinery, inventory and construction materials) in which Debtors James T. Hurst and Linda L. Hurst ("Debtors.") now or hereafter acquires an interest or right, which is now or hereafter located on or affixed to the real property (the "Real Property") described in Exhibit "A" attached to this Trustee's Deed and Affidavit of Sale or to the improvements now or hereafter located on the Real Property (the "Improvements"), or used or useful in the operation, use, or occupancy thereof or in the construction of any additional improvements thereon, together with any interest of Debtors in and to such personal property which is leased by Debtors or is subject to any superior security interest, and all books, records, leases and other agreements, documents, and instruments of whatever kind or character, relating to the Real Property, the Improvements, or such personal property;
2. All fees, income, rents, issues, profits, earnings, receipts, royalties, and revenues that may accrue from the personal property described in Paragraph (1) above or any part thereof, or from the Real Property or the Improvements, or that may be received or receivable by Debtors from any hiring, using, letting, leasing, subhiring, subletting, subleasing, occupancy, operation or use thereof;
3. All of Debtors' present and future rights to receive payments of money, services, or property, including, without limitation, rights to receive capital contributions or subscription payments from the members, partners, shareholders or principals of Debtor, amounts payable on account of the sale of ownership interests in Debtors or the capital stock of Debtors, accounts and other accounts receivable, security deposits, chattel paper, notes, drafts, contract rights, instruments, general intangibles, and principal, interest and payments due on account of goods sold or leased, services rendered, loans made or credit extended, together with title to or interest in all agreements, documents, and instruments, evidencing, securing or guarantying the same;
4. All other intangible property and rights relating to the Real Property, the Improvements, the personal property described in Paragraph (1) above or the operation, occupancy, or use thereof including, without limitation, all governmental and non-governmental permits, licenses (including Debtors' interest in any liquor license related to business operations conducted on the Real Property), and all approvals relating to construction on or operation, occupancy, or use of the Real Property or the Improvements, all names under or by which the Real Property or the Improvements may at any time be operated or known, all rights to carry on business under any such names, or any variant thereof, all trade names and trademarks relating in any way to the Real Property or the Improvements, and all good will in any way relating to the Real Property or the Improvements;
5. Debtors' rights under all insurance policies covering the Real Property, the Improvements or the personal property described in Paragraph (1) above, and any and all proceeds, loss payments, and unearned premiums payable or refundable regarding the same;

6. All reserves, deferred payments, deposits, impound accounts, refunds, cost savings, and payments of any kind relating to the construction of any improvements on the Real Property;
7. All water stock or water rights relating to the Real Property;
8. All architectural, structural, mechanical, and engineering plans and specifications prepared for construction of improvements on the Real Property, or extraction of minerals or gravel from the Real Property, and all studies, data, and drawings relating thereto; and also all contracts and agreements of the Debtors relating to such plans and specifications or to such studies, data, and drawings, for the construction of improvements on or extraction of minerals or gravel from the Real Property;
9. All proceeds from the sale or other disposition of any of the collateral described above;
10. All of Debtors' rights in proceeds of the loan made by Secured Parties Christopher J. Olson, Trustee of the Mortgages Ltd. 401K Plan as to an undivided 93.522% interest and Mortgages Ltd., an Arizona corporation, as agent for the principals Bighi & Associates, an Arizona limited partnership, as to an undivided 1.176% interest, Bruce Dennis Buckley and Alivia Virginia Buckley, Trustees of the Bruce Dennis Buckley and Alivia Virginia Buckley Revocable Living Trust dated June 4, 1985 and Amended December 7, 1994, as to an undivided 2.948% interest, and Gerald Gross, Trustee of the T & J Gross Trust Agreement dated May 20, 1993, and any amendments thereto, as to an undivided 2.354% interest ("Secured Parties"), to Debtors;
11. All of Debtors' rights to security, cleaning, or other deposits from tenants relating to leases or occupancy agreements for any portion of the Real Property or the Improvements;
12. All of Debtors' rights in any impound account held by or on behalf of Secured Parties; and
13. All wells, well equipment, rights to wells, permits and licenses, water rights and all other related property used in connection with the operation of any well on the Real Property or appurtenant to the Real Property.

Magnus Title Agency

WHEN RECORDED MAIL TO:

4000206B-4-2-2--
fraustoj

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**Mortgages Ltd.
4455 E. Camelback Road
Phoenix, AZ 85018**

File no. 04000206-711VE

CAPTION HEADING: STIPULATED ORDER FOR RELIEF FROM STAY

DO NOT REMOVE

THIS IS PART OF THE OFFICIAL DOCUMENT

RECORDPG

Entered on Docket Jan. 26, 2009

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UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

In Re:

J.C. ASSOCIATES, INC.,

Debtor.

Case No. 08-17726-KAO

STIPULATED ORDER FOR RELIEF FROM STAY

Mortgages Ltd, through it counsel Foster Pepper PLLC and J.C. Associates, Inc., debtor in possession herein, through its counsel Larry Feinstein having stipulated for the relief set forth herein and pursuant thereto, it is hereby Ordered as follows:

The Hearing on the Relief from Stay Motion filed by Mortgages, Ltd., is stricken and this Order will substitute for the Proposed Order submitted with that motion.

Mortgages, Ltd., shall be granted relief from the automatic stay imposed by 11 U.S.C. 362 on April 4, 2009.

In the event that as of the close of business on April 3, 2009 the debtor has accepted an offer to purchase the property at 6450 E. Cactus Wren Place, Paradise Valley, AZ., Mortgages will continue its Trustee's sale for a period required to close the sale, but no later than May 29, 2009, on the property on the following conditions:

Vortman & Feinstein
500 Union Street, Suite 500
Seattle, WA 98101
206-223-9595
Fax: 206-386-5355

1 a. The offer must be non-contingent or have the capability for the
2 removal of all contingencies within 30 days of the date the offer was received.

3 b. Closing will occur within 60 days of bankruptcy court approval, but
4 in no event later than May 29, 2009. Any extension must be on good cause and require
5 the prior written approval of Mortgage, Ltd.

6 c. The debtor will obtain bankruptcy court approval and close the sale
7 no later than 60 days following mutual acceptance or approval, but in no event later than
8 May 29, 2009.

9 d. Nothing in this Stipulation/Order shall bind the estate or any trustee
10 if the case is converted to another chapter, to review the claim of Mortgages Ltd., with
11 respect to the validity, perfection or amount of the secured party's lien or debt.

12 e. The Court Order approving sale will include a provision for payment
13 of Mortgages Ltd., claim in full with all fees and costs directly from closing.

14 f. The debtor will not seek any §506(c) assessment that would reduce
15 the recovery of on the Mortgages, Ltd., claim.

16 g. In the event there is a dispute over the terms of the offer, the nature
17 of the buyer, or the ability to perform, it may be raised by Mortgages and any issue
18 relating to the bona fide nature of the offer or the offeror will be determined by this Court.

19 h. Any offer submitted under this Stipulated must be sufficient to pay
20 Mortgages Ltd., claim in full.

21 Dated this _____ day of January, 2009

22
23 *Karen A. Coe*
24 United States Bankruptcy Judge
25 (Dated as of Entered on Docket date above)

26 THIS IS TO CERTIFY that the fore-
27 going is a true and correct copy of
28 an instrument, filed in our office. Vortman & Feinstein
Dated this 11th day of February, 2009 500 Union Street, Suite 500
Seattle, WA 98101
206-223-9595
Fax: 206-386-5355

By *[Signature]*
BANKRUPTCY COURT
A Designated Employee

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Presented by:

/s/ Larry B Feinstein

Larry B. Feinstein, WSBA #6074
Attorney for Debtor

Approved for Entry:

Dillon Jackson per voicemail 1/22/09 4:30

Dillon Jackson, WSBA #
Attorney for Mortgages, LTD.

Vortman & Feinstein
500 Union Street, Suite 500
Seattle, WA 98101
206-223-9595
Fax: 206-386-5355

Ex. 27

Date: Sunday, August 8, 2010 8:41 PM
From: Rachel Schwartz and Chris Olson <cosmoaz@earthlink.net>
To: Jim Cordello <jcordello@cox.net>
Subject: FW: Attached Image

Jim, here is the email you requested. I am also sending my response email with my responses in bold.

Rachel Schwartz, CPA
 Vice President
 Fiduciary Investment Services, Inc.
 29834 N. Cave Creek AZ 85331
 Email: cosmoaz@earthlink.net
 Phone: (602) 326-5508
 Fax: (480) 659-4223

-----Original Message-----
From: REECE, CATHY [CREECE@FCLAW.com]
Sent: Sunday, May 03, 2009 10:15 PM
To: Rachel Schwartz and Chris Olson
Cc: McDonough, Edward
Subject: RE: Attached Image

Chris--

I have not been able to reach you yet so let me walk through the loans. You sent me the names of 6 and then I saw 2 others. You are correct that the OIC Plan is not asking the 401k plan to transfer its ownership interests into any Loan LLC. We understand your constraints.

As I understand it, there are 3 loans where the 401k plan is the only owner of the note-- Downtown Community, CDIG and ECCO. Clearly these three loans can go their own way with no management or service involving the OIC Plan. One loan has only 1 investor with the 401k plan-- 43rd Ave and Olney. One loan has 3 other investors with the 401k plan and the land has been foreclosed on--Hurst. I assume the investors in these two loans will agree with you that these loans will go their own way with no management or service involving the OIC Plan.

The other three loans have some MP funds and investors-- Bisontown has 9 other investors including 1 MP Fund, Vanderbilt has 31 other investors including 5 MP Funds and GP Carefree has 20 other investors and no MP Funds. What I wanted to discuss was what to do with the non-401k plan ownership of those 3 loans. I would think that the non-401k fractional interests could go into the Loan LLC for that loan. Then the 401k Plan would be joint owner with the Loan LLC of the loan in their respective percentage. The Loan LLC will be managed by the Board which includes Bruce Buckley, Elliott Pollack, Scott Summers, Radical Bunny trustee and a soon to be named Rev Op person. It should make it much easier to administer the loan. You then have only one party to deal with, not a large number of individual investors who might disagree with each other. Then the 401k Plan and the Loan LLC could decide where to have the loan serviced and what to do to collect or workout the loan. Is that what you had in mind for these 3 loans? This is what I thought we discussed. But let me know what you think.

Give me a call to discuss. Thanks.
 Cathy

-----Original Message-----
From: REECE, CATHY
Sent: Sunday, May 03, 2009 9:36 PM
To: 'Rachel Schwartz and Chris Olson'
Subject: RE: Attached Image

Chris I just tried to reach you on your cell phone. Please give me a call so we can walk through it and then I can send you a confirming email. Also take a look at footnote 1 on page 7 of the disclosure statement. Also don't forget to vote your Class 11A unsecured claim. I think it is about \$100,000. Call me at (602) 916-5343 or on my cell at (602) 576-6072. Cathy

-----Original Message-----
From: Rachel Schwartz and Chris Olson [cosmoaz@earthlink.net]
Sent: Sunday, May 03, 2009 9:07 PM
To: REECE, CATHY

Subject: RE: Attached Image

Cathy,

I am reviewing the OIC's plan and getting ready to cast the vote for the 401k Plan. I want you to confirm our conversation that we had on April 22 at your meeting. In regards to the 401k Plan, you will not be pursuing placing the loans owned by the 401k Plan (either 100% owned, partially owned by the Plan or deed titled currently in the name of the Plan due to foreclosure Trustee's sale) into the loan LLC's to be formed by the OIC if the OIC's plan of reorganization is ultimately determined to be the plan that moves forward. The Trustee of the Mortgages Ltd. 401k Plan will be responsible for administering these loans outside of the OIC's plan of reorganization.

Please confirm our understanding.

Thank you.

Chris J. Olson
Plan Trustee

-----Original Message-----

From: REECE, CATHY [CREECE@FCLAW.COM]
Sent: Thursday, April 30, 2009 8:44 PM
To: cosmoaz@earthlink.net
Subject: FW: Attached Image

Chris

Here are copies of the claim which the committee filed and the debtor filed. Also included is the notice of disallowance of the committee claim. I also included the petition for allowance that the committee filed today. I do not have the filed copy back yet. Let me know if you have any questions. Cathy
Fennemore Craig, P.C.
Denver | Las Vegas | Nogales | Phoenix | Tucson
www.FennemoreCraig.com

IRS CIRCULAR 230 DISCLOSURE: To ensure compliance with requirements imposed by the IRS, we inform you that, to the extent this communication (or any attachment) addresses any tax matter, it was not written to be (and may not be) relied upon to (i) avoid tax-related penalties under the Internal Revenue Code, or (ii) promote, market or recommend to another party any transaction or matter addressed herein (or in any such attachment). For additional information regarding this disclosure please visit our web site.

CONFIDENTIALITY NOTICE: The information contained in this message may be protected by the attorney-client privilege. If you believe that it has been sent to you in error, do not read it. Please immediately reply to the sender that you have received the message in error. Then delete it. Thank you.

Ex. 28



Date: Sunday, August 8, 2010 8:41 PM
From: Rachel Schwartz and Chris Olson <cosmoaz@earthlink.net>
To: Jim Cordello <jcordello@cox.net>
Subject: FW: Attached Image

Here you go Jim.

Chris Olson

-----Original Message-----

From: REECE, CATHY [mailto:CREECE@FCLAW.com]
Sent: Tuesday, May 05, 2009 7:10 AM
To: cosmoaz@earthlink.net
Subject: Re: Attached Image

Chris. I agree. If there is an asset manager or expenses of foreclosure then I also would think the Plan also picks up its pro rata share of those expenses as well. Do you agree? Cathy

----- Original Message -----

From: Rachel Schwartz and Chris Olson <cosmoaz@earthlink.net>
To: REECE, CATHY
Cc: McDonough, Edward <emcdonough@alvarezandmarsal.com>
Sent: Mon May 04 21:19:28 2009
Subject: RE: Attached Image

Cathy, please see my comments below.

One question that has come up is what about any potential fees due to a new servicing company - either Churchill or someone else. I would think your position would be that the Plan would only be responsible for its pro-rata share and could not be assessed additional fees because it is not in an LLC. What is your opinion on that?

Thanks.

Chris J. Olson

-----Original Message-----

From: REECE, CATHY [mailto:CREECE@FCLAW.com]
Sent: Sunday, May 03, 2009 10:15 PM
To: Rachel Schwartz and Chris Olson
Cc: McDonough, Edward
Subject: RE: Attached Image

Chris--

I have not been able to reach you yet so let me walk through the loans. You sent me the names of 6 and then I saw 2 others. You are correct that the OIC Plan is not asking the 401k plan to transfer its ownership interests into any Loan LLC. We understand your constraints.

As I understand it, there are 3 loans where the 401k plan is the only owner of the note-- Downtown Community, CDIG and ECCO. Clearly these three loans can go their own way with no management or service involving the OIC Plan. One loan has only 1 investor with the 401k plan-- 43rd Ave and Olney. One loan has 3 other investors with the 401k plan and the land has been foreclosed on--Hurst. I assume the investors in these two loans will agree with you that these loans will go their own way with no management or service involving the OIC Plan. That is correct Cathy, the three that are owned 100% by the Plan will be administered by the Plan Trustee or a designee. Hurst has been foreclosed on and the Plan holds title to 93% of that property along with Jerry Gross, Bruce Buckley and Sylvia Bigli. 43rd and Olney is a possible deed in lieu that we are working on and it does not seem to make much sense in putting that one in an LLC.

The other three loans have some MP funds and investors-- Bisontown has 9 other investors including 1 MP Fund, Vanderbilt has 31 other investors including 5 MP Funds and GP Carefree has 20 other investors and no MP Funds. What I wanted to discuss was what to do with the non-401k plan ownership of those 3 loans. I would think that the non-401k fractional interests could go into the Loan LLC for that loan. Then the 401k Plan would be joint owner with the Loan LLC of the loan in their respective percentage. The Loan LLC will be managed by the Board which includes Bruce Buckley, Elliott Pollack, Scott Summers, Radical Bunny trustee and a soon to be named Rev Op person. It should make it much easier to administer the loan. You then have only one party to deal with, not a large number of individual investors who might disagree with each other. Then the 401k Plan and the Loan LLC could decide where to have the loan serviced and what to do to collect or workout the loan. Is that what you had in mind for these 3 loans? This is what I thought we discussed. But let me know what you think. That is consistent with what we discussed. It would more efficient to administer this loan if the Plan Trustee is working with one other party instead of many. I think those three gentlemen would do a good job. We will see who is added to that list.

Give me a call to discuss. Thanks.

Cathy

-----Original Message-----

From: REECE, CATHY

Sent: Sunday, May 03, 2009 9:36 PM

To: 'Rachel Schwartz and Chris Olson'

Subject: RE: Attached Image

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Case 2:09-bk-07465-RJH Doc 2872-28 Filed 08/09/10 Entered 08/09/10 21:47:17

(602) 976-6072. Cathy

Desc Exhibit 28 Page 3 of 5

-----Original Message-----

From: Rachel Schwartz and Chris Olson [<mailto:cosmoaz@earthlink.net>]
Sent: Sunday, May 03, 2009 9:07 PM
To: REECE, CATHY
Subject: RE: Attached Image

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www.FennemoreCraig.com

imposed

by the IRS, we inform you that, to the extent this communication (or any attachment) addresses any tax matter, it was not written to be (and may not

be) relied upon to (i) avoid tax-related penalties under the Internal Revenue Code, or (ii) promote, market or recommend to another party any transaction or matter addressed herein (or in any such attachment). For additional information regarding this disclosure please visit our web site.

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Ex. 29

PROMISSORY NOTE INDORSEMENT

Loan No. 859606 Effective Date: July 5, 2007

"Indorser" (individually and collectively):

Scott M. Coles or Christopher J. Olson, CPA, Trustees of the Mortgages Ltd. 401(k) Plan as to an undivided 36.364% interest; at the Interest Accrual Rate set forth below for each New Holder

"New Holder" (individually and collectively):

Mortgages Ltd., an Arizona corporation as to an undivided 36.364% interest; at the Interest Accrual Rate of 13.5 percent %

For good and valuable consideration, Indorser hereby transfers to New Holder so much of Indorser's rights and interests as consist of the right to receive the undivided percentage set forth above of the principal payments and of interest thereon at the Interest Accrual Rate set forth above (reserving however to the Indorser any and all fees and other charges) in that certain Promissory Note in the principal amount of \$11,000,000.00 (the 'Note'), dated July 5, 2007, and executed by Vanderbilt Farms, L.L.C., an Arizona limited liability company and Vistoso Partners, L.L.C., an Arizona limited liability company, as Maker, in connection with Loan No. 859606 obtained through Scott M. Coles or Christopher J. Olson, CPA, Trustees of the Mortgages Ltd. 401(k) Plan, as Holder. The Note is secured by a Deed of Trust.

By this Indorsement, the Note shall hereby be payable to the order of New Holder without recourse. Hereafter, New Holder has complete and absolute authority to exercise all rights and pursue all interests formerly vested in the Indorser under the Note, which includes, but is not limited to, the right to receive payments and the right to enforce Maker's obligations thereunder. This Indorsement shall be attached to the original Note.

IN WITNESS WHEREOF, this Indorsement is effective as of the date set forth above.

INDORSER:

[Handwritten signature of Scott M. Coles]

Scott M. Coles, Trustee

STATE OF ARIZONA)
)ss
COUNTY OF MARICOPA)

Date of acknowledgement July 6, 2007

Acknowledgement of Scott M. Coles

This instrument was acknowledged before me this date by the persons above subscribed and if subscribed in a representative capacity, then for the principal named and in the capacity indicated.

[Handwritten signature of Suzanne Bernhardt]
Notary Public

My commission expires July 22, 2007



Ex. 30

MASTER AGENCY AGREEMENT

Effective: December 23, 2004

"Beneficiary": **Scott M. Coles, Trustee of The Mortgages Ltd. 401(k) Plan**

"Agent": **Mortgages Ltd., an Arizona corporation.**

In consideration of the reciprocal promises contained herein, Beneficiary and Agent (collectively, the "Parties") hereby agree to the following.

1. APPOINTMENT AND AUTHORITY OF AGENT

Beneficiary hereby appoints Mortgages Ltd. to act as Beneficiary's Agent with regard to the Loans. Beneficiary authorizes Agent to perform any and all of the following tasks on Beneficiary's behalf at Agent's sole discretion.

a. Account Servicing. In order to facilitate Agent's management of Beneficiary's investment in the Loans, Agent may:

(1) Request from Beneficiary, Beneficiary's percentage ratio of any delayed fundings or Equity-Flex™ Advances to Trustor under the Loan Documents, which funds Beneficiary shall deliver to Agent within 3 business days to be held or disbursed by Agent pursuant to the Loan Documents. In the event Beneficiary fails to transmit such funds to Agent within the time period set forth, Agent may, at its option, do the following:

(a) Divide Beneficiary's total funding by the face amount of the Loan to determine Beneficiary's current percentage ratio and transfer to a new investor the difference between the Beneficiary's assigned percentage rate and Beneficiary's current percentage ratio; **or**

(b) Liquidate Beneficiary's investment in the Loan and transfer all of Beneficiary's assigned percentage ratio in the Loan to a new beneficiary.

(2) Receive and hold the original Promissory Notes, Deeds of Trust and all other documents executed by the Trustor in connection with the Loans (collectively, the "Loan Documents");

(3) Service and administer the Loans in any manner provided by the Loan Documents;

(4) Receive and process any and all Loan payments from Trustors or other payers ("Trustor payment") as follows:

(a) Upon receipt of a Trustor payment, deposit that payment in an account held by Agent, and transmit or deposit the appropriate check to Beneficiary.

(b) At Agent's discretion, Agent may delay disbursing funds to Beneficiary from payments received by Trustor until Trustor's funds are collected by Agent's depository institution.

(c) If a Trustor payment is returned for any reason by the drawee financial institution, Agent may send a notice to Trustor requesting payment of the past due amount at the default interest rate.

(5) Assess, receive and process all fees and charges set forth in the Loan Documents including, but not limited to, administrative fees, notice fees and late charges;

(6) Apply any sums received by Agent to the fees, costs and expenses incurred or assessed by Agent before applying to the balance of the Loan account. These fees, costs and expenses include, but are not limited to, notice fees, service fees, administrative fees, inspection fees, appraisal fees, expert fees, attorneys' fees, litigation costs, force placed insurance premiums, late charges and guarantor collection expenses (as described herein);



(7) Receive and retain deposits under the Loan Documents as impounds for the payment of the following:

- (a) Future payments due;
- (b) Taxes and assessments;
- (c) Construction;
- (d) Insurance premiums;
- (e) Extension fees;
- (f) Administration fees; **and**
- (g) Any other expenditure required under the Loan Documents.

Any impound account may be held in the name of Mortgages Ltd. and the Trustor for the benefit of Beneficiary, and Agent may apply and/or disburse any such deposits in accordance with the Loan Documents;

(8) Evaluate, effectuate and process an assumption of the Loans, and assess and receive an assumption fee and/or an interest increase, as provided in A.R.S. § 33-806.01 or any successor statute; **and**

(9) Execute, file and record any and all documents which, at Agent's discretion, are necessary to facilitate Loan servicing, including, but not limited to, deeds of release and reconveyance (full and partial); indorsements and assignments of Loan Documents; corrections, amendments, modifications and extensions of Loan Documents; disclaimers; financing statements; assumptions and various certifications.

(10) Upon Beneficiary's request, hold funds from the full or partial payoff of the loans in Agent's Trust account pending Beneficiary's written direction as to use of such funds.

b. Collection. In order to protect Beneficiary's interests in the Loans, Agent may:

(1) Correspond directly with Trustors at any time on any matter regarding the Loan Documents including, but not limited to, sending notices of delinquency and default, and demands for payment and compliance.

(2) Incur all fees, costs and expenses deemed necessary by Agent to protect Beneficiary's interests under the Loan Documents.

(3) Incur all fees, costs and expenses deemed necessary by Agent to protect the property securing the Loans (the "Trust Property"), including, but not limited to, insurance premiums, receiver fees, property manager fees, maintenance expenses and security expenses.

(4) Negotiate, accept and/or process partial payments of amounts due and owing under the Loan Documents;

(5) Send Beneficiary a request to deposit sufficient funds for delinquent real estate taxes and insurance premiums (including force placed insurance) relating to the Trust Property;

(6) Obtain force placed insurance on any portion of the Trust Property in the event the Trustor fails to maintain insurance as required by the Loan Documents;

(7) Execute, file and record any and all documents Agent deems necessary to protect Beneficiary's interests and/or pursue Beneficiary's remedies upon default, including, but not limited to, a statement of breach or non-performance, a substitution of trustee, a notice of election to foreclose, an affidavit of non-military service, a notice of proposed disposition of collateral and various verifications;

(8) In the event of default and at Agent's discretion, commence foreclosure of the Trust Property, initiate a trustee's sale and/or institute any proceeding necessary to collect the sums due under the Loan Documents or to enforce any provision therein (including, but not limited to, pursuing an action against any borrower or guarantor of the Loans; pursuing injunctive relief, the appointment of a receiver, provisional remedies and a deficiency judgment; pursuing claims in bankruptcy court; pursuing an appeal; collecting rents; and taking possession or operating the Trust Property;

(9) Negotiate and enter into extensions, modifications and/or forbearances of the Loan Document provisions;

(10) Negotiate and facilitate the sale of Beneficiary's interests in the Loan Documents by communicating with potential purchasers and their agents and by providing information regarding the Loans to third parties, such as, but not limited to, copies of the Loan Documents and Loan accounting information;

(11) Retain attorneys, trustees and other agents necessary to collect the sums due under the Loan Documents, to protect the Trust Property and/or to proceed with foreclosure of the Trust Property, initiate a trustee's sale and/or institute, defend, appear or otherwise participate in any proceeding (legal, administrative or otherwise) that Agent deems necessary;

(12) Incur and pay such costs, expenses and fees as Agent deems appropriate in undertaking and pursuing enforcement of the Loan Documents and/or collection of amounts owed thereunder, including, but not limited to, attorneys' fees, receiver fees, trustee fees, expert fees and any fees, costs and expenses incurred in an effort to collect against guarantors of the Loans; and

(13) Request and receive payments from Beneficiary as advances in order to pay such fees, costs and expenses incurred by Agent in accordance with this Agreement and/or the Loan Documents.

c. Compensation. As compensation for the services provided by Agent, Agent may:

(1) Retain any and all fees and charges assessed under the Loan Documents and collected by Agent, including, but not limited to, late charges, maturity late charges, administrative fees, prepayment penalties or premiums, notice fees and services;

(2) Deduct from payments received by Beneficiary an interest participation or minimum service charge equal to the amount set forth in the Direction to Purchase for each Loan to be paid from each monthly payment until paid in full;

(3) Collect and retain any interest on the principal balance of the Loans which is over and above the normal rate set forth in the Promissory Note (the "Note Rate"), including, but not limited to, the Default Interest provided for in the Loan Documents; however, any and all interest, including, but not limited to, Default Interest, collected on any advances (excluding Equity-Flex Advances) made by Beneficiary shall be payable to Beneficiary;

(4) Collect and retain any interest that accrues on any impound accounts;

(5) Collect and retain any assumption fees and charges; and

(6) Collect and retain any extension fees and forbearance fees.

d. Sale of Interest. In the event Beneficiary owns less than 100% interest in any loan being serviced by Mortgages Ltd., Agent, in its sole discretion, may liquidate Beneficiary's interest. Upon payment to Beneficiary, Agent will, upon direction of Beneficiary, use its best efforts to reinvest any funds received by Beneficiary in a new Loan.

2. ACCOMMODATION.

Agent provides its services as an accommodation only, and shall incur no responsibility or liability to any person, including, but not limited to, Trustor and Beneficiary, for nonfeasance or malfeasance, misfeasance and nonfeasance.

3. ASSIGNMENT, RESIGNATION AND TERMINATION.

a. Agent shall have the right to assign the collection account or resign as Agent at any time, provided that Agent notifies Beneficiary of such assignment or resignation in writing.

(1) In the event Agent assigns the collection account, Agent will deliver all Loan Documents, directions and account records to assignee, at which time Agent will have no further duties or liabilities hereunder.

(2) In the event Agent resigns, Beneficiary shall have the right to designate a new collection agent and Agent shall deliver to Beneficiary all Loan Documents, directions and account records to Beneficiary or the newly designated collection agent, at which time Agent will have no further duties or liabilities hereunder.

b. In the event that the ownership of the Trust Property becomes vested in the Beneficiary, either in whole or in part, by trustee sale, judicial foreclosure or otherwise, Agent may enter into a real estate broker's agreement on Beneficiary's behalf for the sale of the Trust Property, enter into a management and/or maintenance agreements for management or maintenance of the Trust Property, if applicable, may acquire insurance for the Trust Property,



and may take such other actions and enter into such other agreements for the protection and sale of the Trust Property, all as Agent deems appropriate. Beneficiary may terminate this Agreement after it becomes the owner of the Trust Property by written notice to Agent and payment of the fees, costs and expenses incurred by Agent as provided herein.

c. Upon Agent's assignment or resignation, or termination of this Agreement, **Beneficiary shall immediately reimburse Agent for any and all fees, costs and expenses incurred hereunder and pay Agent all compensation due.** After such reimbursement and payment, Beneficiary shall have no further duties, except indemnification of Agent.

4. INDEMNITY

a. Beneficiary shall immediately indemnify and hold Agent harmless against any and all liabilities incurred by Agent in performing under the terms of this Agreement or otherwise arising, directly or indirectly, from the Loans or Loan Documents, including, but not limited to, all attorneys' fees, insurance premiums, expenses, costs, damages and expenses.

b. In the event that Agent requests that Beneficiary pay any amount owed hereunder, Beneficiary shall remit that amount to Agent within 5 business days of Agent's request.

5. BENEFICIARY'S OBLIGATIONS

a. **Execution of Documents.** As previously set forth herein, Agent is authorized to execute any and all documents Agent deems necessary to facilitate loan servicing or collection. However, in the event that it is necessary, Beneficiary shall execute any and all documents Agent deems necessary to facilitate loan servicing or collection, including, but not limited to, deeds of release and reconveyance (full and partial), indorsements and assignments. If Agent requests Beneficiary execute such a document, then Beneficiary shall execute and deliver that document to Agent within 5 business days of Agent's request.

b. **Failure to Execute Documents.** In the event that Beneficiary fails to execute one of the documents described in paragraph 5.a. above, Agent shall be authorized to execute that document. In the event that Agent is prevented from executing a document due to circumstances beyond Agent's control, then Agent shall be entitled to seek indemnification from Beneficiary for any liabilities Agent may incur as a result.

c. **Assignment.** Beneficiary shall have the right to assign its rights in this Agreement as to any Loan covered by this Agreement at any time upon immediate notification to Agent in writing of any assignment of Beneficiary's rights. **Upon assignment, Beneficiary's shall immediately reimburse Agent for any and all fees, costs and expenses incurred hereunder and pay Agent all compensation due.** After such reimbursement and payment, Beneficiary shall have no further duties, except indemnification of Agent.

d. **Breach.** In the event that Beneficiary breaches this Agreement, by failing to perform or by interfering with the Agent's ability to perform under this Agreement, then Beneficiary shall pay Agent, within 30 days of written notice of breach, administrative fees, attorneys fees, costs, closeout fees and any other fees or charges owed to Agent as compensation hereunder, along with any additional damages incurred by Agent, whether actual, incidental or consequential.

6. CONFIDENTIALITY

a. For the purposes of this Agency Agreement, the term "Confidential Information" as used herein shall include any and all written and verbal information provided by Agent to Beneficiary in connection with the Loans, whether marked or designated as confidential or not, including without limitation any information regarding Agent's underwriting criteria or procedures. Except with respect to Agent's underwriting criteria and procedures, which shall in all events constitute Confidential Information hereunder, the definition of Confidential Information shall not include any information which: (i) is or becomes generally known to third parties through no fault of Beneficiary; or (ii) is already known to Beneficiary prior to its receipt from Agent as shown by prior written records; or (iii) becomes known to Beneficiary by disclosure from a third party who has a lawful right to disclose the information.



b. Beneficiary acknowledges that the Confidential Information is proprietary and valuable to Agent and that any disclosure or unauthorized use thereof may cause irreparable harm and loss to Agent.

c. In consideration of the disclosure to Beneficiary of the Confidential Information and of the services to be performed by Agent on behalf of Beneficiary hereunder, Beneficiary agrees to receive and to treat the Confidential Information on a confidential and restricted basis and to undertake the following additional obligations with respect thereto:

(i) To use the Confidential Information only in connection with the Loans.

(ii) Not to duplicate, in whole or in part, any Confidential Information.

(iii) Not to disclose Confidential Information to any entity, individual, corporation, partnership, sole proprietorship, customer or client, without the prior express written consent of Agent.

(iv) To return all Confidential Information to Agent upon request therefor and to destroy any additional notes or records made from such Confidential Information.

(v) Not to give testimony against Agent in any legal proceeding to which Agent is a party, unless compelled to do so by competent legal authority.

d. The standard of care to be utilized by Beneficiary in the performance of its obligations set forth herein shall be the standard of care utilized by Beneficiary in treating Beneficiary's own information that it does not wish disclosed, except that Agent's underwriting criteria and procedures shall be kept absolutely confidential and privileged regardless of whether such knowledge was previously known to Beneficiary or has been or is in the future disclosed to Consultant by third parties.

e. The restrictions set forth in this Section 6 shall be binding upon Beneficiary, its employees, agents, officers, directors and any others to whom any Confidential Information may be disclosed as part of or in connection with the Loan transactions. Beneficiary shall be responsible for any actions of its employees, agents, officers, directors or others to whom it has provided such information with respect to such information.

f. The restrictions and obligations of this Section 6 shall survive any expiration, termination or cancellation of this Agent Agreement and shall continue to bind Beneficiary, its successors and assigns.

g. Beneficiary agrees and acknowledges that the rights conveyed in this Section 6 are of a unique and special nature and that Agent will not have an adequate remedy at law in the event of failure of Beneficiary or anyone acting on Beneficiary's behalf or for whom Beneficiary acted to abide by the terms and conditions set forth herein, nor will money damages adequately compensate for such injury. It is, therefore, agreed between the parties that Agent, in the event of a breach by Beneficiary of its agreements contained in this Section 6, shall have the right, among other rights, to obtain an injunction or decree of specific performance to restrain Beneficiary or anyone acting on Beneficiary's behalf or for whom Beneficiary is acting from continuing such breach, in addition to damages sustained as a result of such breach. Nothing herein contained shall in any way limit or exclude any and all other rights granted by law or equity to either party.

7. GENERAL PROVISIONS

a. This Agreement is binding on the Parties and their agents, representatives, successors, assigns, beneficiaries and trustees.

b. This Agreement shall be governed by, construed and enforced in accordance with the laws of the State of Arizona. The Parties hereby submit to the jurisdiction of any Arizona State or Federal Court sitting in the City of Phoenix in any action or proceeding arising out of or relating to this Agreement. The Parties hereby waive the defense of an inconvenient forum.



"We See Things Differently"

c. The Parties hereby waive the right to a jury trial on any and all contested matters arising from this Agreement.

d. This Agreement sets forth the entire agreement and understanding of the Parties and is to be read in consistency and accordance with the other Loan Documents.

e. This Agreement replaces and supersedes any and all prior agency agreements between Beneficiary and Mortgages Ltd. including, but not limited to, the Supplemental Collection Instructions and Agent Authorizations and the Beneficiary's Supplemental Agreement with Collection Agent (collectively, "Prior Agency Agreements"). As to all existing Loans, any and all Prior Agency Agreements are hereby null and void, and the terms of this Agreement govern the relationship of the Parties.

f. This Agreement may be amended, modified, superseded, canceled, renewed or extended and the terms or covenants hereof may be waived only by a written instrument executed by Agent and Beneficiary. Agent's failure, at any time, to require performance of any provision of this Agreement shall in no manner affect the right of Agent or Beneficiary at a later time to enforce the same. No waiver by Agent of the breach of any term or covenant contained in this Agreement, whether by conduct or otherwise, in any one or more instances, shall be deemed to be, or construed as, a further or continuing waiver by Agent of any such breach, or a waiver of the breach of any other term or covenant contained in this Agreement.

g. If any term or other provision of this Agreement or any other Loan Document is declared invalid, illegal or incapable of being enforced by any rule of law or public policy, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect.

h. This Agreement may be executed by the Parties in counterparts. The executed signature pages may then be attached together constituting an original copy of the Agreement. Copies of executed signature pages obtained via facsimile shall be effective and binding on the Parties.

i. If there is any arbitration or litigation by or among the parties to enforce or interpret any provisions of this Agency Agreement or any rights arising hereunder, the unsuccessful party in such arbitration or litigation, as determined by the arbitrator or the court, shall pay to the successful party, as determined by the arbitrator or the court, all costs and expenses, including without limitation attorneys' fees and costs, incurred by the successful party, such costs and expenses to be determined by the arbitrator or court sitting without a jury.

This Agreement is effective on the date set forth on the first page.

BENEFICIARY:

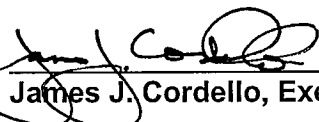
Scott M. Coles, Trustee of The Mortgages Ltd. 401(k) Plan



Scott M. Coles, Trustee

AGENT:

MORTGAGES LTD.



James J. Cordello, Executive Vice President



MASTER AGENCY AGREEMENT

Effective: December 23, 2004

"Beneficiary": **Scott M. Coles, Trustee of The Mortgages Ltd. 401(k) Plan**

"Agent": **Mortgages Ltd., an Arizona corporation.**

In consideration of the reciprocal promises contained herein, Beneficiary and Agent (collectively, the "Parties") hereby agree to the following.

1. APPOINTMENT AND AUTHORITY OF AGENT

Beneficiary hereby appoints Mortgages Ltd. to act as Beneficiary's Agent with regard to the Loans. Beneficiary authorizes Agent to perform any and all of the following tasks on Beneficiary's behalf at Agent's sole discretion.

a. Account Servicing. In order to facilitate Agent's management of Beneficiary's investment in the Loans, Agent may:

(1) Request from Beneficiary, Beneficiary's percentage ratio of any delayed fundings or Equity-Flex™ Advances to Trustor under the Loan Documents, which funds Beneficiary shall deliver to Agent within 3 business days to be held or disbursed by Agent pursuant to the Loan Documents. In the event Beneficiary fails to transmit such funds to Agent within the time period set forth, Agent may, at its option, do the following:

(a) Divide Beneficiary's total funding by the face amount of the Loan to determine Beneficiary's current percentage ratio and transfer to a new investor the difference between the Beneficiary's assigned percentage rate and Beneficiary's current percentage ratio; **or**

(b) Liquidate Beneficiary's investment in the Loan and transfer all of Beneficiary's assigned percentage ratio in the Loan to a new beneficiary.

(2) Receive and hold the original Promissory Notes, Deeds of Trust and all other documents executed by the Trustor in connection with the Loans (collectively, the "Loan Documents");

(3) Service and administer the Loans in any manner provided by the Loan Documents;

(4) Receive and process any and all Loan payments from Trustors or other payers ("Trustor payment") as follows:

(a) Upon receipt of a Trustor payment, deposit that payment in an account held by Agent, and transmit or deposit the appropriate check to Beneficiary.

(b) At Agent's discretion, Agent may delay disbursing funds to Beneficiary from payments received by Trustor until Trustor's funds are collected by Agent's depository institution.

(c) If a Trustor payment is returned for any reason by the drawee financial institution, Agent may send a notice to Trustor requesting payment of the past due amount at the default interest rate.

(5) Assess, receive and process all fees and charges set forth in the Loan Documents including, but not limited to, administrative fees, notice fees and late charges;

(6) Apply any sums received by Agent to the fees, costs and expenses incurred or assessed by Agent before applying to the balance of the Loan account. These fees, costs and expenses include, but are not limited to, notice fees, service fees, administrative fees, inspection fees, appraisal fees, expert fees, attorneys' fees, litigation costs, force placed insurance premiums, late charges and guarantor collection expenses (as described herein);



(7) Receive and retain deposits under the Loan Documents as impounds for the payment of the following:

- (a) Future payments due;
- (b) Taxes and assessments;
- (c) Construction;
- (d) Insurance premiums;
- (e) Extension fees;
- (f) Administration fees; **and**
- (g) Any other expenditure required under the Loan Documents.

Any impound account may be held in the name of Mortgages Ltd. and the Trustor for the benefit of Beneficiary, and Agent may apply and/or disburse any such deposits in accordance with the Loan Documents;

(8) Evaluate, effectuate and process an assumption of the Loans, and assess and receive an assumption fee and/or an interest increase, as provided in A.R.S. § 33-806.01 or any successor statute; **and**

(9) Execute, file and record any and all documents which, at Agent's discretion, are necessary to facilitate Loan servicing, including, but not limited to, deeds of release and reconveyance (full and partial); indorsements and assignments of Loan Documents; corrections, amendments, modifications and extensions of Loan Documents; disclaimers; financing statements; assumptions and various certifications.

(10) Upon Beneficiary's request, hold funds from the full or partial payoff of the loans in Agent's Trust account pending Beneficiary's written direction as to use of such funds.

b. Collection. In order to protect Beneficiary's interests in the Loans, Agent may:

(1) Correspond directly with Trustors at any time on any matter regarding the Loan Documents including, but not limited to, sending notices of delinquency and default, and demands for payment and compliance.

(2) Incur all fees, costs and expenses deemed necessary by Agent to protect Beneficiary's interests under the Loan Documents.

(3) Incur all fees, costs and expenses deemed necessary by Agent to protect the property securing the Loans (the "Trust Property"), including, but not limited to, insurance premiums, receiver fees, property manager fees, maintenance expenses and security expenses.

(4) Negotiate, accept and/or process partial payments of amounts due and owing under the Loan Documents;

(5) Send Beneficiary a request to deposit sufficient funds for delinquent real estate taxes and insurance premiums (including force placed insurance) relating to the Trust Property;

(6) Obtain force placed insurance on any portion of the Trust Property in the event the Trustor fails to maintain insurance as required by the Loan Documents;

(7) Execute, file and record any and all documents Agent deems necessary to protect Beneficiary's interests and/or pursue Beneficiary's remedies upon default, including, but not limited to, a statement of breach or non-performance, a substitution of trustee, a notice of election to foreclose, an affidavit of non-military service, a notice of proposed disposition of collateral and various verifications;

(8) In the event of default and at Agent's discretion, commence foreclosure of the Trust Property, initiate a trustee's sale and/or institute any proceeding necessary to collect the sums due under the Loan Documents or to enforce any provision therein (including, but not limited to, pursuing an action against any borrower or guarantor of the Loans; pursuing injunctive relief, the appointment of a receiver, provisional remedies and a deficiency judgment; pursuing claims in bankruptcy court; pursuing an appeal; collecting rents; and taking possession or operating the Trust Property;

(9) Negotiate and enter into extensions, modifications and/or forbearances of the Loan Document provisions;

(10) Negotiate and facilitate the sale of Beneficiary's interests in the Loan Documents by communicating with potential purchasers and their agents and by providing information regarding the Loans to third parties, such as, but not limited to, copies of the Loan Documents and Loan accounting information;

(11) Retain attorneys, trustees and other agents necessary to collect the sums due under the Loan Documents, to protect the Trust Property and/or to proceed with foreclosure of the Trust Property, initiate a trustee's sale and/or institute, defend, appear or otherwise participate in any proceeding (legal, administrative or otherwise) that Agent deems necessary;

(12) Incur and pay such costs, expenses and fees as Agent deems appropriate in undertaking and pursuing enforcement of the Loan Documents and/or collection of amounts owed thereunder, including, but not limited to, attorneys' fees, receiver fees, trustee fees, expert fees and any fees, costs and expenses incurred in an effort to collect against guarantors of the Loans; and

(13) Request and receive payments from Beneficiary as advances in order to pay such fees, costs and expenses incurred by Agent in accordance with this Agreement and/or the Loan Documents.

c. **Compensation.** As compensation for the services provided by Agent, Agent may:

(1) Retain any and all fees and charges assessed under the Loan Documents and collected by Agent, including, but not limited to, late charges, maturity late charges, administrative fees, prepayment penalties or premiums, notice fees and services;

(2) Deduct from payments received by Beneficiary an interest participation or minimum service charge equal to the amount set forth in the Direction to Purchase for each Loan to be paid from each monthly payment until paid in full;

(3) Collect and retain any interest on the principal balance of the Loans which is over and above the normal rate set forth in the Promissory Note (the "Note Rate"), including, but not limited to, the Default Interest provided for in the Loan Documents; however, any and all interest, including, but not limited to, Default Interest, collected on any advances (excluding Equity-Flex Advances) made by Beneficiary shall be payable to Beneficiary;

(4) Collect and retain any interest that accrues on any impound accounts;

(5) Collect and retain any assumption fees and charges; and

(6) Collect and retain any extension fees and forbearance fees.

d. **Sale of Interest.** In the event Beneficiary owns less than 100% interest in any loan being serviced by Mortgages Ltd., Agent, in its sole discretion, may liquidate Beneficiary's interest. Upon payment to Beneficiary, Agent will, upon direction of Beneficiary, use its best efforts to reinvest any funds received by Beneficiary in a new Loan.

2. ACCOMMODATION.

Agent provides its services as an accommodation only, and shall incur no responsibility or liability to any person, including, but not limited to, Trustor and Beneficiary, for nonfeasance or malfeasance, misfeasance and nonfeasance.

3. ASSIGNMENT, RESIGNATION AND TERMINATION.

a. Agent shall have the right to assign the collection account or resign as Agent at any time, provided that Agent notifies Beneficiary of such assignment or resignation in writing.

(1) In the event Agent assigns the collection account, Agent will deliver all Loan Documents, directions and account records to assignee, at which time Agent will have no further duties or liabilities hereunder.

(2) In the event Agent resigns, Beneficiary shall have the right to designate a new collection agent and Agent shall deliver to Beneficiary all Loan Documents, directions and account records to Beneficiary or the newly designated collection agent, at which time Agent will have no further duties or liabilities hereunder.

b. In the event that the ownership of the Trust Property becomes vested in the Beneficiary, either in whole or in part, by trustee sale, judicial foreclosure or otherwise, Agent may enter into a real estate broker's agreement on Beneficiary's behalf for the sale of the Trust Property, enter into a management and/or maintenance agreements for management or maintenance of the Trust Property, if applicable, may acquire insurance for the Trust Property,



and may take such other actions and enter into such other agreements for the protection and sale of the Trust Property, all as Agent deems appropriate. Beneficiary may terminate this Agreement after it becomes the owner of the Trust Property by written notice to Agent and payment of the fees, costs and expenses incurred by Agent as provided herein.

c. Upon Agent's assignment or resignation, or termination of this Agreement, **Beneficiary shall immediately reimburse Agent for any and all fees, costs and expenses incurred hereunder and pay Agent all compensation due.** After such reimbursement and payment, Beneficiary shall have no further duties, except indemnification of Agent.

4. INDEMNITY

a. Beneficiary shall immediately indemnify and hold Agent harmless against any and all liabilities incurred by Agent in performing under the terms of this Agreement or otherwise arising, directly or indirectly, from the Loans or Loan Documents, including, but not limited to, all attorneys' fees, insurance premiums, expenses, costs, damages and expenses.

b. In the event that Agent requests that Beneficiary pay any amount owed hereunder, Beneficiary shall remit that amount to Agent within 5 business days of Agent's request.

5. BENEFICIARY'S OBLIGATIONS

a. **Execution of Documents.** As previously set forth herein, Agent is authorized to execute any and all documents Agent deems necessary to facilitate loan servicing or collection. However, in the event that it is necessary, Beneficiary shall execute any and all documents Agent deems necessary to facilitate loan servicing or collection, including, but not limited to, deeds of release and reconveyance (full and partial), indorsements and assignments. If Agent requests Beneficiary execute such a document, then Beneficiary shall execute and deliver that document to Agent within 5 business days of Agent's request.

b. **Failure to Execute Documents.** In the event that Beneficiary fails to execute one of the documents described in paragraph 5.a. above, Agent shall be authorized to execute that document. In the event that Agent is prevented from executing a document due to circumstances beyond Agent's control, then Agent shall be entitled to seek indemnification from Beneficiary for any liabilities Agent may incur as a result.

c. **Assignment.** Beneficiary shall have the right to assign its rights in this Agreement as to any Loan covered by this Agreement at any time upon immediate notification to Agent in writing of any assignment of Beneficiary's rights. **Upon assignment, Beneficiary's shall immediately reimburse Agent for any and all fees, costs and expenses incurred hereunder and pay Agent all compensation due.** After such reimbursement and payment, Beneficiary shall have no further duties, except indemnification of Agent.

d. **Breach.** In the event that Beneficiary breaches this Agreement, by failing to perform or by interfering with the Agent's ability to perform under this Agreement, then Beneficiary shall pay Agent, within 30 days of written notice of breach, administrative fees, attorneys fees, costs, closeout fees and any other fees or charges owed to Agent as compensation hereunder, along with any additional damages incurred by Agent, whether actual, incidental or consequential.

6. CONFIDENTIALITY

a. For the purposes of this Agency Agreement, the term "Confidential Information" as used herein shall include any and all written and verbal information provided by Agent to Beneficiary in connection with the Loans, whether marked or designated as confidential or not, including without limitation any information regarding Agent's underwriting criteria or procedures. Except with respect to Agent's underwriting criteria and procedures, which shall in all events constitute Confidential Information hereunder, the definition of Confidential Information shall not include any information which: (i) is or becomes generally known to third parties through no fault of Beneficiary; or (ii) is already known to Beneficiary prior to its receipt from Agent as shown by prior written records; or (iii) becomes known to Beneficiary by disclosure from a third party who has a lawful right to disclose the information.



b. Beneficiary acknowledges that the Confidential Information is proprietary and valuable to Agent and that any disclosure or unauthorized use thereof may cause irreparable harm and loss to Agent.

c. In consideration of the disclosure to Beneficiary of the Confidential Information and of the services to be performed by Agent on behalf of Beneficiary hereunder, Beneficiary agrees to receive and to treat the Confidential Information on a confidential and restricted basis and to undertake the following additional obligations with respect thereto:

(i) To use the Confidential Information only in connection with the Loans.

(ii) Not to duplicate, in whole or in part, any Confidential Information.

(iii) Not to disclose Confidential Information to any entity, individual, corporation, partnership, sole proprietorship, customer or client, without the prior express written consent of Agent.

(iv) To return all Confidential Information to Agent upon request therefor and to destroy any additional notes or records made from such Confidential Information.

(v) Not to give testimony against Agent in any legal proceeding to which Agent is a party, unless compelled to do so by competent legal authority.

d. The standard of care to be utilized by Beneficiary in the performance of its obligations set forth herein shall be the standard of care utilized by Beneficiary in treating Beneficiary's own information that it does not wish disclosed, except that Agent's underwriting criteria and procedures shall be kept absolutely confidential and privileged regardless of whether such knowledge was previously known to Beneficiary or has been or is in the future disclosed to Consultant by third parties.

e. The restrictions set forth in this Section 6 shall be binding upon Beneficiary, its employees, agents, officers, directors and any others to whom any Confidential Information may be disclosed as part of or in connection with the Loan transactions. Beneficiary shall be responsible for any actions of its employees, agents, officers, directors or others to whom it has provided such information with respect to such information.

f. The restrictions and obligations of this Section 6 shall survive any expiration, termination or cancellation of this Agent Agreement and shall continue to bind Beneficiary, its successors and assigns.

g. Beneficiary agrees and acknowledges that the rights conveyed in this Section 6 are of a unique and special nature and that Agent will not have an adequate remedy at law in the event of failure of Beneficiary or anyone acting on Beneficiary's behalf or for whom Beneficiary acted to abide by the terms and conditions set forth herein, nor will money damages adequately compensate for such injury. It is, therefore, agreed between the parties that Agent, in the event of a breach by Beneficiary of its agreements contained in this Section 6, shall have the right, among other rights, to obtain an injunction or decree of specific performance to restrain Beneficiary or anyone acting on Beneficiary's behalf or for whom Beneficiary is acting from continuing such breach, in addition to damages sustained as a result of such breach. Nothing herein contained shall in any way limit or exclude any and all other rights granted by law or equity to either party.

7. GENERAL PROVISIONS

a. This Agreement is binding on the Parties and their agents, representatives, successors, assigns, beneficiaries and trustees.

b. This Agreement shall be governed by, construed and enforced in accordance with the laws of the State of Arizona. The Parties hereby submit to the jurisdiction of any Arizona State or Federal Court sitting in the City of Phoenix in any action or proceeding arising out of or relating to this Agreement. The Parties hereby waive the defense of an inconvenient forum.



"We See Things Differently"

c. The Parties hereby waive the right to a jury trial on any and all contested matters arising from this Agreement.

d. This Agreement sets forth the entire agreement and understanding of the Parties and is to be read in consistency and accordance with the other Loan Documents.

e. This Agreement replaces and supersedes any and all prior agency agreements between Beneficiary and Mortgages Ltd. including, but not limited to, the Supplemental Collection Instructions and Agent Authorizations and the Beneficiary's Supplemental Agreement with Collection Agent (collectively, "Prior Agency Agreements"). As to all existing Loans, any and all Prior Agency Agreements are hereby null and void, and the terms of this Agreement govern the relationship of the Parties.

f. This Agreement may be amended, modified, superseded, canceled, renewed or extended and the terms or covenants hereof may be waived only by a written instrument executed by Agent and Beneficiary. Agent's failure, at any time, to require performance of any provision of this Agreement shall in no manner affect the right of Agent or Beneficiary at a later time to enforce the same. No waiver by Agent of the breach of any term or covenant contained in this Agreement, whether by conduct or otherwise, in any one or more instances, shall be deemed to be, or construed as, a further or continuing waiver by Agent of any such breach, or a waiver of the breach of any other term or covenant contained in this Agreement.

g. If any term or other provision of this Agreement or any other Loan Document is declared invalid, illegal or incapable of being enforced by any rule of law or public policy, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect.

h. This Agreement may be executed by the Parties in counterparts. The executed signature pages may then be attached together constituting an original copy of the Agreement. Copies of executed signature pages obtained via facsimile shall be effective and binding on the Parties.

i. If there is any arbitration or litigation by or among the parties to enforce or interpret any provisions of this Agency Agreement or any rights arising hereunder, the unsuccessful party in such arbitration or litigation, as determined by the arbitrator or the court, shall pay to the successful party, as determined by the arbitrator or the court, all costs and expenses, including without limitation attorneys' fees and costs, incurred by the successful party, such costs and expenses to be determined by the arbitrator or court sitting without a jury.

This Agreement is effective on the date set forth on the first page.

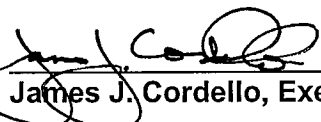
BENEFICIARY:

Scott M. Coles, Trustee of The Mortgages Ltd. 401(k) Plan



Scott M. Coles, Trustee

**AGENT:
MORTGAGES LTD.**



James J. Cordello, Executive Vice President



FINANCING ARIZONA REAL ESTATE SINCE 1963

"We See Things Differently"

Case 2:08-bk-07465-RJH

Doc 2872-30 Filed 08/09/10 Entered 08/09/10 21:47:17
Desc Exhibit 30 Page 13 of 13

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Ex. 31

James A. Bloom

From: Rachel Schwartz and Chris Olson [cosmoaz@earthlink.net]
Sent: Wednesday, June 03, 2009 9:35 PM
To: Nechelle Wimmer; Christine Zahedi; Ryan Walter
Subject: Termination of servicing agreement
Attachments: CCE06032009_00000.jpg

Christine, Nechelle and Ryan,

Pursuant to our discussions, enclosed is notice of servicing agent termination for Mortgages Ltd. as it relates to the Mortgages Ltd. 401k plan. I will call you tomorrow to discuss.

Thank you.

Christopher J. Olson
Plan Trustee

May ²⁹~~20~~, 2009

Christine Zahedi
Chief Operating Officer
Mortgages Ltd.
4455 E. Camelback Road
Phoenix, AZ 85018

Re: Mortgages Ltd. 401k Plan

Dear Christine:

I am writing to inform you that in my capacity as the Trustee of the Mortgages Ltd. 401k Plan ("the Plan"), I am hereby giving notice that the Plan is terminating the Agency Agreement with Mortgages Ltd. in accordance with Section 7(f) of the Agency Agreement adopted by the Mortgages Ltd. 401k Plan on April 12, 2007.

I will be in contact with you to obtain the necessary documents which will be needed to service the Plan assets.

Sincerely,



Christopher J. Olson, CPA
Trustee of the Mortgages Ltd. 401K Plan

Acknowledged:

Mortgages Ltd., an Arizona corporation

By: Christine Zahedi
Its: COO

Ex. 32

ML MANAGER LLC
14050 N.83rd Ave., Suite 180
Peoria, AZ 85381

November 3, 2009

RE: 860206 - GP Properties Carefree Cave Creek, L.L.C.

As many of you are aware, the Trustee's Sale for the above loan was held on October 21, 2009 and the beneficiaries were the successful bidder and now own the property in Carefree.

As confirmed by the bankruptcy judge's orders during the past two weeks, ML Manager, LLC is the agent for each of the individual investors and continues to act in this capacity. The Mortgages Ltd. 401(k) plan also owns a significant percentage of the property, but ML Manager is not the agent for the 401(k) plan. The overall ownership group is responsible for the cost of maintaining the property, including, but not limited to, property insurance and payment of real property taxes. The Guarantee of the loan is unaffected by the foreclosure and Mr. Peloquin continues to have personal liability for the deficiency.

ML Manager, L.L.C. has obtained property insurance coverage on your behalf. Additionally, minor environmental remediation regarding three areas on the property is being completed. A copy of the Trustee's Deed evidencing your ownership of the property has been attached to this email. Please be sure to contact us if you require a hard copy sent to your address on file with us.

There appears to be interest in scheduling a meeting of the investors and you will be receiving information about this meeting in the near future by separate email.

Thank you.

Sincerely,

Mark Winkleman
Chief Operating Officer
ML Manager, L.L.C.

ML Manager LLC

14050 N 83rd Ave. Suite 180
Peoria, Arizona 85381

www.mtg ltd.com

This email and any attachments are confidential and may not be forwarded, copied or distributed beyond the named recipient(s) without prior permission of the sender. We do not waive confidentiality by mis-transmission. If you have received this email in error, please contact the sender. Thank you.

Ex. 33



Date: Wednesday, December 16, 2009 1:07 PM
From: Nechelle Wimmer <NWimmer@mtglttd.com>
To: jcordello@cox.net
Subject: RE: Bisontown Loan

Jim-

I am just confirming that you have spoken with Mark and he has stated that the 401K is taking the lead on this property.

Please let me know.

Thanks!

Nechelle Wimmer

NWimmer@mtglttd.com
P: 623.234.9564
C: 602.540.1502
F: 623.234.9575

ML Servicing Co
14050 N 83rd Ave. Suite 180
Peoria, Arizona 85381

www.mtglttd.com

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-----Original Message-----
From: jcordello@cox.net [jcordello@cox.net]
Sent: Tuesday, November 24, 2009 5:12 PM
To: Nechelle Wimmer
Subject: RE: Bisontown Loan

I haven't heard from him on this.

Jim

----- Nechelle Wimmer <NWimmer@mtglttd.com> wrote:
> Jim-
>
> Did Mark get in touch with you about this?
>
>
> Nechelle Wimmer
>
>
> NWimmer@mtglttd.com
> P: 623.234.9564
> C: 602.540.1502
> F: 623.234.9575
>
> ML Servicing Co
> 14050 N 83rd Ave. Suite 180
> Peoria, Arizona 85381
>
> www.mtglttd.com
>

>
> -----Original Message-----
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> prior permission of the sender. We do not waive confidentiality by
> mis-transmission. If you have received this email in error, please
> contact the sender. Thank you.
>
>
> -----Original Message-----
> From: jcordello@cox.net [jcordello@cox.net]
> Sent: Monday, November 23, 2009 8:56 AM
> To: Nechelle Wimmer
> Cc: rpw@cox.net
> Subject: Bisontown Loan
>
> Good Morning Nechelle,
>
> I just wanted to touch base on Bisontown again with the sale coming up
> tomorrow and coordinate a couple of things.
>
> Insurance-will you be handling that on your end or should we be
working
> that on our end?
>
> Utilities-same question, we will need to get these transferred to the
> new owners' name after the sale and, per the suggestion of Gary
> Martinson, we need to leave the heat on in the building(s) with
> sprinkler systems at a minimum level high enough to keep the pipes
from
> freezing.
>
> Securing the project-should Ryan and I plan on getting the locks
changed
> and inventorying the personal property, AV equipment, etc. for the
> insurance or will Chris Welsh be doing that or should we coordinate a
> trip between us?
>
> There's more to do on this one since it's not just a land loan so
please
> let me know how you'd like to coordinate on this when you get the
> chance.
>
> Thanks Nechelle.
>
> Jim Cordello
> (602) 350-1378

Exhibit 34a

VOLUME SUBMITTER
CROSS-TESTED DEFINED CONTRIBUTION PROTOTYPE PLAN AND TRUST

Cross-Tested Defined Contribution Prototype Plan

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VOLUME SUBMITTER
CROSS-TESTED DEFINED CONTRIBUTION PROTOTYPE PLAN AND TRUST
BASIC PLAN DOCUMENT # 01

VOLUME SUBMITTER, in its capacity as Prototype Plan Sponsor, establishes this Prototype Plan intended to conform to and qualify under §401 and §501 of the Internal Revenue Code of 1986, as amended. An Employer establishes a Plan and Trust under this Prototype Plan by executing an Adoption Agreement. If the Employer adopts this Plan as a restated Plan in substitution for, and in amendment of, an existing plan, the provisions of this Plan, as a restated Plan, apply solely to an Employee whose employment with the Employer terminates on or after the restated Effective Date of the Plan. If an Employee's employment with the Employer terminates prior to the restated Effective Date, that Employee is entitled to benefits under the Plan as the Plan existed on the date of the Employee's termination of employment.

ARTICLE I
DEFINITIONS

1.01 "**Account**" means the separate Account(s) which the Plan Administrator or the Trustee maintains under the Plan for a Participant.

1.02 "**Account Balance**" or "**Accrued Benefit**" means the amount standing in a Participant's Account(s) as of any date derived from Employer contributions and from Participant contributions, if any.

1.03 "**Accounting Date**" means the last day of the Plan Year. The Plan Administrator will allocate Employer contributions and forfeitures for a particular Plan Year as of the Accounting Date of that Plan Year, and on such other dates, if any, as the Plan Administrator determines, consistent with the Plan's allocation conditions and other provisions.

1.04 "**Adoption Agreement**" means the document executed by each Employer adopting this Plan. References to Adoption Agreement within this basic plan document are to the Adoption Agreement as completed and executed by a particular Employer unless the context clearly indicates otherwise. An adopting Employer's Adoption Agreement and this basic plan document together constitute a single Plan and Trust of the Employer. Each elective provision of the Adoption Agreement corresponds (by its parenthetical section reference) to the section of the Plan which grants the election. Each Adoption Agreement offered under this Plan is either a Nonstandardized Plan or a Standardized Plan, as identified in that Adoption Agreement. The provisions of this Plan apply in the same manner to Nonstandardized Plans and to Standardized Plans unless otherwise specified. All section references within an Adoption Agreement are Adoption Agreement section references unless the context clearly indicates otherwise.

1.05 "**Beneficiary**" means a person designated by a Participant or by the Plan who is or may become entitled to a benefit under the Plan. A Beneficiary who becomes entitled to a benefit under the Plan remains a Beneficiary under the Plan until the Trustee has fully distributed to the Beneficiary his/her Plan benefit. A Beneficiary's right to

(and the Plan Administrator's or a Trustee's duty to provide to the Beneficiary) information or data concerning the Plan does not arise until the Beneficiary first becomes entitled to receive a benefit under the Plan.

1.06 "**Code**" means the Internal Revenue Code of 1986, as amended and includes applicable Treasury regulations.

1.07 "**Compensation**" means a Participant's W-2 wages, Code §3401(a) wages, or 415 compensation except, in the case of a Self-Employed Individual, Compensation means Earned Income as defined in Section 1.09. The Employer in its Adoption Agreement must specify which definition of Compensation (Section 1.07(A), (B) or (C)) applies under the Plan and any modifications thereto, for purposes of contribution allocations under Article III.

Any reference in the Plan to Compensation is a reference to the definition in this Section 1.07, unless the Plan reference, or the Employer in its Adoption Agreement, modifies this definition. The Plan Administrator will take into account only Compensation actually paid during (or as permitted under the Code, paid for) the relevant period. A Compensation payment includes Compensation paid by the Employer through another person under the common paymaster provisions in Code §§3121 and 3306. Compensation, unless otherwise specified in the Adoption Agreement, does not include any form of remuneration (including severance pay and vacation pay) paid to the Participant after the Participant incurs a Separation from Service.

(A) **W-2 Wages**. W-2 wages means wages for federal income tax withholding purposes, as defined under Code §3401(a), plus all other payments to an Employee in the course of the Employer's trade or business, for which the Employer must furnish the Employee a written statement under Code §§6041, 6051 and 6052, but determined without regard to any rules that limit the remuneration included in wages based on the nature or location of the employment or services performed (such as the exception for agricultural labor in Code §3401(a)(2)).

(B) **Code §3401(a) Wages**. Code §3401(a) wages means wages within the meaning of Code §3401(a) for the purposes of income tax withholding at the source, but determined without regard to any rules that limit the remuneration included in wages based on the nature or the location of the employment or the services performed (such as the exception for agricultural labor in Code §3401(a)(2)).

(C) **Code §415 Compensation (current income definition)**. Code §415 compensation means the Employee's wages, salaries, fees for professional service and other amounts received for personal services actually rendered in the course of employment with the Employer maintaining the Plan to the extent that the amounts are includible in gross income (including, but not limited to, commissions paid salespersons, compensation for services on the basis of a percentage of profits, commissions on

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insurance premiums, tips, bonuses, fringe benefits and reimbursements or other expense allowances under a nonaccountable plan as described in Treas. Reg. §1.62-2(c)).

Code §415 compensation does not include:

(a) Employer contributions to a plan of deferred compensation to the extent the contributions are not included in the gross income of the Employee for the taxable year in which contributed. Employer contributions on behalf of an Employee to a Simplified Employee Pension Plan to the extent such contributions are excludible from the Employee's gross income, and any distributions from a plan of deferred compensation, regardless of whether such amounts are includible in the gross income of the Employee when distributed.

(b) Amounts realized from the exercise of a non-qualified stock option, or when restricted stock (or property) held by an Employee either becomes freely transferable or is no longer subject to a substantial risk of forfeiture.

(c) Amounts realized from the sale, exchange or other disposition of stock acquired under a stock option described in Part II, Subchapter D, Chapter I, Subtitle A of the Code.

(d) Other amounts which receive special tax benefits, such as premiums for group term life insurance (but only to the extent that the premiums are not includible in the gross income of the Employee), or contributions made by an Employer (whether or not under a salary reduction agreement) toward the purchase of an annuity contract described in Code §403(b) (whether or not the contributions are excludible from the gross income of the Employee).

(D) Elective Contributions. Compensation under Sections 1.07(A), 1.07(B) and 1.07(C) includes Elective Contributions unless the Employer in its Adoption Agreement elects to exclude Elective Contributions. "Elective Contributions" are amounts excludible from the Employee's gross income under Code §§125, 132(f)(4), 402(e)(3), 402(h)(2), 403(b), 408(p) or 457, and contributed by the Employer, at the Employee's election, to a cafeteria plan, a qualified transportation fringe benefit plan, a 401(k) arrangement, a SARSEP, a tax-sheltered annuity, a SIMPLE plan or a Code §457 plan. Notwithstanding the preceding sentence, amounts described in §132(f)(4) are not Elective Contributions until Plan Years beginning on or after January 1, 2001, unless the Plan Administrator operationally has included such amounts effective as of an earlier Plan Year beginning no earlier than January 1, 1998.

(E) Compensation Dollar Limitation. For any Plan Year, the Plan Administrator in allocating contributions under Article III or in testing the Plan for nondiscrimination, cannot take into account more than \$150,000 (or such larger or smaller amount as the Commissioner of Internal Revenue may prescribe) of any Participant's Compensation. Notwithstanding the foregoing, an Employee under a 401(k) arrangement may make elective deferrals with respect to Compensation which exceeds the Plan Year

Compensation limitation, provided such deferrals otherwise satisfy Code §402(g) and other applicable limitations.

(F) Nondiscrimination. For purposes of determining whether the Plan discriminates in favor of Highly Compensated Employees, Compensation means Compensation as defined in this Section 1.07, except: (1) the Employer annually may elect operationally to include or to exclude Elective Contributions, irrespective of the Employer's election in its Adoption Agreement regarding Elective Contributions; and (2) the Plan Administrator will disregard any elections made in the "modifications to Compensation definition" section of Adoption Agreement Section 1.07. The Employer's election described in clause (1) must be consistent and uniform with respect to all Employees and all plans of the Employer for any particular Plan Year. The Employer, irrespective of clause (2), may elect to exclude from this nondiscrimination definition of Compensation any items of Compensation excludible under Code §414(s) and the applicable Treasury regulations, provided such adjusted definition conforms to the nondiscrimination requirements of those regulations. Furthermore, for nondiscrimination purposes, including the computation of an Employee's actual deferral percentage ("ADP") or actual contribution percentage ("ACP"), the Plan Administrator may limit Compensation taken into account to Compensation received only for the portion of the Plan Year in which the Employee was a Participant and only for the portion of the Plan Year in which the Plan or the 401(k) arrangement was in effect.

1.08 "Disability" means the Participant, because of a physical or mental disability, will be unable to perform the duties of his/her customary position of employment (or is unable to engage in any substantial gainful activity) for an indefinite period which the Plan Administrator considers will be of long continued duration. A Participant also is disabled if he/she incurs the permanent loss or loss of use of a member or function of the body, or is permanently disfigured, and incurs a Separation from Service. A Participant is disabled on the date the Plan Administrator determines the Participant satisfies the definition of Disability. The Plan Administrator may require a Participant to submit to a physical examination in order to confirm Disability. The Plan Administrator will apply the provisions of this Section 1.08 in a nondiscriminatory, consistent and uniform manner. The Employer may provide an alternative definition of Disability in an Addendum to its Adoption Agreement.

1.09 "Earned Income" means net earnings from self-employment in the trade or business with respect to which the Employer has established the Plan, provided personal services of the Self-Employed Individual are a material income producing factor. The Plan Administrator will determine net earnings without regard to items excluded from gross income and the deductions allocable to those items. The Plan Administrator will determine net earnings after the deduction allowed to the Self-Employed Individual for all contributions made by the Employer to a qualified plan and after the deduction allowed to the Self-Employed Individual under Code §164(f) for self-employment taxes.

1.10 "Effective Date" of this Plan is the date specified in the Adoption Agreement unless otherwise for a specified purpose provided within this basic plan document

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or within (as part of the Adoption Agreement) a Participation Agreement, an Addendum, or within Appendices A or B.

1.11 "**Employee**" means any common law employee, Self-Employed Individual, Leased Employee or other person the Code treats as an employee of the Employer for purposes of the Employer's qualified plan. The Employer in its Adoption Agreement must elect or specify any Employee, or class of Employees, not eligible to participate in the Plan (an "excluded Employee").

(A) **Collective Bargaining Employees.** If the Employer elects in its Adoption Agreement to exclude collective bargaining Employees from eligibility to participate, the exclusion applies to any Employee included in a unit of Employees covered by an agreement which the Secretary of Labor finds to be a collective bargaining agreement between employee representatives and one or more employers, if: (1) retirement benefits were the subject of good faith bargaining; and (2) two percent or less of the employees covered by the agreement are "professionals" as defined in Treas. Reg. §1.410(b)-9, unless the collective bargaining agreement requires the Employee to be included within the Plan. The term "employee representatives" does not include any organization more than half the members of which are owners, officers, or executives of the Employer.

(B) **Nonresident Aliens.** If the Employer elects in its Adoption Agreement to exclude nonresident aliens from eligibility to participate, the exclusion applies to any nonresident alien Employee who does not receive any earned income, as defined in Code §911(d)(2), from the Employer which constitutes United States source income, as defined in Code §861(a)(3).

(C) **Reclassified Employees.** If the Employer elects in its Adoption Agreement to exclude reclassified Employees from eligibility to participate, the exclusion applies to any person the Employer does not treat as an Employee (including, but not limited to, independent contractors, persons the Employer pays outside of its payroll system and out-sourced workers) for federal income tax withholding purposes under Code §3401(a), but for whom there is a binding determination the individual is an Employee or a Leased Employee of the Employer.

1.12 "**Employer**" means each employer who establishes a Plan under this Prototype Plan by executing an Adoption Agreement and includes to the extent described in Section 1.26 a Related Employer and a Participating Employer. The Employer for purposes of acting as Plan Administrator, making Plan amendments, terminating the Plan or performing other ERISA settlor functions, means the signatory Employer to the Adoption Agreement Execution Page and does not include any Related Employer or Participating Employer.

1.13 "**ERISA**" means the Employee Retirement Income Security Act of 1974, as amended, and includes applicable Department of Labor regulations.

1.14 "**Highly Compensated Employee**" means an Employee who:

(a) during the Plan Year or during the preceding Plan Year, is a more than 5% owner of the Employer

(applying the constructive ownership rules of Code §318, and applying the principles of Code §318, for an unincorporated entity); or

(b) during the preceding Plan Year had Compensation in excess of \$80,000 (as adjusted by the Commissioner of Internal Revenue for the relevant year) and, if the Employer under its Adoption Agreement Appendices A or B, makes the *top-paid group election*, was part of the top-paid 20% group of Employees (based on Compensation for the preceding Plan Year).

For purposes of this Section 1.14, "Compensation" means Compensation as defined in Section 1.07, except any exclusions from Compensation the Employer elects in Adoption Agreement Section 1.07 do not apply, and Compensation specifically includes Elective Contributions. The Plan Administrator must make the determination of who is a Highly Compensated Employee, including the determinations of the number and identity of the top-paid 20% group, consistent with Code §414(q) and regulations issued under that Code section. The Employer in its Adoption Agreement Appendices A or B may make a calendar year data election to determine the Highly Compensated Employees for the Plan Year, as prescribed by Treasury regulations or by other guidance published in the Internal Revenue Bulletin. A calendar year data election must apply to all plans of the Employer which reference the highly compensated employee definition in Code §414(q). For purposes of this Section 1.14, if the current Plan Year is the first year of the Plan, then the term "preceding Plan Year" means the 12-consecutive month period immediately preceding the current Plan Year.

1.15 "**Hour of Service**" means:

(a) Each Hour of Service for which the Employer, either directly or indirectly, pays an Employee, or for which the Employee is entitled to payment, for the performance of duties. The Plan Administrator credits Hours of Service under this Paragraph (a) to the Employee for the computation period in which the Employee performs the duties, irrespective of when paid;

(b) Each Hour of Service for back pay, irrespective of mitigation of damages, to which the Employer has agreed or for which the Employee has received an award. The Plan Administrator credits Hours of Service under this Paragraph (b) to the Employee for the computation period(s) to which the award or the agreement pertains rather than for the computation period in which the award, agreement or payment is made; and

(c) Each Hour of Service for which the Employer, either directly or indirectly, pays an Employee, or for which the Employee is entitled to payment (irrespective of whether the employment relationship is terminated), for reasons other than for the performance of duties during a computation period, such as leave of absence, vacation, holiday, sick leave, illness, incapacity (including disability), layoff, jury duty or military duty. The Plan Administrator will credit no more than 501 Hours of Service under this Paragraph (c) to an Employee on account of any single

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continuous period during which the Employee does not perform any duties (whether or not such period occurs during a single computation period). The Plan Administrator credits Hours of Service under this Paragraph (c) in accordance with the rules of paragraphs (b) and (c) of Labor Reg. §2530.200b-2, which the Plan, by this reference, specifically incorporates in full within this Paragraph (c).

The Plan Administrator will not credit an Hour of Service under more than one of the above Paragraphs (a), (b) or (c). A computation period for purposes of this Section 1.15 is the Plan Year, Year of Service period, Break in Service period or other period, as determined under the Plan provision for which the Plan Administrator is measuring an Employee's Hours of Service. The Plan Administrator will resolve any ambiguity with respect to the crediting of an Hour of Service in favor of the Employee.

(A) Method of Crediting Hours of Service. The Employer must elect in its Adoption Agreement the method the Plan Administrator will use in crediting an Employee with Hours of Service and the purpose for which the elected method will apply.

(B) Actual Method. Under the Actual Method as determined from records, an Employee receives credit for Hours of Service for hours worked and hours for which the Employer makes payment or for which payment is due from the Employer.

(C) Equivalency Method. Under an Equivalency Method, for each equivalency period for which the Plan Administrator would credit the Employee with at least one Hour of Service, the Plan Administrator will credit the Employee with: (i) 10 Hours of Service for a daily equivalency; (ii) 45 Hours of Service for a weekly equivalency; (iii) 95 Hours of Service for a semimonthly payroll period equivalency; and (iv) 190 Hours of Service for a monthly equivalency.

(D) Elapsed Time Method. Under the Elapsed Time Method, an Employee receives credit for Service for the aggregate of all time periods (regardless of the Employee's actual Hours of Service) commencing with the Employee's Employment Commencement Date, or with his/her Re-employment Commencement Date, and ending on the date a Break in Service begins. An Employee's Employment Commencement Date or his/her Re-employment Commencement Date begins on the first day he/she performs an Hour of Service following employment or re-employment. In applying the Elapsed Time Method, the Plan Administrator will credit an Employee's Service for any Period of Severance of less than 12-consecutive months and will express fractional periods of Service in days.

Under the Elapsed Time Method, a Break in Service is a Period of Severance of at least 12 consecutive months. A Period of Severance is a continuous period of time during which the Employee is not employed by the Employer. The continuous period begins on the date the Employee retires, quits, is discharged, or dies or if earlier, the first 12-month anniversary of the date on which the Employee otherwise is absent from Service for any other reason (including disability, vacation, leave of absence, layoff, etc.). In the

case of an Employee who is absent from work for maternity or paternity reasons, the 12-consecutive month period beginning on the first anniversary of the first date the Employee is otherwise absent from Service does not constitute a Break in Service.

(E) Maternity/Paternity Leave/Family and Medical Leave Act. Solely for purposes of determining whether an Employee incurs a Break in Service under any provision of this Plan, the Plan Administrator must credit Hours of Service during the Employee's unpaid absence period: (i) due to maternity or paternity leave; or (ii) as required under the Family and Medical Leave Act. An Employee is on maternity or paternity leave if the Employee's absence is due to the Employee's pregnancy, the birth of the Employee's child, the placement with the Employee of an adopted child, or the care of the Employee's child immediately following the child's birth or placement. The Plan Administrator credits Hours of Service under this Section 1.15(E) on the basis of the number of Hours of Service for which the Employee normally would receive credit or, if the Plan Administrator cannot determine the number of Hours of Service the Employee would receive credit for, on the basis of 8 hours per day during the absence period. The Plan Administrator will credit only the number (not exceeding 501) of Hours of Service necessary to prevent an Employee's Break in Service. The Plan Administrator credits all Hours of Service described in this Section 1.15(E) to the computation period in which the absence period begins or, if the Employee does not need these Hours of Service to prevent a Break in Service in the computation period in which his/her absence period begins, the Plan Administrator credits these Hours of Service to the immediately following computation period.

(F) Qualified Military Service. Hour of Service also includes any Service the Plan must credit for contributions and benefits in order to satisfy the crediting of Service requirements of Code §414(u). The provisions of this Section 1.15(F) apply beginning December 12, 1994, or if the Employer's Plan is effective after that date, as of the Plan's Effective Date.

1.16 "Leased Employee" means an individual (who otherwise is not an Employee of the Employer) who, pursuant to an agreement between the Employer and any other person, has performed services for the Employer (or for the Employer and any persons related to the Employer within the meaning of Code §144(a)(3)) on a substantially full time basis for at least one year and who performs such services under primary direction or control of the Employer within the meaning of Code §414(n)(2). Except as described in Section 1.16(A), a Leased Employee is an Employee for purposes of the Plan. If a Leased Employee is an Employee, "Compensation" includes Compensation from the leasing organization which is attributable to services performed for the Employer.

(A) Safe Harbor Plan Exception. A Leased Employee is not an Employee if the leasing organization covers the employee in a safe harbor plan and, prior to application of this safe harbor plan exception, 20% or less of the Employer's Employees (other than Highly Compensated Employees) are Leased Employees. A safe harbor plan is a money purchase pension plan providing immediate participation, full and immediate vesting, and a nonintegrated contribution formula equal to at least 10% of

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the employee's compensation, without regard to employment by the leasing organization on a specified date. The safe harbor plan must determine the 10% contribution on the basis of compensation as defined in Code §415(c)(3) including Elective Contributions.

(B) Other Requirements. The Plan Administrator must apply this Section 1.16 in a manner consistent with Code §§414(n) and 414(o) and the regulations issued under those Code sections. If a Participant is a Leased Employee covered by a plan maintained by the leasing organization, the Plan Administrator will determine the allocation of Employer contributions and Participant forfeitures on behalf of the Participant under the Employer's Plan without taking into account the Leased Employee's allocation, if any, under the leasing organization's plan.

1.17 "Nonhighly Compensated Employee" means any Employee who is not a Highly Compensated Employee.

1.18 "Nontransferable Annuity" means an annuity contract which by its terms provides that it may not be sold, assigned, discounted, pledged as collateral for a loan or security for the performance of an obligation or for any purpose to any person other than the insurance company. If the Plan distributes an annuity contract, the contract must be a Nontransferable Annuity.

1.19 "Paired Plans" means the Employer has adopted two Standardized Plan Adoption Agreements offered with this Prototype Plan, one Adoption Agreement being a Paired Profit Sharing Plan and one Adoption Agreement being a Paired Pension Plan. A Paired Profit Sharing Plan may include a 401(k) arrangement. A Paired Pension Plan must be a money purchase pension plan, defined benefit plan or a target benefit pension plan. Paired Plans must be the subject of a favorable opinion letter issued by the National Office of the Internal Revenue Service. If an Employer adopts paired plans, only one of the plans may provide for permitted disparity.

1.20 "Participant" means an eligible Employee who becomes a Participant in accordance with the provisions of Section 2.01. An eligible Employee means an Employee who is not an excluded Employee under Adoption Agreement Section 1.11.

1.21 "Plan" means the retirement plan established or continued by the Employer in the form of this Prototype Plan, including the Adoption Agreement under which the Employer has elected to establish this Plan. The Employer must designate the name of the Plan in its Adoption Agreement. An Employer may execute more than one Adoption Agreement offered under this Plan, each of which will constitute a separate Plan and Trust established or continued by that Employer. The Plan and the Trust created by each adopting Employer is a separate Plan and a separate Trust, independent from the plan and the trust of any other employer adopting this Prototype Plan. All section references within this basic plan document are Plan section references unless the context clearly indicates otherwise. The Plan includes any Addendum or Appendix permitted by the basic plan document or by the Employer's Adoption Agreement and which the Employer attaches to its Adoption Agreement. An Addendum must correspond by section reference to the section of the basic plan

document or Adoption Agreement permitting the Addendum.

1.22 "Plan Administrator" means the Employer unless the Employer designates another person or persons to hold the position of Plan Administrator. Any person(s) the Employer appoints as Plan Administrator may or may not be Participants in the Plan. In addition to its other duties, the Plan Administrator has full responsibility for the Plan's compliance with the reporting and disclosure rules under ERISA.

1.23 "Plan Entry Date" means the date(s) the Employer elects in Adoption Agreement Section 2.01.

1.24 "Plan Year" means the consecutive month period the Employer specifies in its Adoption Agreement. The Employer also must specify in its Adoption Agreement the "Limitation Year" applicable to the limitations on allocations described in Article III. If the Employer maintains Paired Plans, each Plan must have the same Plan Year.

1.25 "Protected Benefit" means any accrued benefit described in Treas. Reg. §1.411(d)-4, including any optional form of benefit provided under the Plan which may not (except in accordance with such Regulations) be reduced, eliminated or made subject to Employer discretion.

1.26 "Related Group"/"Related Employer" A Related Group is a controlled group of corporations (as defined in Code §414(b)), trades or businesses (whether or not incorporated) which are under common control (as defined in Code §414(c)), an affiliated service group (as defined in Code §414(m)) or an arrangement otherwise described in Code §414(o). Each Employer/member of the Related Group is a Related Employer. The term "Employer" includes every Related Employer for purposes of crediting Service and Hours of Service, determining Years of Service and Breaks in Service under Articles II and V, determining Separation from Service, applying the Coverage Test under Section 3.06(E), applying the limitations on allocations in Part 2 of Article III, applying the top-heavy rules and the minimum allocation requirements of Article XII, applying the definitions of Employee, Highly Compensated Employee, Compensation and Leased Employee, applying the safe harbor 401(k) provisions of Section 14.02(D), applying the SIMPLE 401(k) provisions of Section 14.02(E) and for any other purpose the Code or the Plan require.

(A) Participating Employer. An Employer may contribute to the Plan only by being a signatory to the Execution Page of the Adoption Agreement or to a Participation Agreement to the Adoption Agreement. If a Related Employer executes a Participation Agreement to the Adoption Agreement, the Related Employer is a Participating Employer. A Participating Employer is an Employer for all purposes of the Plan except as provided in Section 1.12.

(B) Standardized/Nonstandardized Plan. If the Employer's Plan is a Standardized Plan, all Employees of the Employer or of any Related Employer, are eligible to participate in the Plan, irrespective of whether the Related Employer directly employing the Employee is a

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Participating Employer. Notwithstanding the immediately preceding sentence, individuals who become Employees of a Related Employer as a result of a transaction described in Code §410(b)(6)(C) are not eligible to participate in the Plan during the Plan Year in which such transaction occurs nor in the following Plan Year, unless the Related Employer which employs such Employees becomes during such period a Participating Employer, by executing a Participation Agreement to the Adoption Agreement. If the Plan is a Nonstandardized Plan, the Employees of a Related Employer are not eligible to participate in the Plan unless the Related Employer is a Participating Employer.

1.27 **"Self-Employed Individual"/ "Owner-Employee"/"Shareholder-Employee"** "Self-Employed Individual" means an individual who has Earned Income (or who would have had Earned Income but for the fact that the trade or business did not have net profits) for the taxable year from the trade or business for which the Plan is established. "Owner-Employee" means a Self-Employed Individual who is the sole proprietor in the case of a sole proprietorship. If the Employer is a partnership, or a limited liability company taxed for federal income tax purposes as a partnership, "Owner-Employee" means a Self-Employed Individual who is a partner or member and owns more than 10% of either the capital or the profits interest of the partnership or of the limited liability company. "Shareholder-Employee" means an employee or officer of an "S" corporation who owns (or is considered as owning under Code §318(a)(1)) more than 5% of the outstanding stock of the corporation on any day of the corporation's taxable year.

1.28 **"Separation from Service"** means an event after which the Employee no longer has an employment relationship with the Employer maintaining this Plan or with a Related Employer.

1.29 **"Service"** means any period of time the Employee is in the employ of the Employer, including any period the Employee is on an unpaid leave of absence authorized by the Employer under a uniform, nondiscriminatory policy applicable to all Employees.

1.30 **"Service with a Predecessor Employer"** If the Employer maintains the plan of a predecessor employer, service of the Employee with the predecessor employer is

Service with the Employer. If the Employer does not maintain the plan of a predecessor employer, the Plan does not credit service with the predecessor employer, unless the Employer in its Adoption Agreement (or in a Participation Agreement, if applicable) elects to credit designated predecessor employer service and specifies the purposes for which the Plan will credit service with that predecessor employer.

Unless the Employer under its Adoption Agreement Section 2.01 provides for this purpose specific Plan Entry Dates, an Employee who satisfies the Plan's eligibility condition(s) by reason of the crediting of predecessor service will enter the Plan in accordance with the provisions of Section 2.04 as if the Employee were a re-employed Employee on the first day the Plan credits predecessor service.

1.31 **"Trust"** means the separate Trust created under the Plan.

1.32 **"Trust Fund"** means all property of every kind acquired by the Plan and held by the Trust, other than incidental benefit insurance contracts.

1.33 **"Trustee"** means the person or persons who as Trustee execute the Adoption Agreement, or any successor in office who in writing accepts the position of Trustee. The Employer must designate in its Adoption Agreement whether the Trustee will administer the Trust as a discretionary Trustee or as a nondiscretionary Trustee. If a person acts as a discretionary Trustee, the Employer also may appoint a Custodian. See Article X. If the Prototype Plan Sponsor is a bank, savings and loan association, credit union, mutual fund, insurance company, or other institution qualified to serve as Trustee, a person other than the Prototype Plan Sponsor (or its affiliate) may not serve as Trustee or as Custodian of the Plan without the written consent of the Prototype Plan Sponsor.

1.34 **"Vested"** means a Participant or a Beneficiary has an unconditional claim, legally enforceable against the Plan, to the Participant's Account Balance or Accrued Benefit.

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**ARTICLE II
ELIGIBILITY AND PARTICIPATION**

2.01 ELIGIBILITY. Each eligible Employee becomes a Participant in the Plan in accordance with the eligibility provisions the Employer elects in its Adoption Agreement. If this Plan is a restated Plan, each Employee who was a Participant in the Plan on the day before the restated Effective Date continues as a Participant in the restated Plan, irrespective of whether he/she satisfies the eligibility conditions of the restated Plan, unless the Employer provides otherwise in its Adoption Agreement. If the Employer contributes to the Plan under a Davis-Bacon contract, except as the contract provides, the Employer's Adoption Agreement elections imposing age and service eligibility conditions do not apply with respect to an Employee performing Davis-Bacon contract Service.

2.02 AGE AND SERVICE CONDITIONS. For purposes of an Employee's participation in the Plan, the Plan: (1) may not impose an age condition exceeding age 21; and (2) takes into account all of the Employee's Years of Service with the Employer, except as provided in Section 2.03. "Year of Service" for purposes of an Employee's participation in the Plan, means a 12-consecutive month eligibility computation period during which the Employee completes the number of Hours of Service (not exceeding 1,000) the Employer specifies in its Adoption Agreement.

The initial eligibility computation period is the first 12-consecutive month period measured from the Employee's Employment Commencement Date. The Plan measures succeeding 12-consecutive month eligibility computation periods in accordance with the Employer's election in its Adoption Agreement. If the Employer elects to measure subsequent periods on a Plan Year basis, an Employee who receives credit for the required number of Hours of Service during the initial eligibility computation period and also during the first applicable Plan Year receives credit for two Years of Service under Article II. "Employment Commencement Date" means the date on which the Employee first performs an Hour of Service for the Employer.

If the Employer under Adoption Agreement Section 2.01 elects an alternative Service condition to one Year of Service or two Years of Service, the Employer must elect in the Adoption Agreement the Hour of Service and any other requirement(s), if any, after the Employee completes one Hour of Service. Under any alternative Service condition election, the Plan may not require an Employee to complete more than one Year of Service (1,000 Hours of Service in 12-consecutive months) or two Years of Service if applicable.

If the Employer in its Adoption Agreement elects to apply the Equivalency Method or the Elapsed Time Method in applying the Plan's eligibility Service condition, the Plan Administrator will credit Service in accordance with Sections 1.15(D) and (D).

2.03 BREAK IN SERVICE - PARTICIPATION. An Employee incurs a "Break in Service" if during any applicable 12-consecutive month period he/she does not complete more than 500 Hours of Service with the

Employer. The "12-consecutive month period" under this Section 2.03 is the same 12-consecutive month period for which the Plan measures a "Year of Service" under Section 2.02. If the Plan applies the Elapsed Time Method of crediting Service under Section 1.15(D), a Participant incurs a "Break in Service" if the Participant has a Period of Severance of at least 12 consecutive months.

(A) Two Year Eligibility. If the Employer under Adoption Agreement Section 2.01 elects a two Years of Service condition for eligibility purposes, an Employee who incurs a one year Break in Service prior to completing two Years of Service is a new Employee on the date he/she first performs an Hour of Service for the Employer after the Break in Service, and the Employee establishes a new Employment Commencement Date for purposes of the initial eligibility computation period under Section 2.02.

(B) One Year Hold-Out Rule. The Employer must elect in its Adoption Agreement whether to apply the one year hold-out rule under Code §410(a)(5)(C). Under this rule, a Participant will incur a suspension of participation in the Plan after incurring a one year Break in Service and the Plan disregards a Participant's Service completed prior to a Break in Service until the Participant completes one Year of Service following the Break in Service. The Plan suspends the Participant's participation in the Plan as of the first day of the Plan Year following the Plan Year in which the Participant incurs the Break in Service. If the Participant completes one Year of Service following his/her Break in Service, the Plan restores that Participant's pre-Break Service (and the Participant resumes active participation in the Plan) retroactively to the first day of the computation period in which the Participant first completes one Year of Service following his/her Break in Service. The initial computation period under this Section 2.03(B) is the 12-consecutive month period measured from the date the Participant first receives credit for an Hour of Service following the one year Break in Service. The Plan measures any subsequent computation periods, if necessary, in a manner consistent with the Employer's eligibility computation period election in Adoption Agreement Section 2.02. If the Employer elects to apply the one year hold-out rule, the Employer also must elect in its Adoption Agreement whether to limit application of the rule only to a Participant who has incurred a Separation from Service.

The Plan Administrator also will apply the one-year hold out rule, if applicable, to an Employee who satisfies the Plan's eligibility conditions but who incurs a Separation from Service and a one year Break in Service prior to becoming a Participant.

This Section 2.03(B) does not affect a Participant's vesting credit under Article V and, during a suspension period, the Participant's Account continues to share fully in Trust Fund allocations under Article IX. Furthermore, the Plan Administrator in applying this Section 2.03(B) does not restore any Service disregarded under the Break in Service rule of Section 2.03(A).

(C) No Application to 401(k) Arrangement. If the Plan includes a 401(k) arrangement and the Employer in its Adoption Agreement elects to apply the Section 2.03(B)

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one year hold-out rule, the Plan Administrator will apply the provisions of Section 2.04 to the deferral contributions portion of the Plan without regard to Section 2.03(B).

(D) No Rule of Parity – Participation. For purposes of Plan participation, the Plan does not apply the "rule of parity" under Code §410(a)(5)(D).

2.04 PARTICIPATION UPON RE-EMPLOYMENT.

A Participant who incurs a Separation from Service will re-enter the Plan as a Participant on the date of his/her re-employment with the Employer, subject to the one year hold-out rule, if applicable, under Section 2.03(B). An Employee who satisfies the Plan's eligibility conditions but who incurs a Separation from Service prior to becoming a Participant will become a Participant on the later of the Plan Entry Date on which he/she would have entered the Plan had he/she not incurred a Separation from Service or the date of his/her re-employment, subject to the one year hold-out rule, if applicable, under Section 2.03(B). Any Employee who incurs a Separation from Service prior to satisfying the Plan's eligibility conditions becomes a Participant in accordance with Adoption Agreement Section 2.01.

2.05 CHANGE IN EMPLOYMENT STATUS. The Employer in its Adoption Agreement Section 1.11 may elect to exclude certain Employees from Plan participation ("excluded Employees"). If a Participant has not incurred a Separation from Service but becomes an excluded Employee, during the period of exclusion the excluded Employee will not share in the allocation of any Employer contributions or Participant forfeitures, and may not make deferral contributions if the Plan includes a 401(k)

arrangement, with respect to Compensation paid to the excluded Employee during the period of exclusion. However, during such period of exclusion, the Participant, without regard to employment classification, continues to receive credit for vesting under Article V for each included Year of Service and the Participant's Account continues to share fully in Trust Fund allocations under Article IX. If a Participant who becomes an excluded Employee subsequently resumes status as an eligible Employee, the Participant will participate in the Plan immediately upon resuming eligible status, subject to the one year hold-out rule, if applicable, under Section 2.03(B).

If an excluded Employee who is not a Participant becomes an eligible Employee, he/she will participate immediately in the Plan if he/she has satisfied the eligibility conditions of Adoption Agreement Section 2.01 and would have been a Participant had he/she not been an excluded Employee during his/her period of Service. Furthermore, the excluded Employee receives credit for vesting under Article V for each included vesting Year of Service notwithstanding the Employee's excluded Employee status.

2.06 ELECTION NOT TO PARTICIPATE. If the Plan is a Standardized Plan, the Plan does not permit an otherwise eligible Employee nor any Participant to elect not to participate in the Plan ("opt-out"). If the Plan is a Nonstandardized Plan, the Employer in its Adoption Agreement must elect whether any eligible Employee may elect irrevocably to opt-out. The Employee prior to his/her Plan Entry Date must file an opt-out election in writing with the Plan Administrator on a form provided by the Plan Administrator for this purpose.

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**ARTICLE III
EMPLOYER CONTRIBUTIONS AND FORFEITURES**

**Part 1. Amount of Employer Contributions and Plan
Allocations: Sections 3.01 through 3.06**

3.01 EMPLOYER CONTRIBUTIONS.

(A) **Amount and Types of Contribution.** The Employer in its Adoption Agreement will elect the amount and type(s) of Employer Plan contribution(s). The Employer will not make a contribution to the Trust for any Plan Year to the extent the contribution would exceed the Participants' Maximum Permissible Amounts. Unless otherwise provided in an Addendum to its Adoption Agreement, the Employer need not have net profits to make a contribution under the Plan. If the Employer's Plan is a money purchase pension plan and the Employer also maintains a defined benefit pension plan, notwithstanding the money purchase pension plan formula in the Employer's Adoption Agreement, the Employer's required contribution to its money purchase pension plan for a Plan Year is limited to the amount which the Employer may deduct under Code §404(a)(7). If the Employer under Code §404(a)(7) must reduce its money purchase pension plan contribution, the Plan Administrator will reduce each Participant's allocation in the same ratio as the reduced total Employer contribution bears to the original (unreduced) Employer contribution.

(B) **Form of Contribution/Related Employer.** Subject to the consent of the Trustee, the Employer may make its contribution in property instead of cash, provided the contribution of property is not a prohibited transaction under the Code or under ERISA. Unless the Employer in its Adoption Agreement makes a contrary election, the Plan Administrator will allocate all Employer contributions and forfeitures without regard to which contributing Related Employer directly employs the affected Participants.

(C) **Time of Payment of Contribution.** The Employer may pay its contribution for any Plan Year in one or more installments without interest. Unless otherwise required by contract, by the Code or by ERISA, the Employer may make its contribution to the Plan for a particular Plan Year at such time(s) as the Employer in its sole discretion determines. If the Employer makes a contribution for a particular Plan Year after the close of that Plan Year, the Employer will designate in writing to the Trustee the Plan Year for which the Employer is making its contribution.

(D) **Return of Employer Contribution.** The Employer contributes to the Plan on the condition its contribution is not due to a mistake of fact and the Internal Revenue Service will not disallow the deduction of the Employer's contribution. The Trustee, upon written request from the Employer, must return to the Employer the amount of the Employer's contribution made by the Employer by mistake of fact or the amount of the Employer's contribution disallowed as a deduction under Code §404. The Trustee will not return any portion of the Employer's contribution under the provisions of this Section 3.01(D) more than one year after:

(1) The Employer made the contribution by mistake of fact; or

(2) The disallowance of the contribution as a deduction, and then, only to the extent of the disallowance.

The Trustee will not increase the amount of the Employer contribution returnable under this Section 3.01(D) for any earnings attributable to the contribution, but the Trustee will decrease the Employer contribution returnable for any losses attributable to the contribution. The Trustee may require the Employer to furnish the Trustee whatever evidence the Trustee deems necessary to enable the Trustee to confirm the amount the Employer has requested be returned, is properly returnable under ERISA.

3.02 DEFERRAL CONTRIBUTIONS. If the Plan includes a 401(k) arrangement, the Employer in its Adoption Agreement must elect the Plan limitations and restrictions, if any, which apply to deferral contributions or to cash or deferred contributions, if applicable. Under Adoption Agreement Section 3.02, for purposes of applying any Plan limit the Employer has elected on deferral contributions, the Employer must elect to take into account the Employee's entire Plan Year Compensation or to limit Compensation to the portion of the Plan Year in which the Employee actually is a Participant.

3.03 MATCHING CONTRIBUTIONS. If the Plan includes a 401(k) arrangement, the Employer in its Adoption Agreement must elect the type(s) of matching contributions, the time period applicable to any matching contribution formula, and as applicable, the amount of matching contributions and the Plan limitations and restrictions, if any, which apply to matching contributions.

**3.04 EMPLOYER CONTRIBUTION
ALLOCATION.**

(A) **Method of Allocation.** The Employer in its Adoption Agreement must specify, subject to this Section 3.04, the manner of allocating Employer contributions to the Trust. For purposes of this Section 3.04, Employer contributions include as applicable, the Employer's nonelective contributions, money purchase pension and target benefit contributions, but do not include deferral contributions or, except under Section 3.04(B), matching contributions.

(B) **Compensation Taken into Account.** The Employer in its Adoption Agreement Section 1.07 must specify the Compensation the Plan Administrator is to take into account in allocating an Employer contribution to a Participant's Account. For the Plan Year in which the Employee first becomes a Participant in the Plan (or in any portion of the Plan), the Employer may elect to take into account the Employee's entire Plan Year Compensation or to limit Compensation to the portion of the Plan Year in which the Employee actually is a Participant. For all other Plan Years, the Plan Administrator will take into account only the Compensation determined for the portion of the Plan Year in which the Employee actually is a Participant. The Plan Administrator must take into account the Employee's entire Compensation for the Plan Year to determine whether the Plan satisfies the top-heavy minimum allocation requirements of Article XII. The Employer, in its Adoption Agreement, may elect to

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measure Compensation for allocating its Employer contribution for a Plan Year on the basis of a specified period other than the Plan Year.

(C) Top-Heavy Minimum Allocation. Unless the Employer in an Addendum to its Adoption Agreement elects to satisfy any top-heavy minimum allocation requirement in another plan (not maintained under this basic plan document), the Employer in this Plan must satisfy the top-heavy requirements of Article XII.

(D) Allocation Conditions. Subject to any restoration allocation required under the Plan, the Plan Administrator will allocate and credit Employer contributions to the Account of each Participant who satisfies the allocation conditions of Section 3.06.

(E) Alternative Allocation Formulas. The Plan Administrator will allocate Employer contributions for the Plan Year or other applicable period in accordance with the allocation formula the Employer elects in its Adoption Agreement. The Plan Administrator, in allocating under any allocation formula which is based in whole or in part on Compensation, only will take into account Compensation of those Participants entitled to an allocation.

The Employer in its Adoption Agreement must elect, one or more as applicable of the following allocation formulas:

(1) Nonintegrated (pro rata) allocation formula. The Plan Administrator will allocate the Employer contributions for a Plan Year in the same ratio that each Participant's Compensation for the Plan Year bears to the total Compensation of all Participants for the Plan Year.

(2) Two-tiered permitted disparity allocation formula. Under the first tier, the Plan Administrator will allocate the Employer contributions for a Plan Year in the same ratio that each Participant's Compensation plus Excess Compensation (as defined in Adoption Agreement Section 3.04) for the Plan Year bears to the total Compensation plus Excess Compensation of all Participants for the Plan Year. The allocation under this first tier, as a percentage of each Participant's Compensation plus Excess Compensation, must not exceed the applicable percentage (5.7%, 5.4% or 4.3%) listed under Section 3.04(D)(4).

Under the second tier, the Plan Administrator will allocate any remaining Employer contributions for a Plan Year in the same ratio that each Participant's Compensation for the Plan Year bears to the total Compensation of all Participants for the Plan Year.

(3) Four-tiered permitted disparity allocation formula. Under the first tier, the Plan Administrator will allocate the Employer contributions for a Plan Year in the same ratio that each Participant's Compensation for the Plan Year bears to the total Compensation of all Participants for the Plan Year, but not exceeding 3% of each Participant's Compensation. Solely for purposes of this first tier allocation, a "Participant" means, in addition to any Participant who satisfies the allocation conditions of Section 3.06

for the Plan Year, any other Participant entitled to a top-heavy minimum allocation under the Plan.

Under the second tier, the Plan Administrator will allocate the Employer contributions for a Plan Year in the same ratio that each Participant's Excess Compensation (as defined in Adoption Agreement Section 3.04) for the Plan Year bears to the total Excess Compensation of all Participants for the Plan Year, but not exceeding 3% of each Participant's Excess Compensation.

Under the third tier, the Plan Administrator will allocate the Employer contributions for a Plan Year in the same ratio that each Participant's Compensation plus Excess Compensation for the Plan Year bears to the total Compensation plus Excess Compensation of all Participants for the Plan Year. The allocation under this third tier, as a percentage of each Participant's Compensation plus Excess Compensation, must not exceed the applicable percentage (2.7%, 2.4% or 1.3%) listed under Section 3.04(D)(4).

Under the fourth tier, the Plan Administrator will allocate any remaining Employer contributions for a Plan Year, in the same ratio that each Participant's Compensation for the Plan Year bears to the total Compensation of all Participants for the Plan Year.

(4) Maximum disparity table. For purposes of the permitted disparity allocation formulas under this Section 3.04, the applicable percentage is:

Integration level % of taxable wage base	Applicable % for 2-tiered formula	Applicable % for 4-tiered formula
100%	5.7%	2.7%
More than 80% but less than 100%	5.4%	2.4%
More than 20% (but not less than \$10,001) and not more than 80%	4.3%	1.3%
20% (or \$10,000, if greater) or less	5.7%	2.7%

(5) Overall permitted disparity limits.

(i) Annual overall permitted disparity limit. Notwithstanding Sections 3.04(D)(2) and (3), for any Plan Year the Plan benefits any Participant who benefits under another qualified plan or under a simplified employee pension plan (as defined in Code §408(k)) maintained by the Employer that provides for permitted disparity (or imputes disparity), the Plan Administrator will allocate Employer contributions to the Account of each Participant in the same ratio that each Participant's Compensation bears to the total Compensation of all Participants for the Plan Year.

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(ii) **Cumulative permitted disparity limit.** Effective for Plan Years beginning after December 31, 1994, the cumulative permitted disparity limit for a Participant is 35 total cumulative permitted disparity years. "Total cumulative permitted disparity years" means the number of years credited to the Participant for allocation or accrual purposes under the Plan, any other qualified plan or simplified employee pension plan (whether or not terminated) ever maintained by the Employer. For purposes of determining the Participant's cumulative permitted disparity limit, the Plan Administrator will treat all years ending in the same calendar year as the same year. If the Participant has not benefited under a defined benefit plan or under a target benefit plan of the Employer for any year beginning after December 31, 1993, the Participant does not have a cumulative permitted disparity limit.

For purposes of this Section 3.04(D)(5), a Participant "benefits" under the Plan for any Plan Year during which the Participant receives, or is deemed to receive, a contribution allocation in accordance with Treas. Reg. §1.410(b)-3(a).

(6) **Uniform points allocation formula.** The Plan Administrator will allocate the Employer contributions for a Plan Year in the same ratio that each Participant's points (as elected in Adoption Agreement Section 3.04) bear to the total points of all Participants for the Plan Year.

(7) **Incorporation of contribution formula.** The Plan Administrator will allocate the Employer's contributions for a Plan Year in accordance with the contribution formula the Employer has elected under Section 3.01.

(8) **Target benefit allocation formula.** The Plan Administrator will allocate the Employer contributions for a Plan Year as provided in the Employer's target benefit Adoption Agreement.

(9) **Davis-Bacon contract allocation formula.** The Plan Administrator will allocate the Employer contributions for a Plan Year in accordance with the applicable Davis-Bacon contract pursuant to which the Employer has made its contributions for the Plan Year. The Employer's contributions will take into account each Participant's hourly rate, employment category, employment classification and such other factors the Davis-Bacon contract may specify. For purposes of the Plan, "Davis-Bacon contract" includes a contract under any state prevailing wage law.

(F) **Qualified Nonelective Contributions.** The Employer operationally may designate all or any portion of its nonelective contributions as a qualified nonelective contribution. The Employer, to facilitate the Plan Administrator's correction of test failures under Sections 14.08, 14.09 and 14.10, also may make qualified nonelective contributions to the Plan irrespective of whether the Employer in its Adoption Agreement has elected to provide nonelective contributions. The Employer in its Adoption Agreement must elect whether the Plan

Administrator will allocate the Employer contributions designated as a qualified nonelective contribution to all Participants or solely to Nonhighly Compensated Employee Participants. The Employer operationally must elect whether the Plan Administrator will allocate qualified nonelective contributions: (1) to eligible Participants pro rata in relation to Compensation; (2) to eligible Participants in the same amount without regard to Compensation (flat dollar); or (3) under the reverse allocation or other similar method. Under the reverse allocation method, the Plan Administrator, subject to Section 3.06, will allocate a qualified nonelective contribution first to the Nonhighly Compensated Employee Participant(s) with the lowest Compensation for the Plan Year not exceeding the Maximum Permissible Amount for each Participant, with any remaining amounts allocated to the next highest paid Nonhighly Compensated Employee Participant(s) not exceeding his/her Maximum Permissible Amount and continuing in this manner until the Plan Administrator has fully allocated the qualified nonelective contribution.

(G) **Qualified Replacement Plan.** The Employer may establish or maintain this Plan as a qualified replacement plan as described in Code §4980 under which the Plan may receive a transfer from a terminating qualified plan the Employer also maintains. The Plan Administrator will credit the transferred amounts to a suspense account under the Plan and thereafter the Plan Administrator will allocate the transferred amounts under this Section 3.04(G) in the same manner as the Plan Administrator allocates Employer nonelective contributions, unless the Employer specifies in an Addendum to its Adoption Agreement: (1) to apply such transferred amounts to the Plan's administrative expenses; or (2) if the Plan includes a 401(k) arrangement, the Employer in its Addendum designates such transferred amounts as matching contributions.

3.05 FORFEITURE ALLOCATION. The amount of a Participant's Account forfeited under the Plan is a Participant forfeiture. The Plan Administrator, subject to Section 3.06, will allocate Participant forfeitures at the time and in the manner the Employer specifies in its Adoption Agreement. The Plan Administrator will continue to hold the undistributed, non-Vested portion of the Account of a Participant who has separated from Service solely for his/her benefit until a forfeiture occurs at the time specified in Section 5.09 or if applicable, until the time specified in Section 9.11. Except as provided under Section 5.04, a Participant will not share in the allocation of a forfeiture of any portion of his/her Account. If the Plan includes a 401(k) arrangement, the Plan Administrator first will determine if a Participant's forfeitures are attributable to nonelective or to matching contributions, and the Plan Administrator then will allocate the forfeitures in the manner the Employer has elected in its Adoption Agreement. If the Employer elects to allocate forfeitures to reduce nonelective or matching contributions and the forfeitures exceed the amount of the contribution to which the Plan Administrator will apply the forfeitures, the Plan Administrator will allocate the remaining forfeitures as an additional discretionary nonelective or discretionary matching contribution or the Plan Administrator will apply the forfeitures to the Employer's nonelective or matching contribution in the succeeding Plan Year. A Participant's forfeiture is attributable to matching contributions if the forfeiture is: (1) a non-Vested matching Account forfeited in accordance with Section 5.09 or, if applicable, Section

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9.11: (2) a non-Vested excess aggregate contribution (adjusted for earnings) forfeited in correcting for nondiscrimination failures under Section 14.09 or Section 14.10; or (3) an "associated matching contribution," which includes any Vested or non-Vested matching contribution (adjusted for earnings) made with respect to elective deferrals or Employee contributions the Plan Administrator distributes in correction of Code §402(g), Code §415 or nondiscrimination failures under Sections 14.07, 14.08, 14.09 or 14.10. An Employee forfeits an associated matching contribution unless the matching contribution is a Vested excess aggregate contribution distributed in accordance with Sections 14.09 or 14.10.

3.06 ALLOCATION CONDITIONS. The Plan Administrator will determine the allocation conditions which apply to Employer contributions (including matching contributions) and Participant forfeitures on the basis of the Plan Year (or on any other basis representing a reasonable division of the Plan Year) in accordance with the Employer's elections in its Adoption Agreement. A Participant does not accrue an Employer contribution with respect to a Plan Year or other applicable period until the Participant satisfies the allocation conditions described in this Section 3.06. The Plan under a 401(k) arrangement may not impose any allocation conditions with respect to deferral contributions, safe harbor contributions or SIMPLE contributions.

(A) Hours of Service Requirement. Except as required to satisfy the top-heavy minimum allocation requirement of Article XII, the Plan Administrator will not allocate any portion of an Employer contribution for a Plan Year to any Participant's Account if the Participant does not complete the applicable minimum Hours of Service or consecutive calendar days of employment requirement the Employer specifies in its Adoption Agreement for the relevant period. The Employer in its Standardized Adoption Agreement must elect whether to require a Participant to complete during a Plan Year 501 Hours of Service or to be employed for at least 91 consecutive calendar days under the Elapsed Time Method, to share in the allocation of Employer contributions for that Plan Year where the Participant is not employed by the Employer on the Accounting Date of that Plan Year, including the Plan Year in which the Employer terminates the Plan.

(B) "Last Day" Employment Requirement. If the Plan is a Standardized Plan, a Participant who is employed by the Employer on the Accounting Date of a Plan Year will share in the allocation of Employer contributions for that Plan Year without regard to the Participant's Hours of Service completed during that Plan Year. If the Plan is a Nonstandardized Plan, the Employer must specify in its Adoption Agreement whether the Participant will benefit under the Plan if the Participant is not employed by the Employer on the Accounting Date of the Plan Year or other specified date. If the Plan is a Nonstandardized money purchase Plan or target benefit Plan, the Plan conditions Employer contribution allocations on a Participant's employment with the Employer on the last day of the Plan Year for the Plan Year in which the Employer terminates the Plan.

(C) Death, Disability or Normal Retirement Age. Unless the Employer otherwise elects in its Adoption Agreement, any allocation condition elected under

Adoption Agreement Section 3.06 does not apply for a Plan Year if a Participant incurs a Separation from Service during the Plan Year on account of the Participant's death, Disability or attainment of Normal Retirement Age in the current Plan Year or on account of the Participant's Disability or attainment of Normal Retirement Age in a prior Plan Year.

(D) Other Conditions. In allocating Employer contributions under the Plan, the Plan Administrator will not apply any other conditions except those the Employer elects in its Adoption Agreement or otherwise as the Plan may require.

(E) Suspension of Allocation Conditions Under a Nonstandardized Plan. The suspension provisions of this Section 3.06(E) do not apply unless the Employer elects in its Nonstandardized Adoption Agreement to apply them. If Section 3.06(E) applies, the Plan suspends for a Plan Year the Adoption Agreement Section 3.06 allocation conditions if the Plan fails in that Plan Year to satisfy coverage under the Ratio Percentage Test, unless in an Addendum to its Adoption Agreement, the Employer specifies the Plan Administrator will apply this Section 3.06(E) using the Average Benefit Percentage Test described in Code §410(b)(2). A Plan satisfies coverage under the Ratio Percentage Test if, on the last day of the Plan Year, the Plan's benefiting ratio of the Nonhighly Compensated Includible Employees is at least 70% of the benefiting ratio of the Highly Compensated Includible Employees.

The benefiting ratio of the Nonhighly Compensated Includible Employees is the number of Nonhighly Compensated Includible Employees benefiting under the Plan over the number of the Includible Employees who are Nonhighly Compensated Employees. "Includible" Employees are all Employees other than: (1) those Employees excluded from participating in the Plan for the entire Plan Year by reason of the collective bargaining unit or the nonresident alien exclusions under Code §410(b)(3) or by reason of the age and service requirements of Article II; and (2) those Employees who incur a Separation from Service during the Plan Year and for the Plan Year fail to complete more than 500 Hours of Service or at least 91 consecutive calendar days under the Elapsed Time Method.

For purposes of coverage, an Employee is benefiting under the Plan on a particular date if, under Section 3.04 of the Plan, he/she is entitled to an Employer contribution or to a Participant forfeiture allocation for the Plan Year.

If this Section 3.06(E) applies for a Plan Year, the Plan Administrator will suspend the allocation conditions for the Nonhighly Compensated Includible Employees who are Participants, beginning first with the Includible Employee(s) employed by the Employer on the last day of the Plan Year, then the Includible Employee(s) who have the latest Separation from Service during the Plan Year, and continuing to suspend the allocation conditions for each Includible Employee who incurred an earlier Separation from Service, from the latest to the earliest Separation from Service date, until the Plan satisfies coverage for the Plan Year. If two or more Includible Employees have a Separation from Service on the same day, the Plan Administrator will suspend the allocation conditions for all such Includible Employees, irrespective of whether the Plan can satisfy coverage by accruing

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benefits for fewer than all such Includible Employees. If the Plan for any Plan Year suspends the allocation conditions for an Includible Employee, that Employee will share in the allocation for that Plan Year of the Employer contribution and Participant forfeitures, if any, without regard to whether he/she has satisfied the allocation conditions of this Section 3.06.

If the Plan includes Employer matching contributions subject to ACP testing, this Section 3.06(E) applies separately to the Code §401(m) portion of the Plan.

Part 2. Limitations On Allocations: Sections 3.07 through 3.18

[Note: Sections 3.07 through 3.10 apply only to Participants in this Plan who do not participate, and who have never participated, in another qualified plan, individual medical account (as defined in Code §415(1)(2)), simplified employee pension plan (as defined in Code §408(k)) or welfare benefit fund (as defined in Code §419(e)) maintained by the Employer, which provides an Annual Addition.]

3.07 ANNUAL ADDITIONS LIMITATION. The amount of Annual Additions which the Plan Administrator may allocate under this Plan to a Participant's Account for a Limitation Year may not exceed the Maximum Permissible Amount. If the Annual Additions the Plan Administrator otherwise would allocate under the Plan to a Participant's Account would for the Limitation Year exceed the Maximum Permissible Amount, the Plan Administrator will not allocate the Excess Amount, but will instead take any reasonable, uniform and nondiscriminatory action the Plan Administrator determines necessary to avoid allocation of an Excess Amount. Such actions include, but are not limited to, those described in this Section 3.07. If the Plan includes a 401(k) arrangement, the Plan Administrator may apply this Section 3.07 in a manner which maximizes the allocation to a Participant of Employer contributions (exclusive of the Participant's deferral contributions). Notwithstanding any contrary Plan provision, the Plan Administrator, for the Limitation Year, may: (1) suspend or limit a Participant's additional Employee contributions or deferral contributions; (2) notify the Employer to reduce the Employer's future Plan contribution(s) as necessary to avoid allocation to a Participant of an Excess Amount; or (3) suspend or limit the allocation to a Participant of any Employer contribution previously made to the Plan (exclusive of deferral contributions) or of any Participant forfeiture. If an allocation of Employer contributions previously made (excluding a Participant's deferral contributions) or of Participant forfeitures would result in an Excess Amount to a Participant's Account, the Plan Administrator will allocate the Excess Amount to the remaining Participants who are eligible for an allocation of Employer contributions for the Plan Year in which the Limitation Year ends. The Plan Administrator will make this allocation in accordance with the Plan's allocation method as if the Participant whose Account otherwise would receive the Excess Amount, is not eligible for an allocation of Employer contributions. If the Plan Administrator allocates to a Participant an Excess Amount, Plan Administrator must dispose of the Excess Amount in accordance with Section 3.10 (relating to certain "reasonable errors" and allocation of forfeitures) or, if

Section 3.10 does not apply, the Plan Administrator will dispose of the Excess Amount under Section 9.12.

3.08 ESTIMATING COMPENSATION. Prior to the determination of the Participant's actual Compensation for a Limitation Year, the Plan Administrator may determine the Maximum Permissible Amount on the basis of the Participant's estimated annual Compensation for such Limitation Year. The Plan Administrator must make this determination on a reasonable and uniform basis for all Participants similarly situated. The Plan Administrator must reduce the allocation of any Employer contributions (including any allocation of forfeitures) based on estimated annual Compensation by any Excess Amounts carried over from prior Limitation Years.

3.09 DETERMINATION BASED ON ACTUAL COMPENSATION. As soon as is administratively feasible after the end of the Limitation Year, the Plan Administrator will determine the Maximum Permissible Amount for the Limitation Year on the basis of the Participant's actual Compensation for such Limitation Year.

3.10 DISPOSITION OF ALLOCATED EXCESS AMOUNT. If, because of a reasonable error in estimating a Participant's actual Limitation Year Compensation, because of the allocation of forfeitures, because of a reasonable error in determining a Participant's deferral contributions or because of any other facts and circumstances the Internal Revenue Service ("Revenue Service") considers to constitute reasonable error, a Participant receives an allocation of an Excess Amount for a Limitation Year, the Plan Administrator will dispose of such Excess Amount as follows:

- (a) The Plan Administrator first will return to the Participant any Employee contributions (adjusted for earnings) and then any Participant deferral contributions (adjusted for earnings) to the extent necessary to reduce or eliminate the Excess Amount.
- (b) If, after the application of Paragraph (a), an Excess Amount still exists and the Plan covers the Participant at the end of the Limitation Year, the Plan Administrator then will use the Excess Amount(s) to reduce future Employer contributions (including any allocation of forfeitures) under the Plan for the next Limitation Year and for each succeeding Limitation Year, as is necessary, for the Participant. If the Employer's Plan is a profit sharing plan, a Participant who is a Highly Compensated Employee may elect to limit his/her Compensation for allocation purposes to the extent necessary to reduce his/her allocation for the Limitation Year to the Maximum Permissible Amount and to eliminate the Excess Amount.
- (c) If, after the application of Paragraph (a), an Excess Amount still exists and the Plan does not cover the Participant at the end of the Limitation Year, the Plan Administrator then will hold the Excess Amount unallocated in a suspense account. The Plan Administrator will apply the suspense account to reduce Employer Contributions (including the allocation of forfeitures) for all remaining Participants in the next Limitation Year, and in each succeeding Limitation Year if necessary. Neither the Employer nor any Employee may contribute to the Plan for any

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Limitation Year in which the Plan is unable to allocate fully a suspense account maintained pursuant to this Paragraph (c). Amounts held unallocated in a suspense account will not share in any allocation of Trust Fund net income, gain or loss.

(d) The Plan Administrator under Paragraphs (b) or (c) will not distribute any Excess Amount(s) to Participants or to former Participants.

[Note: Sections 3.11 through 3.15 apply only to Participants who, in addition to this Plan, participate in one or more M&P defined contribution plans (including Paired Plans), welfare benefit funds (as defined in Code §419(e)), individual medical accounts (as defined in Code §415(1)(2)), or simplified employee pension plans (as defined in Code §408(k)) maintained by the Employer and which provide an Annual Addition during the Limitation Year (collectively "Code §415 aggregated plans").]

3.11 COMBINED PLANS ANNUAL ADDITIONS

LIMITATION. The amount of Annual Additions which the Plan Administrator may allocate under this Plan to a Participant's Account for a Limitation Year may not exceed the Maximum Permissible Amount, reduced by the sum of any Annual Additions allocated to the Participant's accounts for the same Limitation Year under the Code §415 aggregated plans. If the amount the Employer otherwise would allocate to the Participant's Account under this Plan would cause the Annual Additions for the Limitation Year to exceed this Section 3.11 combined plans limitation, the Employer will reduce the amount of its allocation to that Participant's Account in the manner described in Section 3.07, so the Annual Additions under all of the Code §415 aggregated plans for the Limitation Year will equal the Maximum Permissible Amount. If the Plan Administrator allocates to a Participant an amount attributed to this Plan under Section 3.14 which exceeds this Section 3.11 combined plans limitation, the Plan Administrator must dispose of the Excess Amount in accordance with Section 3.15 (relating to certain "reasonable errors" and allocation of forfeitures) or, if Section 3.15 does not apply, the Plan Administrator will dispose of the Excess Amount under Section 9.12.

3.12 ESTIMATING COMPENSATION. Prior to the determination of the Participant's actual Compensation for the Limitation Year, the Plan Administrator may determine the Section 3.11 combined plans limitation on the basis of the Participant's estimated annual Compensation for such Limitation Year. The Plan Administrator will make this determination on a reasonable and uniform basis for all Participants similarly situated. The Plan Administrator must reduce the allocation of any Employer contribution (including the allocation of Participant forfeitures) based on estimated annual Compensation by any Excess Amounts carried over from prior years.

3.13 DETERMINATION BASED ON ACTUAL COMPENSATION. As soon as is administratively feasible after the end of the Limitation Year, the Plan Administrator will determine the Section 3.11 combined plans limitation on the basis of the Participant's actual Compensation for such Limitation Year.

3.14 ORDERING OF ANNUAL ADDITION ALLOCATIONS. If, because of a reasonable error in

estimating a Participant's actual Limitation Year Compensation, because of the allocation of forfeitures, because of a reasonable error in determining a Participant's deferral contributions or because of any other facts and circumstances the Revenue Service considers to constitute reasonable error, a Participant's Annual Additions under this Plan and the Code §415 aggregated plans result in an Excess Amount, such Excess Amount will consist of the Amounts last allocated. The Plan Administrator will determine the Amounts last allocated by treating the Annual Additions attributable to a simplified employee pension as allocated first, followed by allocation to a welfare benefit fund or individual medical account, irrespective of the actual allocation date. If the Plan Administrator allocates an Excess Amount to a Participant on an allocation date of this Plan which coincides with an allocation date of another plan, unless the Employer specifies otherwise in an Addendum to its Adoption Agreement, the Excess Amount attributed to this Plan will equal the product of:

- (a) the total Excess Amount allocated as of such date, multiplied by
- (b) the ratio of (i) the Annual Additions allocated to the Participant as of such date for the Limitation Year under the Plan to (ii) the total Annual Additions allocated to the Participant as of such date for the Limitation Year under this Plan and the Code §415 aggregated plans.

3.15 DISPOSITION OF ALLOCATED EXCESS AMOUNT ATTRIBUTABLE TO PLAN. The Plan Administrator will dispose of any allocated Excess Amounts described in and attributed to this Plan under Section 3.14 as provided in Section 3.10 or, as applicable under Section 9.12.

[Note: Section 3.16 applies only to Participants who, in addition to this Plan, participate in one or more qualified defined contribution plans maintained by the Employer during the Limitation Year, but which are not M&P plans described in Sections 3.11 through 3.15.]

3.16 OTHER DEFINED CONTRIBUTION PLANS LIMITATION. If a Participant is a participant in another defined contribution plan maintained by the Employer, but which plan is not an M&P plan described in Sections 3.11 through 3.15, the Plan Administrator must limit the allocation to the Participant of Annual Additions under this Plan as provided in Sections 3.11 through 3.15, as though the other defined contribution plan were an M&P plan, unless the Employer specifies otherwise in an Addendum to its Adoption Agreement.

3.17 DEFINED BENEFIT PLAN LIMITATION. If the Employer maintains a defined benefit plan, or has ever maintained a defined benefit plan which the Employer has terminated, then the sum of the defined benefit plan fraction and the defined contribution plan fraction for any Participant for any Limitation Year beginning before January 1, 2000, must not exceed 1.0. The 1.0 limitation of the immediately preceding sentence does not apply for Limitation Years beginning after December 31, 1999, unless the Employer in Appendix B to its Adoption Agreement specifies a later effective date. To the extent necessary to satisfy the 1.0 limitation, if the Employer still

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maintains the defined benefit plan as an active plan, the Employer in its Adoption Agreement Appendix B will elect whether to reduce the Participant's projected annual benefit under the defined benefit plan under which the Participant participates, or to reduce its contribution or allocation on behalf of the Participant to the defined contribution plan(s) under which the Participant participates. If the Employer has frozen or terminated the defined benefit plan, the Employer will reduce its contribution or allocation on behalf of the Participant to the defined contribution plan(s) under which the Participant participates. The Employer must provide in Appendix B to its Adoption Agreement the manner in which the Plan will satisfy the top-heavy requirements of Code §416 after taking into account the existence (or prior maintenance) of the defined benefit plan.

3.18 DEFINITIONS - ARTICLE III. For purposes of Article III:

(a) "Annual Additions" means the sum of the following amounts allocated to a Participant's Account for a Limitation Year: (i) all Employer contributions (including Participant deferral contributions); (ii) all forfeitures; (iii) all Employee contributions; (iv) Excess Amounts reapplied to reduce Employer contributions under Section 3.10 or Section 3.15; (v) amounts allocated after March 31, 1984, to an individual medical account (as defined in Code §415(l)(2)) included as part of a pension or annuity plan maintained by the Employer; (vi) contributions paid or accrued after December 31, 1985, for taxable years ending after December 31, 1985, attributable to post-retirement medical benefits allocated to the separate account of a key-employee (as defined in Code §419A(d)(3)) under a welfare benefit fund (as defined in Code §419(e)) maintained by the Employer; (vii) amounts allocated under a Simplified Employee Pension Plan; and (viii) corrected excess contributions described in Code §401(k) and corrected excess aggregate contributions described in Code §401(m). Excess deferrals described in Code §402(g), which the Plan Administrator corrects by distribution by April 15 of the following calendar year, are not Annual Additions.

(b) "Compensation" for purposes of applying the limitations of Part 2 of this Article III, means Compensation as defined in Section 1.07, except, for Limitation Years beginning after December 31, 1997, Compensation includes Elective Contributions, irrespective of whether the Employer has elected to include these amounts as Compensation under Section 1.07 of its Adoption Agreement and any exclusion the Employer has elected in Section 1.07 of the Adoption Agreement does not apply.

(c) "Employer" means the Employer and any Related Employer. Solely for purposes of applying the limitations of Part 2 of this Article III, the Plan Administrator will determine Related Employer by modifying Code §§414(b) and (c) in accordance with Code §415(h).

(d) "Excess Amount" means the excess of the Participant's Annual Additions for the Limitation Year over the Maximum Permissible Amount.

(e) "Limitation Year" means the period the Employer elects in its Adoption Agreement Section 1.24. All qualified plans of the Employer must use the same Limitation Year. If the Employer amends the Limitation Year to a different 12-consecutive month period, the new Limitation Year must begin on a date within the Limitation Year for which the Employer makes the amendment, creating a short Limitation Year.

(f) "M&P Plan" means a prototype plan the form of which is the subject of a favorable opinion letter (or prior to Revenue Procedure 2000-20, a favorable notification or favorable opinion letter) from the Revenue Service.

(g) "Maximum Permissible Amount" means the lesser of: (i) \$30,000 (or, if greater, the \$30,000 amount as adjusted under Code §415(d)), or (ii) 25% of the Participant's Compensation for the Limitation Year. If there is a short Limitation Year because of a change in Limitation Year, the Plan Administrator will multiply the \$30,000 (or adjusted) limitation by the following fraction:

$$\frac{\text{Number of months in the short Limitation Year}}{12}$$

The 25% limitation does not apply to any contribution for medical benefits within the meaning of Code §401(h) or Code §419A(f)(2) which otherwise is an Annual Addition.

(h) "Defined contribution plan" means a retirement plan which provides for an individual account for each participant and for benefits based solely on the amount contributed to the participant's account, and any income, expenses, gains and losses, and any forfeitures of accounts of other participants which the plan may allocate to such participant's account. The Plan Administrator must treat all defined contribution plans (whether or not terminated) maintained by the Employer as a single plan. Solely for purposes of the limitations of Part 2 of this Article III, employee contributions made to a defined benefit plan maintained by the Employer is a separate defined contribution plan. The Plan Administrator also will treat as a defined contribution plan an individual medical account (as defined in Code §415(l)(2)) included as part of a defined benefit plan maintained by the Employer and, for taxable years ending after December 31, 1985, a welfare benefit fund under Code §419(e) maintained by the Employer to the extent there are post-retirement medical benefits allocated to the separate account of a key employee (as defined in Code §419A(d)(3)).

(i) "Defined benefit plan" means a retirement plan which does not provide for individual accounts for Employer contributions. All defined benefit plans (whether or not terminated) maintained by the Employer are a single plan.

[Note: The definitions in Paragraphs (j), (k) and (l) apply only if the limitation described in Section 3.17 applies to the Plan.]

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(j) "Defined benefit plan fraction" means the following fraction:

$$\frac{\text{Projected annual benefit of the Participant under the defined benefit plan(s)}}{\text{The lesser of: (i) 125\% (subject to the "100\% limitation" in Paragraph (1)) of the dollar limitation in effect under Code §415(b)(1)(A) for the Limitation Year, or (ii) 140\% of the Participant's average Compensation for his/her high three (3) consecutive Years of Service}}$$

To determine the denominator of this fraction, the Plan Administrator will make any adjustment required under Code §415(b) and will determine a Year of Service, unless the Employer provides otherwise in an Addendum to its Adoption Agreement, as a Plan Year in which the Employee completed at least 1,000 Hours of Service. The "projected annual benefit" is the annual retirement benefit (adjusted to an actuarially equivalent straight life annuity if the defined benefit plan expresses such benefit in a form other than a straight life annuity or qualified joint and survivor annuity) of the Participant under the terms of the defined benefit plan on the assumptions he/she continues employment until his/her normal retirement age (or current age, if later) as stated in the defined benefit plan, his/her compensation continues at the same rate as in effect in the Limitation Year under consideration until the date of his/her normal retirement age and all other relevant factors used to determine benefits under the defined benefit plan remain constant as of the current Limitation Year for all future Limitation Years.

Current Accrued Benefit. If the Participant accrued benefits in one or more defined benefit plans maintained by the Employer which were in existence on May 6, 1986, the dollar limitation used in the denominator of this fraction will not be less than the Participant's Current Accrued Benefit. A Participant's Current Accrued Benefit is the sum of the annual benefits under such defined benefit plans which the Participant had accrued as of the end of the 1986 Limitation Year (the last Limitation Year beginning before January 1, 1987), determined without regard to any change in the terms or conditions of the defined benefit plan made after May 5, 1986, and without regard to any cost of living adjustment occurring after May 5, 1986. This Current Accrued Benefit rule applies only if the defined benefit plans individually and in the aggregate satisfied the requirements of Code §415 as in effect at the end of the 1986 Limitation Year.

(k) "Defined contribution plan fraction" means the following fraction:

$$\frac{\text{The sum, as of the close of the Limitation Year, of the Annual Additions for all Limitation Years to the Participant's Account under the defined contribution plan(s)}}{\text{The sum of the lesser of the following amounts determined for the Limitation Year and for each prior Limitation Year of service with the Employer: (i) 125\% (subject to the "100\% limitation" in Paragraph (1)) of the dollar limitation in effect under Code §415(c)(1)(A) for the Limitation Year (determined without regard to the special dollar limitations for employee stock ownership plans), or (ii) 35\% of the Participant's Compensation for the Limitation Year}}$$

For purposes of determining the defined contribution plan fraction, the Plan Administrator will not recompute Annual Additions in Limitation Years beginning prior to January 1, 1987, to treat all Employee contributions as Annual Additions. If the Plan satisfied Code §415 for Limitation Years beginning prior to January 1, 1987, the Plan Administrator will redetermine the defined contribution plan fraction and the defined benefit plan fraction as of the end of the 1986 Limitation Year, in accordance with this Section 3.18. If the sum of the redetermined fractions exceeds 1.0, the Plan Administrator will subtract permanently from the numerator of the defined contribution plan fraction an amount equal to the product of: (1) the excess of the sum of the fractions over 1.0, times (2) the denominator of the defined contribution plan fraction. In making the adjustment, the Plan Administrator must disregard any accrued benefit under the defined benefit plan which is in excess of the Current Accrued Benefit. This Plan continues any transitional rules applicable to the determination of the defined contribution plan fraction under the Plan as of the end of the 1986 Limitation Year.

(l) "100% limitation" means the limitation in Code §416(h) which applies if the plan is top-heavy. If the 100% limitation applies, the Plan Administrator must determine the denominator of the defined benefit plan fraction and the denominator of the defined contribution plan fraction by substituting 100% for 125%. If this Plan is a Standardized Plan, the 100% limitation applies in all Limitation Years, unless the Employer specifies otherwise in an Addendum to its Adoption Agreement. If the Employer overrides the 100% limitation under a Standardized Plan, the Employer must specify in its Addendum the manner in which the Plan satisfies the extra minimum benefit requirement of Code §416(h) and the 100% limitation must continue to apply if the Plan's top-heavy ratio exceeds 90%. If this Plan is a Nonstandardized Plan, the 100% limitation applies only if: (i) the Plan's top-heavy ratio exceeds 90%; or (ii) the Plan's top-heavy ratio is greater than 60%, and the Employer does not specify in its Adoption Agreement to provide extra minimum benefits which satisfy Code §416(h)(2).

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**ARTICLE IV
PARTICIPANT CONTRIBUTIONS**

4.01 PARTICIPANT CONTRIBUTIONS. For purposes of this Article IV, Participant contributions means all Employee contributions described in Section 4.02, deductible Participant contributions described in Section 4.03 ("DECs") and rollover contributions described Section 4.04.

4.02 EMPLOYEE CONTRIBUTIONS. An Employee contribution is a nondeductible contribution which a Participant makes to the Trust as permitted under this Section 4.02. A deferral contribution made by a Participant under a 401(k) arrangement is not an Employee contribution. Employee contributions must satisfy the nondiscrimination requirements of Code §401(m). See Section 14.09. An Employer must elect in its Adoption Agreement whether to permit Employee contributions. If the Employer elects to permit Employee contributions, the Employer also must specify in its Adoption Agreement any conditions or limitations which may apply to Employee contributions. If the Employer permits Employee contributions, the Employer operationally will determine if a Participant will make Employee contributions through payroll deduction or by other means.

The Employer must elect in its Adoption Agreement whether the Employer will make matching contributions with respect to any Employee contributions and any conditions or limitations which may apply to those matching contributions. Any matching contribution must satisfy the nondiscrimination requirements of Code §401(m). See Section 14.09.

4.03 DECS. A DEC is a deductible Participant contribution made to the Plan for a taxable year commencing prior to 1987. If a Participant has made DECs to the Plan, the Plan Administrator must maintain a separate Account for the Participant's DECs as adjusted for earnings, including DECs which are part of a rollover contribution described in Section 4.04. The DECs Account is part of the Participant's Account for all purposes of the Plan, except for purposes of determining the top-heavy ratio under Article XII. The Plan Administrator may not use a Participant's DECs Account to purchase life insurance on the Participant's behalf.

4.04 ROLLOVER CONTRIBUTIONS. A rollover contribution is an amount of cash or property which the Code permits an eligible Employee or Participant to transfer directly or indirectly to this Plan from another qualified plan. A rollover contribution excludes Employee contributions, as adjusted for earnings. An Employer operationally and on a nondiscriminatory basis, may elect to permit or not to permit rollover contributions to this Plan or may elect to limit an eligible Employee's right or a Participant's right to make a rollover contribution. If an Employer permits rollover contributions, any Participant (or as applicable, any eligible Employee), with the Employer's written consent and after filing with the Trustee the form prescribed by the Plan Administrator, may make a rollover contribution to the Trust. Before accepting a rollover contribution, the Trustee may require a Participant

(or eligible Employee) to furnish satisfactory evidence the proposed transfer is in fact a "rollover contribution" which the Code permits an employee to make to a qualified plan. The Trustee, in its sole discretion, may decline to accept a rollover contribution of property which could: (1) generate unrelated business taxable income; (2) create difficulty or undue expense in storage, safekeeping or valuation; or (3) create other practical problems for the Trust. A rollover contribution is not an Annual Addition under Part 2 of Article III.

If an eligible Employee makes a rollover contribution to the Trust prior to satisfying the Plan's eligibility conditions, the Plan Administrator and Trustee must treat the Employee as a limited Participant (as described in Rev. Rul. 96-48 or in any successor ruling). A limited Participant does not share in the Plan's allocation of Employer contributions nor Participant forfeitures and may not make deferral contributions if the Plan includes a 401(k) arrangement until he/she actually becomes a Participant in the Plan. If a limited Participant has a Separation from Service prior to becoming a Participant in the Plan, the Trustee will distribute his/her rollover contributions Account to him/her in accordance with Article VI as if it were an Employer contributions Account.

4.05 PARTICIPANT CONTRIBUTIONS - VESTING. A Participant's Participant contributions Account is, at all times, 100% Vested.

4.06 PARTICIPANT CONTRIBUTIONS - DISTRIBUTION. Subject to any contrary Employer election in its Adoption Agreement Appendix A, an Employee, after attaining age 70 1/2 may elect to receive distribution prior to Separation from Service ("in-service distribution") of all or any part of his/her Participant contributions Account. The Employer in its Adoption Agreement Section 6.01 must elect the additional in-service distribution election rights, if any, a Participant has with respect to his/her Participant contributions Account. For purposes of the Employer's Adoption Agreement elections regarding in-service distribution of Participant contributions, a Participant's Employee contributions also includes DECs. A Participant will not incur a forfeiture of any Account under the Plan solely as a result of the distribution of his/her Participant contributions.

The Trustee, following a Participant's Separation from Service, will distribute to the Participant his/her Participant contributions Account in accordance with Article VI in the same manner as the Trustee distributes the Participant's Employer contributions Account.

4.07 PARTICIPANT CONTRIBUTIONS - INVESTMENT AND ACCOUNTING. The Plan Administrator must maintain a separate Account in the name of each Participant to reflect his/her Participant contributions (including, if applicable, the different types of Participant contributions), as adjusted for earnings. The Trustee will invest all Participant contributions as part of the Trust Fund.

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ARTICLE V
VESTING

5.01 NORMAL/EARLY RETIREMENT AGE. The Employer in its Adoption Agreement must specify the Plan's Normal Retirement Age. An Employer in its Adoption Agreement may specify an Early Retirement Age. A Participant's Account Balance derived from Employer contributions is 100% Vested upon and after his/her attaining Normal Retirement Age (or if applicable, Early Retirement Age) if the Participant is employed by the Employer on or after that date.

5.02 PARTICIPANT DEATH OR DISABILITY. Unless the Employer elects otherwise in its Adoption Agreement, a Participant's Account Balance derived from Employer contributions is 100% Vested if the Participant's Separation from Service is a result of his/her death or his/her Disability.

5.03 VESTING SCHEDULE. Except as provided in Sections 5.01 and 5.02, for each Year of Service as described in Section 5.06, a Participant's Vested percentage of his/her Account Balance derived from Employer contributions equals the percentage under the vesting schedule the Employer has elected in its Adoption Agreement.

For purposes of Adoption Agreement Section 5.03, "6-year graded," "3-year cliff," "7-year graded" or "5-year cliff" means an Employee's Vested percentage, based on each included Year of Service, under the following applicable schedule:

6-year graded	7-year graded
0-1 year / 0%	0-2 years / 0%
2 years / 20%	3 years / 20%
3 years / 40%	4 years / 40%
4 years / 60%	5 years / 60%
5 years / 80%	6 years / 80%
6 years / 100%	7 years / 100%
3-year cliff	5-year cliff
0-2 years / 0%	0-4 years / 0%
3 years / 100%	5 years / 100%

(A) "**Grossed-Up**" **Vesting Formula.** If the Trustee makes a distribution (other than a cash-out distribution described in Section 5.04) to a partially-Vested Participant, and the Participant has not incurred a Forfeiture Break in Service at the relevant time, the provisions of this Section 5.03(A) apply to the Participant's Account Balance. At any relevant time following the distribution, the Plan Administrator will determine the Participant's Vested Account Balance derived from Employer contributions in accordance with the following formula: $P(AB + D) - D$.

To apply this formula, "P" is the Participant's current vesting percentage at the relevant time, "AB" is the Participant's Employer-derived Account Balance at the relevant time and "D" is the amount of the earlier distribution. If, under a restated Plan, the Plan has made distribution to a partially-Vested Participant prior to its restated Effective Date and is unable to apply the cash-out provisions of Section 5.04 to that prior distribution, this

special vesting formula also applies to that Participant's remaining Account Balance. The Employer, in an Addendum to its Adoption Agreement, may elect to modify this formula to read as follows: $P(AB + (R \times D)) - (R \times D)$. For purposes of this alternative formula, "R" is the ratio of "AB" to the Participant's Employer-derived Account Balance immediately following the earlier distribution.

(B) **Special Vesting Elections.** The Employer in its Adoption Agreement may elect other specified vesting provisions which are consistent with Code §411 and applicable Treasury regulations.

5.04 CASH-OUT DISTRIBUTIONS TO PARTIALLY-VESTED PARTICIPANTS/ RESTORATION OF FORFEITED ACCOUNT BALANCE. If, pursuant to Article VI, a partially-Vested Participant receives a cash-out distribution before he/she incurs a Forfeiture Break in Service, the Participant will incur an immediate forfeiture of the non-Vested portion of his/her Account Balance. If a partially-Vested Participant's Account is entitled to an allocation of Employer contributions or Participant forfeitures for the Plan Year in which he/she otherwise would incur a forfeiture by reason of a cash-out distribution, the Plan Administrator will apply the cash-out forfeiture rule as if the partially-Vested Participant received a cash-out distribution on the first day of the immediately following Plan Year. A partially-Vested Participant is a Participant whose Vested percentage determined under Section 5.03 is more than 0% but is less than 100%. A cash-out distribution is a distribution to the Participant (whether involuntary or with required consent as described in Article VI), of his/her entire Vested Account Balance due to the Participant's Separation from Service.

(A) **Forfeiture Restoration and Conditions for Restoration.** A partially-Vested Participant re-employed by the Employer after receiving a cash-out distribution of the Vested percentage of his/her Account Balance may repay to the Trust the entire amount of the cash-out distribution attributable to Employer contributions without any adjustment for gains and losses, unless the Participant no longer has a right to restoration under this Section 5.04(A). If a re-employed Participant repays his/her cash-out distribution, the Plan Administrator, subject to the conditions of this Section 5.04(A), must restore the Participant's Account Balance attributable to Employer contributions to the same dollar amount as the dollar amount of his/her Account Balance on the Accounting Date, or other valuation date, immediately preceding the date of the cash-out distribution, unadjusted for any gains or losses occurring subsequent to that Accounting Date, or other valuation date. Restoration of the Participant's Account Balance includes restoration of all Protected Benefits with respect to that restored Account Balance, in accordance with applicable Treasury regulations. The Plan Administrator will not restore a re-employed Participant's Account Balance under this Section 5.04 (A) if:

- (1) 5 years have elapsed since the Participant's first re-employment date with the Employer following the cash-out distribution;

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(2) The Participant is not in the Employer's Service on the date the Participant repays his/her cash-out distribution; or

(3) The Participant has incurred a Forfeiture Break in Service. This condition also applies if the Participant makes repayment within the Plan Year in which he/she incurs the Forfeiture Break in Service and that Forfeiture Break in Service would result in a complete forfeiture of the amount the Plan Administrator otherwise would restore.

(B) Time and Method of Forfeiture Restoration. If none of the conditions in Section 5.04(A) preventing restoration of the Participant's Account Balance applies, the Plan Administrator will restore the Participant's Account Balance as of the Plan Year Accounting Date coincident with or immediately following the repayment. To restore the Participant's Account Balance, the Plan Administrator, to the extent necessary, will allocate to the Participant's Account:

(1) First, the amount, if any, of Participant forfeitures the Plan Administrator otherwise would allocate under Section 3.05;

(2) Second, the amount, if any, of the Trust Fund net income or gain for the Plan Year; and

(3) Third, the Employer contribution for the Plan Year to the extent made under a discretionary formula.

In an Addendum to its Adoption Agreement, the Employer may eliminate as a means of restoration any of the amounts described in clauses (1), (2) and (3) or may change the order of priority of these amounts. To the extent the amounts described in clauses (1), (2) and (3) are insufficient to enable the Plan Administrator to make the required restoration, the Employer must contribute, without regard to any requirement or condition of Article III, the additional amount necessary to enable the Plan Administrator to make the required restoration. If, for a particular Plan Year, the Plan Administrator must restore the Account Balance of more than one re-employed Participant, the Plan Administrator will make the restoration allocations from the amounts described in clauses (1), (2) and (3) to each such Participant's Account in the same proportion that a Participant's restored amount for the Plan Year bears to the restored amount for the Plan Year of all re-employed Participants. A cash-out restoration allocation is not an Annual Addition under Part 2 of Article III.

(C) Deemed Cash-out of 0% Vested Participant. Except as the Employer may provide in an Addendum to its Adoption Agreement, the deemed cash-out rule of this Section 5.04(C) applies to any 0% Vested Participant. A "0% Vested Participant" is a Participant whose Account Balance derived from Employer contributions is entirely forfeitable at the time of his/her Separation from Service. If a 0% Vested Participant's Account is not entitled to an allocation of Employer contributions for the Plan Year in which the Participant has a Separation from Service, the Plan Administrator will apply the deemed cash-out rule as if the 0% Vested Participant received a cash-out distribution on the date of the Participant's Separation from Service. If a 0% Vested Participant's Account is entitled to

an allocation of Employer contributions or Participant forfeitures for the Plan Year in which the Participant has a Separation from Service, the Plan Administrator will apply the deemed cash-out rule as if the 0% Vested Participant received a cash-out distribution on the first day of the first Plan Year beginning after his/her Separation from Service. For purposes of applying the restoration provisions of this Section 5.04, the Plan Administrator will treat a re-employed 0% Vested Participant as repaying his/her cash-out "distribution" on the date of the Participant's re-employment with the Employer.

5.05 ACCOUNTING FOR CASH-OUT REPAYMENT. As soon as is administratively practicable, the Plan Administrator will credit to the Participant's Account the cash-out amount a Participant has repaid to the Plan. Pending the restoration of the Participant's Account Balance, the Plan Administrator under Section 9.08(B) may direct the Trustee to place the Participant's cash-out repayment in a temporary segregated investment Account. Unless the cash-out repayment qualifies as a Participant rollover contribution, the Plan Administrator will direct the Trustee to repay to the Participant as soon as is administratively practicable, the full amount of the Participant's cash-out repayment if the Plan Administrator determines any of the conditions of Section 5.04(A) prevents restoration as of the applicable Accounting Date, notwithstanding the Participant's repayment.

5.06 YEAR OF SERVICE - VESTING. For purposes of determining a Participant's vesting under Section 5.03, "Year of Service" means the 12-consecutive month vesting computation period the Employer elects in its Adoption Agreement during which an Employee completes the number of Hours of Service (not exceeding 1,000) specified in the Adoption Agreement or, if the Plan applies the Elapsed Time Method of crediting Vesting Service, the vesting computation period for which the Employee receives credit for a Year of Service under the Service crediting rules of Section 1.15(D). A Year of Service includes any Year of Service completed prior to the Effective Date of the Plan, except as provided in Section 5.08.

5.07 BREAK IN SERVICE AND FORFEITURE BREAK IN SERVICE - VESTING. For purposes of this Article V, a Participant incurs a "Break in Service" if during any vesting computation period he/she does not complete more than 500 Hours of Service or, if the Plan applies the Elapsed Time Method of crediting Service, the Participant has a Period of Severance of at least 12 consecutive months. If, pursuant to Section 5.06, the Plan does not require more than 500 Hours of Service to receive credit for a Year of Service, a Participant incurs a Break in Service in a vesting computation period in which he/she fails to complete a Year of Service. A Participant incurs a Forfeiture Break in Service when he/she incurs 5 consecutive Breaks in Service. The Plan does not apply the Break in Service (one year hold-out) rule for vesting under Code §411(a)(6)(B). Therefore, an Employee need not complete a Year of Service after a Break in Service before the Plan takes into account the Employee's otherwise includible pre-Break Years of Service under this Article V.

5.08 INCLUDED YEARS OF SERVICE - VESTING. For purposes of determining "Years of Service" under

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Section 5.06, the Plan takes into account all Years of Service an Employee completes with the Employer except:

(a) For the sole purpose of determining a Participant's Vested percentage of his/her Account Balance derived from Employer contributions which accrued for his/her benefit prior to a Forfeiture Break in Service or receipt of a cash-out distribution, the Plan disregards any Year of Service after the Participant first incurs a Forfeiture Break in Service or receives a cash-out distribution (except where the Plan Administrator restores the Participant's Account under Section 5.04(A)).

(b) Consistent with Code §411(a)(4), any Year of Service the Employer elects to exclude under its Adoption Agreement.

5.09 FORFEITURE OCCURS. A Participant's forfeiture of his/her non-Vested Account Balance derived from Employer contributions occurs under the Plan on the earlier of:

(a) The last day of the vesting computation period in which the Participant first incurs a Forfeiture Break in Service; or

(b) The date the Participant receives a cash-out distribution.

The Plan Administrator determines the percentage of a Participant's Account Balance forfeiture, if any, under this Section 5.09 solely by reference to the vesting schedule the Employer elected in its Adoption Agreement. A Participant does not forfeit any portion of his/her Account Balance for any other reason or cause except as expressly provided by this Section 5.09 or as provided under Section 9.11.

5.10 RULE OF PARITY - VESTING. The Employer may elect in its Adoption Agreement to apply the "rule of parity" under Code §411(a)(6)(D) for purposes of determining vesting Years of Service. Under the rule of parity, the Plan Administrator excludes a Participant's Years of Service before a Break in Service if: (a) the number of the Participant's consecutive Breaks in Service equals or exceeds 5; and (b) the Participant is 0% Vested in his/her Account Balance derived from Employer contributions at the time he/she has the Breaks in Service.

5.11 AMENDMENT TO VESTING SCHEDULE. The Employer under Section 13.02 may amend the Plan's vesting schedule(s) under Section 5.03 at any time. However, the Plan Administrator will not apply the amended vesting schedule to reduce any Participant's

existing Vested percentage (determined on the later of the date the Employer adopts the amendment, or the date the amendment becomes effective) in the Participant's existing and future Account Balance attributable to Employer contributions, to a percentage less than the Vested percentage computed under the Plan without regard to the amendment. Furthermore, an amended vesting schedule will apply to a Participant only if the Participant receives credit for at least one Hour of Service after the new vesting schedule becomes effective.

If the Employer amends the Plan's vesting schedule, each Participant having completed at least 3 Years of Service (as described in Section 5.06) with the Employer prior to the expiration of the election period described below, may irrevocably elect to have the Plan Administrator determine the Vested percentage of his/her Account Balance without regard to the amendment. The Participant must file his/her election with the Plan Administrator within 60 days of the latest of: (a) the Employer's adoption of the amendment; (b) the effective date of the amendment; or (c) the Participant's receipt of a copy of the amendment. The Plan Administrator, as soon as practicable, must forward a true copy of any amendment to the vesting schedule to each affected Participant, together with a written explanation of the effect of the amendment, the appropriate form upon which the Participant may make an election to remain under the pre-amendment vesting schedule and notice of the time within which the Participant must make an election to remain under the pre-amendment vesting schedule. The election described in this Section 5.11 does not apply to a Participant if the amended vesting schedule provides for vesting at least as rapid at any time as the vesting schedule in effect prior to the amendment. For purposes of this Section 5.11, an amendment to the vesting schedule includes any Plan amendment which directly or indirectly affects the computation of the Vested percentage of a Participant's Account Balance. Furthermore, any shift in the Plan's vesting schedule under Article XII, due to a change in the Plan's top-heavy status, is an amendment to the vesting schedule for purposes of this Section 5.11.

5.12 DEFERRAL CONTRIBUTIONS TAKEN INTO ACCOUNT. If the Plan includes a 401(k) arrangement, the vesting rules described in Article V must take into account a Participant's deferral contributions for purposes of determining: (1) if a Participant's distribution is of his/her entire Vested Account balance as required for a cash-out distribution under Section 5.04; (2) if a Participant repays the entire amount of a prior cash-out distribution so the Participant is entitled to restoration under Section 5.04(A); and (3) if a Participant is 0% vested under Section 5.04(C) and under Section 5.10.

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ARTICLE VI
DISTRIBUTIONS

6.01 TIMING OF DISTRIBUTION. The Plan Administrator will direct the Trustee to commence distribution of a Participant's Vested Account Balance in accordance with this Section 6.01 upon the Participant's Separation from Service for any reason, or if the Participant exercises an in-Service distribution right under the Plan. The Trustee may make Plan distributions on any administratively practicable date during the Plan Year, consistent with the Employer's elections in its Adoption Agreement.

(A) Distribution upon Separation from Service (other than death).

(1) **Participant's Vested Account Balance not exceeding \$5,000.** Upon the Participant's Separation from Service for any reason other than death, the Plan Administrator (without any requirement of Participant or spousal consent) will direct the Trustee to distribute the Participant's Vested Account Balance (determined in accordance with Section 6.01(A)(6)) not exceeding \$5,000 in a lump sum (without regard to Section 6.04), at the time specified in the Adoption Agreement, but in no event later than the 60th day following the close of the Plan Year in which the later of the following events occur: (a) the Participant attains Normal Retirement Age; or (b) the Participant Separates from Service.

(2) **Participant's Vested Account Balance exceeds \$5,000.** Upon the Participant's Separation from Service for any reason other than death, the Plan Administrator, subject to the Participant's election to postpone distribution under this Section 6.01(A)(2) and the consent requirements of Section 6.01(A)(5), will direct the Trustee to commence distribution of the Participant's Vested Account Balance (determined in accordance with Section 6.01(A)(6)) exceeding \$5,000, at the time specified in the Adoption Agreement and in a form under Section 6.03 elected by the Participant. Any election under this Section 6.01(A)(2) is subject to the requirements of Section 6.02 and of Section 6.04.

A Participant eligible to make an election under this Section 6.01(A)(2) may elect to postpone distribution beyond the time the Employer has elected in its Adoption Agreement, to any specified date including, but not beyond the Participant's Required Beginning Date, unless the Employer, in its Adoption Agreement, specifically limits a Participant's right to postpone distribution of his/her Account Balance to the later of the date the Participant attains age 62 or Normal Retirement Age. The Plan Administrator will reapply the notice and consent requirements of Section 6.01(A)(4) and Section 6.01(A)(5) to any distribution postponed under this Section 6.01(A)(2).

In the absence of a Participant's consent and distribution election (as described in Section 6.01(A)(5)) or in the absence of the Participant's election to postpone distribution prior to his/her annuity starting date, the Plan Administrator, consistent with the Employer's elections in its Adoption Agreement, will treat the Participant as having elected to postpone his/her distribution until the 60th day following the close of the Plan Year in which the latest of the following events occurs: (a) the Participant attains

Normal Retirement Age; (b) the Participant attains age 62; or (c) the Participant Separates from Service. At the applicable date, the Plan Administrator then will direct the Trustee to distribute the Participant's Vested Account Balance in a lump sum (or, if applicable, the annuity form of distribution required under Section 6.04).

(3) **Disability.** If the Participant's Separation from Service is because of his/her Disability, the Plan Administrator will direct the Trustee to pay the Participant's Vested Account Balance in the same manner as if the Participant had incurred a Separation from Service without Disability.

(4) **Distribution notice/annuity starting date.** At least 30 days and not more than 90 days prior to the Participant's annuity starting date, the Plan Administrator must provide a written notice (or a summary notice as permitted under Treasury regulations) to a Participant who is eligible to make an election under Section 6.01(A)(2) ("distribution notice"). The distribution notice must explain the optional forms of benefit in the Plan, including the material features and relative values of those options, and the Participant's right to postpone distribution until the applicable date described in Section 6.01(A)(2). For all purposes of this Article VI, the term "annuity starting date" means the first day of the first period for which the Plan pays an amount as an annuity or in any other form but in no event is the "annuity starting date" earlier than a Participant's Separation from Service.

(5) **Consent requirements/Participant distribution election.** A Participant must consent, in writing, following receipt of the distribution notice, to any distribution under this Section 6.01, if at the time of the distribution to the Participant, the Participant's Vested Account Balance exceeds \$5,000 and the Participant has not attained the later of Normal Retirement Age or age 62. Accounts which are distributable prior to the foregoing applicable age are "immediately distributable." Furthermore, the Participant's spouse also must consent, in writing, to any distribution, for which Section 6.04 requires the spouse's consent. The Participant may reconsider his/her distribution election at any time prior to the annuity starting date and elect to commence distribution as of any other distribution date permitted under the Plan or under the Adoption Agreement. A Participant may elect to receive distribution at any administratively practicable time which is earlier than 30 days following the Participant's receipt of the distribution notice, by waiving in writing the balance of the 30 days. However, if the requirements of Section 6.04 apply, the Participant may not elect to commence distribution less than 7 days following the Participant's receipt of the distribution notice. The consent requirements of this Section 6.01(A)(5) do not apply with respect to defaulted loans described in Section 10.03(E).

(6) **Determination of Vested Account Balance.** For purposes of the consent requirements under this Article VI, the Plan Administrator determines a Participant's Vested Account Balance as of the most recent valuation date immediately prior to the distribution date, and takes into account the Participant's entire Account, including deferral contributions. The Plan Administrator in

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determining the Participant's Vested Account Balance at the relevant time, will disregard a Participant's Vested Account Balance existing on any prior date, except as the Code otherwise may require.

(7) **Consent to cash-out/forfeiture.** If a Participant is partially-Vested in his/her Account Balance, a Participant's election under Section 6.01(A)(2) to receive distribution prior to the Participant's incurring a Forfeiture Break in Service, must be in the form of a cash-out distribution as defined in Section 5.04.

(8) **Return to employment.** A Participant may not receive a distribution by reason of Separation from Service, or continue any installment distribution based on a prior Separation from Service, if, prior to the time the Trustee actually makes the distribution, the Participant returns to employment with the Employer.

(B) Distribution upon Death. In the event of the Participant's Separation from Service on account of death, the Plan Administrator will direct the Trustee, in accordance with this Section 6.01(B) and subject to Section 6.02(D), to distribute to the Participant's Beneficiary the Participant's Vested Account Balance remaining in the Trust at the time of the Participant's death.

The Plan Administrator, subject to the requirements of Sections 6.04 and 6.02(D) or to a Beneficiary's written election (if authorized by the next paragraph of this Section 6.01(B)), must direct the Trustee to distribute or commence distribution of the deceased Participant's Vested Account Balance, as soon as administratively practicable following the Participant's death or, if later, the date on which the Plan Administrator receives notification of, or otherwise confirms, the Participant's death. If the Participant's Vested Account Balance determined in accordance with Section 6.01(A)(6) does not exceed \$5,000, the Trustee will distribute the balance in a lump sum without regard to Section 6.04. If the Participant's Vested Account Balance exceeds \$5,000, the Trustee will distribute the balance subject to Section 6.02(D).

If the Participant's death benefit is payable in full to the Participant's surviving spouse, the surviving spouse may elect distribution at any time and in any form (except a joint and survivor annuity) the Plan would permit a Participant to elect upon Separation from Service. The Participant, on a form prescribed by the Plan Administrator, may (subject to the requirements of Section 6.04) elect the payment method or the payment term or both, which will apply to any Beneficiary, including his/her surviving spouse. The Participant's election may limit any Beneficiary's right to increase the frequency or the amount of any payments. Any payment term elected by the Participant must not exceed the payment term the Code otherwise would permit the Beneficiary to elect upon the Participant's death.

(C) In-Service Distribution. The Employer must elect in its Adoption Agreement the distribution election rights, if any, a Participant has prior to his/her Separation from Service ("in-service distribution"). Subject to any contrary Employer election in Appendix A to its Adoption Agreement, a Participant upon attaining age 70 1/2, until he/she incurs a Separation from Service, has a continuing election to receive all or any portion of his/her Account

Balance, including Employer contributions and Participant contributions. If the Employer elects in its Adoption Agreement additional in-service distribution of any Employer contribution (including deferral contributions), the Employer in its Adoption Agreement must specify events or conditions, if any, applicable to such in-service distributions. For special requirements regarding hardship distributions, see Section 6.09. The Employer also must elect in its Adoption Agreement the additional in-service distribution rights, if any, a Participant has with respect to Participant contributions as defined in Section 4.01. If a Participant receives an in-service distribution as to a partially-Vested Account, and the Participant has not incurred a Forfeiture Break in Service, the Plan Administrator will apply the vesting provisions of Section 5.03(A).

A Participant must make any permitted in-service distribution election under this Section 6.01(C) in writing and on a form prescribed by the Plan Administrator which specifies the percentage or dollar amount of the distribution and the Participant's Plan Account (Employer contributions or Participant contributions and type) to which the election applies. If the Plan permits in-service distributions, a Participant only may elect to receive one in-service distribution per Plan Year under this Section 6.01(C) unless the election form prescribed by the Plan Administrator provides for more frequent distributions. The Trustee, as directed by the Plan Administrator and subject to Sections 6.01(A)(4), 6.01(A)(5) and 6.04, will distribute the amount(s) a Participant elects in single sum, as soon as administratively practicable after the Participant files his/her in-service distribution election with the Plan Administrator. The Trustee will distribute the Participant's remaining Account Balance in accordance with the other provisions of this Article VI.

The Trustee, prior to a Participant's Normal Retirement Age or Disability may not make any in-service distribution to the Participant with respect to his/her Account Balance attributable to assets (including post-transfer earnings on those assets) and liabilities transferred, within the meaning of Code §414(l), to a profit sharing plan from a money purchase pension plan or from a target benefit plan qualified under Code §401(a) (other than any portion of those assets and liabilities attributable to Employee contributions).

6.02 REQUIRED MINIMUM DISTRIBUTIONS.

(A) Priority of Required Minimum Distribution. If any distribution under this Article VI (by Plan provision or by Participant election or nonelection), would commence later than the Participant's required beginning date ("RBD"), the Plan Administrator instead must direct the Trustee to make distribution on the Participant's RBD, subject only to the TEFRA election, if applicable, under Section 6.11. The Employer in its Adoption Agreement Appendix B may elect to apply a special effective date to the RBD definition or may elect in Appendix A to continue to apply the RBD definition in effect prior to 1997 ("pre-SBJPA RBD"). The Employer in its Adoption Agreement also may elect to require distribution earlier than the RBD.

(1) **RBD – more than 5% owner.** A Participant's RBD is the April 1 following the close of the calendar year in which the Participant attains age 70 1/2 if the Participant

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is a more than 5% owner (as defined in Code §416) with respect to the Plan Year ending in that calendar year. If a Participant is a more than 5% owner at the close of the relevant calendar year, the Participant may not discontinue required minimum distributions notwithstanding the Participant's subsequent change in ownership status.

(2) **RBD – non 5% owners.** If the Participant is not a more than 5% owner, his/her RBD is the April 1 following the close of the calendar year in which the Participant incurs a Separation from Service or, if later, the April 1 following the close of the calendar year in which the Participant attains age 70 1/2. If a Participant is not a more than 5% owner, his/her pre-SBJPA RBD (if applicable) is April 1 following the close of the calendar year in which the Participant attains age 70 1/2.

(3) **Form of distribution.** The Trustee will make a required minimum distribution at the Participant's RBD in a lump sum (or, if applicable, the annuity form of distribution required under Section 6.04) unless the Participant, pursuant to the provisions of this Article VI, makes a valid election to receive an alternative form of payment.

(B) Participant Transitional Elections.

(1) **Election to discontinue distributions.** A Participant who: (a) is not a more than 5% owner; (b) had attained age 70 1/2 prior to 1997; (c) had commenced prior to 1997 required minimum distributions under the pre-SBJPA RBD; and (d) has not incurred a Separation from Service, has a continuing election to discontinue receiving distributions from the Plan (which previously were required minimum distributions under the Plan). A Participant who makes an election under this Section 6.02(B)(1) must establish a new annuity starting date when he/she recommences payment of his/her Account Balance under the Plan. A married Participant who is subject to Section 6.04 must obtain spousal consent: (a) to discontinue his/her distributions under this Section 6.04(B)(1) if distributions are in QJSA form; and (b) to recommence benefits in a form other than a QJSA. A Participant may not make any election under this Section 6.02(B)(1) which is inconsistent with any QDRO applicable to the Participant's Account.

(2) **Election to postpone distributions.** A Participant who: (a) is not a more than 5% owner; and (b) attained age 70 1/2 after 1996 (or who attained age 70 1/2 in 1996, but who had not commenced his/her required minimum distributions in 1996) may elect under this Section 6.02(B)(2) to postpone distribution of required minimum distributions until the Participant's RBD established under Section 6.02(A). If the Participant attained age 70 1/2 in 1996, he/she must have elected under this Section 6.02(B)(2) to postpone distributions by December 31, 1997. If the Participant attained age 70 1/2 after 1996, he/she must make the election to postpone distribution under this Section 6.01(B)(2) not later than April 1 of the calendar year following the year in which the Participant attains age 70 1/2.

(3) **Election requirements.** All Participant elections made under this Section 6.01(B) are subject to and must be consistent with the Employer's RBD elections in its Adoption Agreement Appendices A and B. A Participant makes his/her election under this Section

6.02(B) in writing on a form prescribed by the Plan Administrator.

(C) **Minimum Distribution Requirements for Participants.** The Plan Administrator may not direct the Trustee to distribute the Participant's Vested Account Balance, nor may the Participant elect to have the Trustee distribute his/her Vested Account Balance, under a method of payment which, as of the Participant's RBD, does not satisfy the minimum distribution requirements under Code §401(a)(9) and the applicable Treasury regulations.

(1) **Calculation of amount.** The required minimum distribution for a calendar year ("distribution calendar year") equals the Participant's Vested Account Balance as of the latest valuation date preceding the beginning of the distribution calendar year (such valuation date being within the "valuation calendar year") divided by the Participant's life expectancy or, if applicable, the joint and last survivor expectancy of the Participant and his/her designated Beneficiary (as determined under Article VIII, subject to the requirements of Code §401(a)(9)). The Plan Administrator will increase the Participant's Vested Account Balance, as determined on the relevant valuation date, for contributions or forfeitures allocated after the valuation date and by December 31 of the valuation calendar year, and will decrease the valuation by distributions made after the valuation date and by December 31 of the valuation calendar year. For purposes of this valuation, any portion of the required minimum distribution for the first distribution calendar year made after the close of that year is a distribution occurring in that first distribution calendar year.

(2) **Recalculation.** In computing a required minimum distribution, the Plan Administrator must use the unisex life expectancy multiples under Treas. Reg. §1.72-9. The Plan Administrator, only upon the Participant's timely election, will compute the required minimum distribution for a distribution calendar year subsequent to the first distribution calendar year by redetermining ("recalculation" of) the Participant's life expectancy or the Participant's and spouse designated Beneficiary's life expectancies as elected. However, the Plan Administrator may not redetermine the joint life and last survivor expectancy of the Participant and a nonspouse designated Beneficiary in a manner which takes into account any adjustment to a life expectancy other than the Participant's life expectancy. A Participant must elect recalculation under this Section 6.02(C)(2) in writing and on a form the Plan Administrator prescribes, not later than the Participant's RBD.

(3) **Minimum distribution incidental benefit (MDIB).** If the Participant's spouse is not his/her designated Beneficiary, a method of payment to the Participant (whether by Participant election or by Plan Administrator direction) must satisfy the MDIB requirement under Code §401(a)(9) for distributions made on or after the Participant's RBD and before the Participant's death. To satisfy the MDIB requirement, the Plan Administrator will compute the Participant's required minimum distribution by substituting the applicable MDIB divisor for the applicable life expectancy factor, if the MDIB divisor is a lesser number. Following the Participant's death, the Plan Administrator will compute the minimum distribution required by Section 6.02(D) solely

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on the basis of the applicable life expectancy factor and will disregard the MDIB factor.

(4) **Payment due date.** The required minimum distribution for the first distribution calendar year is due by the Participant's RBD. The required minimum distribution for each subsequent distribution calendar year, including the calendar year in which the Participant's RBD occurs, is due by December 31 of that year.

(5) **Nontransferable annuity.** If the Participant receives distribution in the form of a Nontransferable Annuity, the distribution satisfies this Section 6.02(C) if the contract complies with the requirements of Code §401(a)(9).

(D) Minimum Distribution Requirements for Beneficiaries. The method of distribution to the Participant's Beneficiary must satisfy Code §401(a)(9).

(1) **Death after RBD.** If the Participant's death occurs after his/her RBD (or earlier, if the Participant had commenced an irrevocable annuity pursuant to Section 6.04), the Trustee must distribute the Participant's remaining benefit to the Beneficiary at least as rapidly as under the method in effect for the Participant, determined without regard to the MDIB requirements of Section 6.02(C)(3).

(2) **Death prior to RBD.** If the Participant's death occurs prior to his/her RBD (and the Participant had not commenced an irrevocable annuity pursuant to Section 6.04), the method of payment to the Beneficiary, subject to Section 6.04, must provide for completion of payment to the Beneficiary over a period not exceeding: (a) 5 years after the date of the Participant's death; or (b) if the Beneficiary is a designated Beneficiary, the designated Beneficiary's life expectancy. A designated Beneficiary is a Beneficiary designated by the Participant or determined under Section 8.02. The Plan Administrator may not direct payment of the Participant's Vested Account Balance over a period described in clause (b) unless the Trustee will commence payment to the designated Beneficiary no later than the December 31 following the close of the calendar year in which the Participant's death occurred or, if later, and the designated Beneficiary is the Participant's surviving spouse, December 31 of the calendar year in which the Participant would have attained age 70 1/2.

If the Trustee will make distribution in accordance with clause (b) of this Section 6.02(D)(2), the minimum distribution for a distribution calendar year equals the Participant's Vested Account Balance as of the latest valuation date preceding the beginning of the distribution calendar year divided by the designated Beneficiary's life expectancy. The Plan Administrator must use the unisex life expectancy multiples under Treas. Reg. §1.72-9 for purposes of applying this Section 6.02(D).

(3) **Recalculation.** The Plan Administrator, only upon the Participant's election (under Section 6.02(C)(2)) or the Participant's surviving spouse designated Beneficiary's election, will recalculate the life expectancy of the Participant's surviving spouse not more frequently than annually. However, the Plan Administrator may not recalculate the life expectancy of a nonspouse designated Beneficiary after the Trustee commences payment to the

designated Beneficiary. The Plan Administrator will apply this Section 6.02(D) by treating any amount paid to the Participant's child, which becomes payable to the Participant's surviving spouse upon the child's attaining the age of majority, as paid to the Participant's surviving spouse. A surviving spouse designated Beneficiary must elect recalculation under this §6.02(D)(3) in writing and on a form the Plan Administrator prescribes not later than the last day of the spouse's first distribution year.

(4) **Beneficiary election.** If the Participant under Section 6.01(B) had not elected the payment method or payment term, the Participant's Beneficiary must elect the method of distribution no later than the date specified above upon which the Trustee must commence distribution to the Beneficiary. If the Beneficiary fails to elect timely a distribution method, the Plan Administrator must commence distribution within the time required for a Participant who dies without a designated Beneficiary.

(E) Model Amendment. The employer in Appendix B to its Adoption Agreement may elect to apply the following IRS Model Amendment:

With respect to distributions under the Plan made on or after the effective date the Employer specifies in Appendix B to its Adoption Agreement, for calendar years beginning on or after January 1, 2001, the Plan will apply the minimum distribution requirements of section 401(a)(9) of the Internal Revenue Code in accordance with the regulations under section 401(a)(9) that were proposed on January 17, 2001, (the "2001 Proposed Regulations"), notwithstanding any provision of the Plan to the contrary. If the total amount of required minimum distributions made to a Participant for 2001 prior to the Appendix B effective date are equal to or greater than the amount of required minimum distributions determined under the 2001 Proposed Regulations, then no additional distributions are required for such Participant for 2001 on or after such date. If the total amount of required minimum distributions made to a Participant for 2001 prior to the Appendix B effective date are less than the amount determined under the 2001 Proposed Regulations, then the amount of required minimum distributions for 2001 on or after such date will be determined so that the total amount of required minimum distributions for 2001 is the amount determined under the 2001 Proposed Regulations. This amendment shall continue in effect until the last calendar year beginning before the effective date of final regulations under section 401(a)(9) or such other date as may be published by the Internal Revenue Service.

6.03 METHOD OF DISTRIBUTION. Subject to any contrary requirements imposed by Sections 6.01 (including 6.01(C) regarding in-service distributions), 6.02 or 6.04, a Participant or a Beneficiary may elect distribution under one, or any combination, of the following methods: (a) by payment in a lump sum; or (b) by payment in monthly, quarterly or annual installments over a fixed reasonable period of time, not exceeding the life expectancy of the Participant, or the joint life and last survivor expectancy of the Participant and his/her designated Beneficiary. The Employer may elect in its Adoption Agreement to modify the methods of payment available under this Section 6.03.

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If the Employer's Plan is a restated Plan, the Employer in its Adoption Agreement and in accordance with Treas. Reg. §1.411(d)-4, may elect to eliminate from the prior Plan certain Protected Benefits. If the Employer elects or is required to provide an annuity, the annuity must: (1) be a Nontransferable Annuity; and (2) otherwise comply with the Plan terms.

The distribution options permitted under this Section 6.03 are available only if the Participant's Vested Account Balance, as determined under Section 6.01(A)(6), exceeds \$5,000. To facilitate installment payments under this Article VI, the Plan Administrator under Section 9.08(B) may direct the Trustee to segregate all or any part of the Participant's Account Balance in a segregated investment Account. Under an installment distribution, the Participant or the Beneficiary, at any time, may elect to accelerate the payment of all, or any portion, of the Participant's unpaid Vested Account Balance.

Pending final accounting for a valuation date, the Plan Administrator may make a partial distribution to a Participant who has incurred a Separation from Service or to a Beneficiary.

6.04 ANNUITY DISTRIBUTIONS TO PARTICIPANTS AND TO SURVIVING SPOUSES.

(A) Qualified Joint and Survivor Annuity (QJSA). The Plan Administrator must direct the Trustee to distribute a married or unmarried Participant's Vested Account Balance in the form of a QJSA, unless the Participant, and spouse if the Participant is married, waive the QJSA in accordance with Section 6.05. If, as of the annuity starting date, the Participant is married (even if the Participant has not been married throughout the one year period ending on the annuity starting date), a QJSA is an immediate annuity which is purchasable with the Participant's Vested Account Balance and which provides a life annuity for the Participant and a survivor annuity payable for the remaining life of the Participant's surviving spouse equal to 50% of the amount of the annuity payable during the life of the Participant. If, as of the annuity starting date, the Participant is not married, a QJSA is an immediate life annuity for the Participant which is purchasable with the Participant's Vested Account Balance. A life annuity means an annuity payable in equal installments for the life of the Participant that terminates upon the Participant's death.

(B) Qualified Preretirement Survivor Annuity (QPSA). If a married Participant dies prior to his/her annuity starting date, the Plan Administrator will direct the Trustee to distribute a portion of the Participant's Vested Account Balance to the Participant's surviving spouse in the form of a QPSA, unless: (1) the Participant has a valid waiver election (as described in Section 6.06) in effect; or (2) the Participant and his/her spouse were not married throughout the one year period ending on the date of the Participant's death. The Employer in an Addendum to its Adoption Agreement may elect not to apply the one year of marriage requirement in clause (2). A QPSA is an annuity which is purchasable with 50% of the Participant's Vested Account Balance (determined as of the date of the Participant's death) and which is payable for the life of the Participant's surviving spouse. The value of the QPSA is attributable to Employer contributions and to Participant contributions in the same proportion as the Participant's Vested Account

Balance is attributable to those contributions. The portion of the Participant's Vested Account Balance not payable as a QPSA is payable to the Participant's Beneficiary, in accordance with the remaining provisions of this Article VI.

(C) Surviving Spouse Elections. If the Participant's Vested Account Balance which the Trustee would apply to purchase the QPSA exceeds \$5,000, the Participant's surviving spouse may elect to have the Trustee commence payment of the QPSA at any time following the date of the Participant's death, but not later than the mandatory distribution periods described in Section 6.02, and may elect any of the forms of payment described in Section 6.03, in lieu of the QPSA. In the absence of an election by the surviving spouse, the Plan Administrator must direct the Trustee to distribute the QPSA on the earliest administratively practicable date following the close of the Plan Year in which the latest of the following events occurs: (1) the Participant's death; (2) the date the Plan Administrator receives notification of or otherwise confirms the Participant's death; (3) the date the Participant would have attained Normal Retirement Age; or (4) the date the Participant would have attained age 62.

(D) Effect of Waiver. If the Participant has in effect a valid waiver election regarding the QJSA or the QPSA, the Plan Administrator must direct the Trustee to distribute the Participant's Vested Account Balance in accordance with Sections 6.01, 6.02 and 6.03.

(E) Loan Offset. The Plan Administrator will reduce the Participant's Vested Account Balance by any security interest (pursuant to any offset rights authorized by Section 10.03(E)) held by the Plan by reason of a Participant loan, to determine the value of the Participant's Vested Account Balance distributable in the form of a QJSA or QPSA, provided the loan satisfied the spousal consent requirement described in Section 10.03(E).

(F) Effect of QDRO. For purposes of applying this Article VI, a former spouse (in lieu of the Participant's current spouse) is the Participant's spouse or surviving spouse to the extent provided under a QDRO described in Section 6.07. The provisions of this Section 6.04, and of Sections 6.05 and 6.06, apply separately to the portion of the Participant's Vested Account Balance subject to a QDRO and to the portion of the Participant's Vested Account Balance not subject to the QDRO.

(G) Vested Account Balance Not Exceeding \$5,000. The Trustee must distribute in a lump sum, a Participant's Vested Account Balance which the Trustee otherwise under Section 6.04 would apply to provide a QJSA or QPSA benefit, where the Participant's Vested Account Balance determined under Section 6.01(A)(6) does not exceed \$5,000.

(H) Profit Sharing Plan Exception. If this Plan is a profit sharing plan, the Employer in its Adoption Agreement must elect the extent to which the preceding provisions of Section 6.04 apply. The Employer may elect to exempt from the provisions of Section 6.04, all Participants ("Exempt Participants") except the following Participants to whom Section 6.04 must be applied: (1) a Participant as respects whom the Plan is a direct or indirect transferee from a plan subject to the Code §417 requirements and the

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Plan received the transfer after December 31, 1984, unless the transfer is an elective transfer described in Section 13.07; (2) a Participant who elects a life annuity distribution (if Section 13.02 of the Plan requires the Plan to provide a life annuity distribution option); and (3) a Participant whose benefits under a defined benefit plan maintained by the Employer are offset by benefits provided under this Plan. If the Employer elects to apply this Section 6.04 to all Participants, the preceding provisions of this Section 6.04 apply to all Participants without regard to the limitations of this Section 6.04(H). Sections 6.05 and 6.06 only apply to Participants to whom the provisions of this Section 6.04 apply.

6.05 WAIVER ELECTION - QJSA. At least 30 days and not more than 90 days before the Participant's annuity starting date, the Plan Administrator must provide the Participant a written explanation of the terms and conditions of the QJSA, the Participant's right to make, and the effect of, an election to waive the QJSA benefit, the rights of the Participant's spouse regarding the waiver election and the Participant's right to make, and the effect of, a revocation of a waiver election ("QJSA notice"). The Plan does not limit the number of times the Participant may revoke a waiver of the QJSA or make a new waiver during the election period. The Participant (and his/her spouse, if the Participant is married), may revoke an election to receive a particular form of benefit at any time until the annuity starting date.

A married Participant's QJSA waiver election is not valid unless: (a) the Participant's spouse (to whom the survivor annuity is payable under the QJSA), after the Participant has received the QJSA notice, has consented in writing to the waiver election, the spouse's consent acknowledges the effect of the election, and a notary public or the Plan Administrator (or his/her representative) witnesses the spouse's consent; (b) the spouse consents to the alternative form of payment designated by the Participant or to any change in that designated form of payment; and (c) unless the spouse is the Participant's sole primary Beneficiary, the spouse consents to the Participant's Beneficiary designation or to any change in the Participant's Beneficiary designation. The spouse's consent to a waiver of the QJSA is irrevocable, unless the Participant revokes the waiver election. The spouse may execute a blanket consent to the Participant's future payment form election or Beneficiary designation, if the spouse acknowledges the right to limit his/her consent to a specific designation but, in writing, waives that right.

The Plan Administrator will accept as valid a waiver election which does not satisfy the spousal consent requirements if the Plan Administrator establishes the Participant does not have a spouse, the Plan Administrator is not able to locate the Participant's spouse, the Participant is legally separated or has been abandoned (within the meaning of applicable state law) and the Participant has a court order to that effect, or other circumstances exist under which the Secretary of the Treasury will excuse the spousal consent requirement. If the Participant's spouse is legally incompetent to give consent, the spouse's legal guardian (even if the guardian is the Participant) may give consent.

6.06 WAIVER ELECTION - QPSA. The Plan Administrator must provide a written explanation of the QPSA to each married Participant ("QPSA notice"), within

the following period which ends last: (1) the period beginning on the first day of the Plan Year in which the Participant attains age 32 and ending on the last day of the Plan Year in which the Participant attains age 34; (2) a reasonable period after an Employee becomes a Participant; (3) a reasonable period after Section 6.04 of the Plan becomes applicable to the Participant; or (4) a reasonable period after the Plan no longer satisfies the requirements for a fully subsidized benefit. A "reasonable period" described in clauses (2), (3) and (4) is the period beginning one year before and ending one year after the applicable event. If the Participant separates from Service before attaining age 35, clauses (1), (2), (3) and (4) do not apply and the Plan Administrator must provide the QPSA notice within the period beginning one year before and ending one year after the Separation from Service. The QPSA notice must describe, in a manner consistent with Treasury regulations, the terms and conditions of the QPSA and of the waiver of the QPSA, comparable to the QJSA notice required under Section 6.05. The Plan does not limit the number of times the Participant may revoke a waiver of the QPSA or make a new waiver during the election period. The election period for waiver of the QPSA ends on the date of the Participant's death.

A Participant's QPSA waiver election is not valid unless: (a) the Participant makes the waiver election after the Participant has received the QPSA notice and no earlier than the first day of the Plan Year in which he/she attains age 35; and (b) the Participant's spouse (to whom the QPSA is payable) satisfies or is excused from the consent requirements as described in Section 6.05, except the spouse need not consent to the form of benefit payable to the designated Beneficiary. The spouse's consent to the waiver of the QPSA is irrevocable, unless the Participant revokes the waiver election. The spouse also may execute a blanket consent as described in Section 6.05. Irrespective of the time of election requirement described in clause (a), if the Participant separates from Service prior to the first day of the Plan Year in which he/she attains age 35, the Plan Administrator will accept a waiver election as respects the Participant's Account Balance attributable to his/her Service prior to his/her Separation from Service. Furthermore, if a Participant who has not separated from Service makes a valid waiver election, except for the timing requirement of clause (a), the Plan Administrator will accept that election as valid, but only until the first day of the Plan Year in which the Participant attains age 35.

6.07 DISTRIBUTIONS UNDER QUALIFIED DOMESTIC RELATIONS ORDERS (QDRO). Notwithstanding any other provision of this Plan, the Trustee, in accordance with the direction of the Plan Administrator, must comply with the provisions of a QDRO, as defined in Code §414(p), which is issued with respect to the Plan. This Plan specifically permits distribution to an alternate payee under a QDRO at any time, irrespective of whether the Participant has attained his/her earliest retirement age (as defined under Code §414(p)) under the Plan. A distribution to an alternate payee prior to the Participant's attainment of earliest retirement age is available only if: (1) the QDRO specifies distribution at that time or permits an agreement between the Plan and the alternate payee to authorize an earlier distribution; and (2) if the present value of the alternate payee's benefits under the Plan exceeds \$5,000, and the QDRO requires, the alternate payee consents to any

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distribution occurring prior to the Participant's attainment of earliest retirement age. Nothing in this Section 6.07 gives a Participant a right to receive distribution at a time the Plan otherwise does not permit nor does Section 6.07 authorize the alternate payee to receive a form of payment the Plan does not permit.

The Plan Administrator must establish reasonable procedures to determine the qualified status of a domestic relations order. Upon receiving a domestic relations order, the Plan Administrator promptly will notify the Participant and any alternate payee named in the order, in writing, of the receipt of the order and the Plan's procedures for determining the qualified status of the order. Within a reasonable period of time after receiving the domestic relations order, the Plan Administrator must determine the qualified status of the order and must notify the Participant and each alternate payee, in writing, of the Plan Administrator's determination. The Plan Administrator must provide notice under this paragraph by mailing to the individual's address specified in the domestic relations order, or in a manner consistent with DOL regulations.

If any portion of the Participant's Vested Account Balance is payable under the domestic relations order during the period the Plan Administrator is making its determination of the qualified status of the domestic relations order, the Plan Administrator must maintain a separate accounting of the amounts payable. If the Plan Administrator determines the order is a QDRO within 18 months of the date amounts first are payable following receipt of the domestic relations order, the Plan Administrator will direct the Trustee to distribute the payable amounts in accordance with the QDRO. If the Plan Administrator does not make its determination of the qualified status of the order within the 18-month determination period, the Plan Administrator will direct the Trustee to distribute the payable amounts in the manner the Plan would distribute if the order did not exist and will apply the order prospectively if the Plan Administrator later determines the order is a QDRO.

To the extent it is not inconsistent with the provisions of the QDRO, the Plan Administrator under Section 9.08(B) may direct the Trustee to segregate the QDRO amount in a segregated investment account. The Trustee will make any payments or distributions required under this Section 6.07 by separate benefit checks or other separate distribution to the alternate payee(s).

6.08 DEFAULTED LOAN – TIMING OF OFFSET.

If a Participant or a Beneficiary defaults on a Plan loan, the Plan Administrator will determine the timing of the reduction (offset) of the Participant's Vested Account Balance in accordance with this Section 6.08 and the Plan Administrator's loan policy. If, under the loan policy a loan default also is a distributable event under the Plan, the Trustee, at the time of the loan default, will offset the Participant's Vested Account Balance by the lesser of the amount in default (including accrued interest) or the Plan's security interest in that Vested Account Balance. If the loan is from a money purchase pension plan or from a target benefit plan and the loan default is a distributable event under the loan policy, the Trustee will offset the Participant's Account Balance in the manner described above, only if the Participant has incurred a Separation from Service or has attained Normal Retirement Age. If the

loan is under a 401(k) arrangement, to the extent the loan is attributable to the Participant's deferral contributions Account, qualified matching contributions Account, qualified nonelective contributions Account or safe harbor contributions Account, the Trustee will not offset the Participant's Vested Account Balance unless the Participant has incurred a Separation from Service or unless the Participant has attained age 59 1/2.

6.09 HARDSHIP DISTRIBUTION. For purposes of this Plan, unless the Employer in its Adoption Agreement Section 6.01 elects otherwise, a hardship distribution is a distribution on account of one or more of the following immediate and heavy financial needs: (1) expenses for medical care described in Code §213(d) incurred by the Participant, by the Participant's spouse, or by any of the Participant's dependents, or necessary to obtain such medical care; (2) costs directly related to the purchase (excluding mortgage payments) of a principal residence of the Participant; (3) payment of post-secondary education tuition and related educational fees (including room and board), for the next 12-month period, for the Participant, for the Participant's spouse, or for any of the Participant's dependents (as defined in Code §152); (4) payments necessary to prevent the eviction of the Participant from his/her principal residence or the foreclosure on the mortgage of the Participant's principal residence; or (5) any need the Revenue Service prescribes in a revenue ruling, notice or other document of general applicability which satisfies the safe harbor definition of hardship under Treas. Reg. §1.401(k)-1(d)(2)(iv)(A). See Section 14.11(A) if a hardship distribution is from a Participant's elective deferral Account in a 401(k) arrangement. The Employer in its Adoption Agreement Section 6.01 may elect to apply Section 14.11(A) to all Plan hardship distributions. If the Plan permits a hardship distribution from more than one Account type, the Plan Administrator may determine any ordering of a Participant's hardship distribution from the hardship distribution eligible Accounts.

6.10 DIRECT ROLLOVER OF ELIGIBLE ROLLOVER DISTRIBUTIONS.

(A) Participant Election. A Participant (including for this purpose, a former Employee) may elect, at the time and in the manner prescribed by the Plan Administrator, to have any portion of his/her eligible rollover distribution from the Plan paid directly to an eligible retirement plan specified by the Participant in a direct rollover election. For purposes of this Section 6.10, a Participant includes as to their respective interests, a Participant's surviving spouse and the Participant's spouse or former spouse who is an alternate payee under a QDRO.

(B) Rollover and Withholding Notice. At least 30 days and not more than 90 days prior to the Trustee's distribution of an eligible rollover distribution, the Plan Administrator must provide a written notice (including a summary notice as permitted under applicable Treasury regulations) explaining to the distributee the rollover option, the applicability of mandatory 20% federal withholding to any amount not directly rolled over, and the recipient's right to roll over within 60 days after the date of receipt of the distribution ("rollover notice"). If applicable, the rollover notice also must explain the availability of income averaging and the exclusion of net unrealized appreciation. A recipient of an eligible rollover distribution (whether

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he/she elects a direct rollover or elects to receive the distribution), also may elect to receive distribution at any administratively practicable time which is earlier than 30 days (but not less than 7 days if Section 6.04 applies) following receipt of the rollover notice.

(C) **Default rollover.** The Plan Administrator, in the case of a Participant who does not respond timely to the notice described in Section 6.10(B), may make a direct rollover of the Participant's Account (as described in Revenue Ruling 2000-36 or in any successor guidance) in lieu of distributing the Participant's Account.

(D) **Definitions.** The following definitions apply to this Section 6.10:

(1) **Eligible rollover distribution.** An eligible rollover distribution is any distribution of all or any portion of the balance to the credit of the Participant, except an eligible rollover distribution does not include: (a) any distribution which is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the Participant or the joint lives (or joint life expectancies) of the Participant and the Participant's designated beneficiary, or for a specified period of ten years or more; (b) any Code §401(a)(9) required minimum distribution; (c) the portion of any distribution which is not includible in gross income (determined without regard to the exclusion of net unrealized appreciation with respect to employer securities); (d) any hardship distribution made after December 31, 1998, from a Participant's deferral contributions Account (except where the Participant also satisfies a non-hardship distribution event described in Section 14.03(d)); and (e) any distribution which otherwise would be an eligible rollover distribution, but where the total distributions to the Participant during that calendar year are reasonably expected to be less than \$200.

(2) **Eligible retirement plan.** An eligible retirement plan is an individual retirement account described in Code §408(a), an individual retirement annuity described in Code §408(b), an annuity plan described in

Code §403(a), or a qualified trust described in Code §401(a), which accepts the Participant's or alternate payee's eligible rollover distribution. However, in the case of an eligible rollover distribution to the surviving spouse, an eligible retirement plan is either an individual retirement account or individual retirement annuity.

(3) **Direct rollover.** A direct rollover is a payment by the Plan to the eligible retirement plan specified by the distributee.

6.11 TEFRA ELECTIONS. Notwithstanding the provisions of Sections 6.01, 6.02 and 6.03, if the Participant (or Beneficiary) signed a written distribution designation prior to January 1, 1984, ("TEFRA election") the Plan Administrator must direct the Trustee to distribute the Participant's Vested Account Balance in accordance with that election, subject however, to the survivor annuity requirements, if applicable, of Sections 6.04, 6.05 and 6.06. This Section 6.11 does not apply to a TEFRA election, and the Plan Administrator will not comply with that election, if any of the following applies: (1) the elected method of distribution would have disqualified the Plan under Code §401(a)(9) as in effect on December 31, 1983; (2) the Participant did not have an Account Balance as of December 31, 1983; (3) the election does not specify the timing and form of the distribution and the death Beneficiaries (in order of priority); (4) the substitution of a Beneficiary modifies the distribution payment period; or, (5) the Participant (or Beneficiary) modifies or revokes the election. In the event of a revocation, the Trustee must distribute, no later than December 31 of the calendar year following the year of revocation, the amount which the Participant would have received under Section 6.02 if the distribution designation had not been in effect or, if the Beneficiary revokes the distribution designation, the amount which the Beneficiary would have received under Section 6.02 if the distribution designation had not been in effect. The Plan Administrator will apply this Section 6.11 to rollovers and transfers in accordance with Part J of the Code §401(a)(9) Treasury regulations.

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**ARTICLE VII
EMPLOYER ADMINISTRATIVE PROVISIONS**

7.01 INFORMATION TO PLAN ADMINISTRATOR. The Employer must supply current information to the Plan Administrator as to the name, date of birth, date of employment, Compensation, leaves of absence, Years of Service and date of Separation from Service of each Employee who is, or who will be eligible to become, a Participant under the Plan, together with any other information which the Plan Administrator considers necessary to administer properly the Plan. The Employer's records as to the current information the Employer furnishes to the Plan Administrator are conclusive as to all persons.

7.02 NO RESPONSIBILITY FOR OTHERS. Except as required under ERISA, the Employer has no responsibility or obligation under the Plan to Employees, Participants or Beneficiaries for any act (unless the Employer also serves in such capacities) required of the Plan Administrator, the Trustee, the Custodian, or of any other service provider to the Plan.

7.03 INDEMNITY OF CERTAIN FIDUCIARIES. The Employer will indemnify, defend and hold harmless the Plan Administrator from and against any and all loss resulting from liability to which the Plan Administrator may be subjected by reason of any act or omission (except willful misconduct or gross negligence) in its official capacities in the administration of this Trust or Plan or both, including attorneys' fees and all other expenses reasonably incurred in the Plan Administrator's defense, in case the Employer fails to provide such defense. The indemnification provisions of this Section 7.03 do not relieve the Plan Administrator from any liability the Plan Administrator may have under ERISA for breach of a fiduciary duty. Furthermore, the Plan Administrator and the Employer may execute a written agreement further delineating the indemnification agreement of this Section 7.03, provided the agreement is consistent with and does not violate ERISA. The indemnification provisions of this Section 7.03 extend to any Trustee, third party administrator, Custodian or other Plan service provider solely to the extent provided by a written agreement executed by such persons and the Employer.

7.04 EMPLOYER DIRECTION OF INVESTMENT. The Employer has the right to direct the Trustee with respect to the investment and re-investment of assets comprising the Trust Fund only if and to the extent the Trustee consents in writing to permit such direction.

7.05 EVIDENCE. Anyone including the Employer, required to give data, statements or other information relevant under the terms of the Plan ("evidence") may do so by certificate, affidavit, document or other form which the person to act in reliance may consider pertinent, reliable and genuine, and to have been signed, made or presented by the proper party or parties. The Plan Administrator and the Trustee are protected fully in acting and relying upon any evidence described under the immediately preceding sentence.

7.06 PLAN CONTRIBUTIONS. The Employer is solely responsible to determine the proper amount of any Employer contribution it makes to the Plan and for the

timely deposit to the Trust of the Employer's Plan contributions.

7.07 EMPLOYER ACTION. The Employer must take any action under the Plan in accordance with applicable Plan provisions and with proper authority such that the action is valid and under applicable law and is binding upon the Employer.

7.08 FIDUCIARIES NOT INSURERS. The Trustee, the Plan Administrator and the Employer in no way guarantee the Trust Fund from loss or depreciation. The Employer does not guarantee the payment of any money which may be or becomes due to any person from the Trust Fund. The liability of the Employer, the Plan Administrator and the Trustee to make any payment from the Trust Fund at any time and all times is limited to the then available assets of the Trust.

7.09 PLAN TERMS BINDING. The Plan is binding upon the Employer, Trustee, Plan Administrator, Custodian (and all other service providers to the Plan), upon Participants, Beneficiaries and all other persons entitled to benefits, and upon the successors and assigns of the foregoing persons.

7.10 WORD USAGE. Words used in the masculine also apply to the feminine where applicable, and wherever the context of the Plan dictates, the plural includes the singular and the singular includes the plural. Titles of Plan and Adoption Agreement sections are for reference only.

7.11 STATE LAW. The law of the state of the Employer's principal place of business will determine all questions arising with respect to the provisions of the Plan, except to the extent superseded by ERISA or other federal law. The Employer in an Addendum to its Adoption Agreement and subject to applicable law, may elect to apply the law of another state.

7.12 PROTOTYPE PLAN STATUS. If the Plan fails initially to qualify or to maintain qualification or if the Employer makes any amendment or modification to a provision of the Plan (other than a proper completion of an elective provision under the Adoption Agreement or the attachment of an Addendum authorized by the Plan or by the Adoption Agreement), the Employer no longer may participate under this Prototype Plan. The Employer also may not participate (or continue to participate) in this Prototype Plan if the Trustee or Custodian does not have the written consent of the Prototype Plan Sponsor required under Section 1.33 to serve in the capacity of Trustee or Custodian. If the Employer is not entitled to participate under this Prototype Plan, the Plan is an individually-designed plan and the reliance procedures specified in the applicable Adoption Agreement no longer apply.

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7.13 EMPLOYMENT NOT GUARANTEED.

Nothing contained in this Plan, or with respect to the establishment of the Trust, or any modification or any amendment to the Plan or Trust, or in the creation of any Account, or with respect to the payment of any benefit, gives any Employee, Participant or any Beneficiary any

right to employment or to continued employment by the Employer, or any legal or equitable right against the Employer, the Trustee, the Plan Administrator or any employee or agent thereof, except as expressly provided by the Plan, the Trust, ERISA or other applicable law.

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ARTICLE VIII
PARTICIPANT ADMINISTRATIVE PROVISIONS

8.01 **BENEFICIARY DESIGNATION.** A Participant from time to time may designate, in writing, any person(s) (including a trust or other entity), contingently or successively, to whom the Trustee will pay the Participant's Vested Account Balance (including any life insurance proceeds payable to the Participant's Account) in the event of death. A Participant also may designate the form and method of payment of his/her Account. The Plan Administrator will prescribe the form for the Participant's written designation of Beneficiary and, upon the Participant's filing the form with the Plan Administrator, the form effectively revokes all designations filed prior to that date by the same Participant. A divorce decree, or a decree of legal separation, revokes the Participant's designation, if any, of his/her spouse as his/her Beneficiary under the Plan unless: (1) the decree or a QDRO provides otherwise; or (2) the Employer provides otherwise in an Addendum to its Adoption Agreement. The foregoing revocation provision (if applicable) applies only with respect to a Participant whose divorce or legal separation becomes effective on or following the date the Employer executes this Plan, unless the Employer in its Adoption Agreement specifies a different effective date.

(A) **Coordination with Survivor Annuity Requirements.** If Section 6.04 applies to the Participant, this Section 8.01 does not impose any special spousal consent requirements on the Participant's Beneficiary designation unless the Participant waives the QJSA or QPSA benefit. If the Participant waives the QJSA or QPSA benefit without spousal consent to the Participant's Beneficiary designation: (1) any waiver of the QJSA or of the QPSA is not valid; and (2) if the Participant dies prior to his/her annuity starting date, the Participant's Beneficiary designation will apply only to the portion of the death benefit which is not payable as a QPSA. Regarding clause (2), if the Participant's surviving spouse is a primary Beneficiary under the Participant's Beneficiary designation, the Trustee will satisfy the spouse's interest in the Participant's death benefit first from the portion which is payable as a QPSA.

(B) **Profit Sharing Plan Exception.** If the Plan is a profit sharing plan, the Beneficiary designation of a married Exempt Participant, as described in Section 6.04(H), is not valid unless the Participant's spouse consents (in a manner described in Section 6.05) to the Beneficiary designation. The spousal consent requirement in this Section 8.01(B) does not apply if the Participant's spouse is the Participant's sole primary Beneficiary, or if the Exempt Participant and his/her spouse are not married throughout the one-year period ending on the date of the Participant's death.

(C) **Incapacity of Beneficiary.** If, in the opinion of the Plan Administrator, a Beneficiary is not able to care for his/her affairs because of a mental condition, physical condition or by reason of age, the Plan Administrator will apply the provisions of Section 10.09.

8.02 **NO BENEFICIARY DESIGNATION/DEATH OF BENEFICIARY.** If a Participant fails to name a Beneficiary in accordance with Section 8.01, or if the Beneficiary named by a Participant predeceases the Participant, then the Trustee will pay the Participant's

Vested Account Balance in accordance with Section 6.03 in the following order of priority (unless the Employer specifies a different order of priority in an Addendum to its Adoption Agreement), to:

- (a) The Participant's surviving spouse (without regard to the one-year marriage rule of Sections 6.04(B) and 8.01(B); and if no surviving spouse to
- (b) The Participant's children (including adopted children), in equal shares by right of representation (one share for each surviving child and one share for each child who predeceases the Participant with living descendants); and if none to
- (c) The Participant's surviving parents, in equal shares; and if none to
- (d) The Participant's estate.

If the Beneficiary survives the Participant, but dies prior to distribution of the Participant's entire Vested Account Balance, the Trustee will pay the remaining Vested Account Balance to the Beneficiary's estate unless: (1) the Participant's Beneficiary designation provides otherwise; (2) the Beneficiary has properly designated a beneficiary; or (3) the Employer provides otherwise in an Addendum to its Adoption Agreement. A Beneficiary only may designate a beneficiary for the Participant's Account Balance remaining at the Beneficiary's death, if the Participant has not previously designated a successive contingent beneficiary and the Beneficiary's designation otherwise complies with the Plan terms. If the Plan is a profit sharing plan, and the Plan includes Exempt Participants, the Employer may not specify a different order of priority in an Addendum unless the Participant's surviving spouse will be the sole primary Beneficiary in the different order of priority. The Plan Administrator will direct the Trustee as to the method and to whom the Trustee will make payment under this Section 8.02.

8.03 **ASSIGNMENT OR ALIENATION.** Except as provided in Code §414(p) relating to QDROs and in Code §401(a)(13) relating to certain voluntary, revocable assignments, judgments and settlements, neither a Participant nor a Beneficiary may anticipate, assign or alienate (either at law or in equity) any benefit provided under the Plan, and the Trustee will not recognize any such anticipation, assignment or alienation. Furthermore, except as provided by Code §401(a)(13) or other applicable law, a benefit under the Plan is not subject to attachment, garnishment, levy, execution or other legal or equitable process.

8.04 **INFORMATION AVAILABLE.** Any Participant or Beneficiary may examine copies of the Plan description, latest annual report, any bargaining agreement, this Plan and Trust, and any contract or any other instrument which relates to the establishment or administration of the Plan or Trust. The Plan Administrator will maintain all of the items listed in this Section 8.04 in its office, or in such other place or places as it may designate from time to time in order to comply with the regulations issued under ERISA, for examination during reasonable business hours. Upon

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the written request of a Participant or a Beneficiary, the Plan Administrator must furnish the Participant or Beneficiary with a copy of any item listed in this Section 8.04. The Plan Administrator may make a reasonable copying charge to the requesting person.

8.05 CLAIMS PROCEDURE FOR DENIAL OF BENEFITS. A Participant or a Beneficiary may file with the Plan Administrator a written claim for benefits, if the Participant or the Beneficiary disputes the Plan Administrator's determination regarding the Participant's or Beneficiary's Plan benefit. However, the Plan will distribute only such Plan benefits to Participants or Beneficiaries as the Plan Administrator in its discretion determines a Participant or Beneficiary is entitled to. The Plan Administrator will maintain a separate written document as part of (or which accompanies) the Plan's summary plan description explaining the Plan's claims procedure. This Section 8.05 specifically incorporates the written claims procedure as from time to time published by the Plan Administrator as a part of the Plan. If the Plan Administrator pursuant to the Plan's written claims procedure makes a final written determination denying a Participant's or Beneficiary's benefit claim, the Participant or Beneficiary to preserve the claim must file an action with respect to the denied claim not later than 180 days following the date of the Plan Administrator's final determination.

8.06 PARTICIPANT DIRECTION OF INVESTMENT. A Participant's direction of the investment of his/her Account is subject to the provisions of this Section 8.06. For purposes of this Section 8.06, a Participant shall also include a Beneficiary where the Beneficiary has succeeded to the Participant's Account and the Plan affords the Beneficiary the same self-direction or loan rights as a Participant.

(A) Trustee Authorization and Procedures. A Participant has the right to direct the Trustee with respect to the investment or re-investment of the assets comprising the Participant's individual Account only if the Trustee consents in writing to permit such direction. If the Trustee consents to Participant direction of investment, the Trustee only will accept direction from each Participant on a

written direction of investment from the Plan Administrator provides for this purpose. The Trustee, or with the Trustee's consent, the Plan Administrator, may establish written procedures relating to Participant direction of investment under this Section 8.06, including procedures or conditions for electronic transfers or for changes in investments by Participants. The Plan Administrator will maintain, or direct the Trustee to maintain, an appropriate individual investment Account to the extent a Participant's Account is subject to Participant self-direction.

(B) ERISA §404(c). No Plan fiduciary (including the Employer and Trustee) is liable for any loss or for any breach resulting from a Participant's direction of the investment of any part of his/her directed Account to the extent the Participant's exercise of his/her right to direct the investment of his/her Account satisfies the requirements of ERISA §404(c).

(C) Participant Loans. The Plan Administrator, to the extent provided in a written loan policy adopted under Section 9.04, will treat a Plan loan made to a Participant as a Participant direction of investment under this Section 8.06, even if the Plan otherwise does not permit a Participant to direct his/her Account investments. Where a loan is treated as a directed investment, the borrowing Participant's Account alone shares in any interest paid on the loan, and it alone bears any expense or loss it incurs in connection with the loan. The Trustee may retain any principal or interest paid on the borrowing Participant's loan in a segregated Account (as described in Section 9.08(B)) on behalf of the borrowing Participant until the Trustee (or the Named Fiduciary, in the case of a nondiscretionary Trustee) deems it appropriate to add the loan payments to the Participant's Account under the Plan.

(D) Collectibles. If the Trustee consents to Participant direction of investment of his/her Account, any post-December 31, 1981, investment by a Participant's directed Account in collectibles (as defined by Code §408(m)) is a deemed distribution to the Participant for Federal income tax purposes.

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**ARTICLE IX
PLAN ADMINISTRATOR**

9.01 COMPENSATION AND EXPENSES. The Plan Administrator (and any individuals serving as Plan Administrator) will serve without compensation for services as such, but the Employer will pay all expenses of the Plan Administrator, except to the extent the Trustee properly pays for such expenses, pursuant to Article X.

9.02 RESIGNATION AND REMOVAL. If the Employer appoints one or more persons to serve as Plan Administrator, such person(s) shall serve until they resign by written notice to the Employer or until the Employer removes them by written notice. In case of a vacancy in the position of Plan Administrator, the Employer will exercise any and all of the powers, authority, duties and discretion conferred upon the Plan Administrator pending the filling of the vacancy.

9.03 GENERAL POWERS AND DUTIES. The Plan Administrator has the following general powers and duties which are in addition to those the Plan otherwise accords to the Plan Administrator:

- (a) To determine the rights of eligibility of an Employee to participate in the Plan, all factual questions that arise in the course of administering the Plan, the value of a Participant's Account Balance (based on the value of the Trust assets, as determined by the Trustee) and the Vested percentage of each Participant's Account Balance;
- (b) To adopt rules of procedure and regulations necessary for the proper and efficient administration of the Plan, provided the rules are not inconsistent with the terms of the Plan, the Code, ERISA or other applicable law;
- (c) To construe and enforce the terms of the Plan and the rules and regulations the Plan Administrator adopts, including interpretation of the basic plan document, the Adoption Agreement and any document related to the Plan's operation;
- (d) To direct the Trustee regarding the crediting and distribution of the Trust Fund and to direct the Trustee to conduct interim valuations under Section 10.15;
- (e) To review and render decisions regarding a claim for (or denial of a claim for) a benefit under the Plan;
- (f) To furnish the Employer with information which the Employer may require for tax or other purposes;
- (g) To engage the service of agents whom the Plan Administrator may deem advisable to assist it with the performance of its duties;
- (h) To engage the services of an Investment Manager or Managers (as defined in ERISA §3(38)), each of whom will have full power and authority to manage, acquire or dispose (or direct the Trustee with respect to acquisition or disposition) of any Plan asset under such Manager's control;

(i) To make any other determinations and undertake any other actions the Plan Administrator believes are necessary or appropriate for the administration of the Plan; and

(j) To establish and maintain a funding standard account and to make credits and charges to the account to the extent required by and in accordance with the provisions of the Code.

The Plan Administrator must exercise all of its powers, duties and discretion under the Plan in a uniform and nondiscriminatory manner. The Plan Administrator shall have total and complete discretion to interpret and construe the Plan and to determine all questions arising in the administration, interpretation and application of the Plan. Any determination the Plan Administrator makes under the Plan is final and binding upon any affected person.

9.04 PLAN LOANS. The Plan Administrator may, in its sole discretion, in accordance with Section 10.03(E) establish, amend or terminate from time to time, a nondiscriminatory policy which the Trustee must observe in making Plan loans, if any, to Participants and to Beneficiaries. If the Plan Administrator adopts a loan policy, the loan policy must be a written document and must include: (1) the identity of the person or positions authorized to administer the participant loan program; (2) the procedure for applying for a loan; (3) the criteria for approving or denying a loan; (4) the limitations, if any, on the types and amounts of loans available; (5) the procedure for determining a reasonable rate of interest; (6) the types of collateral which may secure the loan; and (7) the events constituting default and the steps the Plan will take to preserve Plan assets in the event of default. A loan policy the Plan Administrator adopts under this Section 9.04 is part of the Plan, except that the Plan Administrator may amend or terminate the policy without regard to Section 13.02.

9.05 FUNDING POLICY. The Plan Administrator will review, not less often than annually, all pertinent Employee information and Plan data in order to establish the funding policy of the Plan and to determine the appropriate methods of carrying out the Plan's objectives. The Plan Administrator must communicate periodically, as it deems appropriate, to the Trustee and to any Plan Investment Manager the Plan's short-term and long-term financial needs for the coordination of the Plan's investment policy with Plan financial requirements.

9.06 INDIVIDUAL ACCOUNTS. The Plan Administrator will maintain, or direct the Trustee to maintain, a separate Account, or multiple Accounts, in the name of each Participant to reflect the Participant's Account Balance under the Plan.

(A) Forfeitures. If a Participant re-enters the Plan subsequent to his/her having a Forfeiture Break in Service, the Plan Administrator, or the Trustee, must maintain a separate Account for the Participant's pre-Forfeiture Break in Service Account Balance and a separate Account for his post-Forfeiture Break in Service Account Balance, unless

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the Participant's entire Account Balance under the Plan is 100% Vested.

If the Plan is subject to Participant direction of investment under Section 8.06, the Plan Administrator may maintain, or may direct the Trustee to maintain, a separate temporary forfeiture Account in the name of the Plan to account for Participant forfeitures which occur during the Plan Year. The Trustee will direct the investment of any separate temporary forfeiture Account. As of each Accounting Date, or interim valuation date, if applicable, the Plan Administrator will allocate the net income, gain or loss from the temporary forfeiture Account, if any, to the Accounts of the Participants in accordance with the provisions of Section 9.08.

(B) Net Income, Gain or Loss. The Plan Administrator will make its allocations of net income, gain or loss or request the Trustee to make its allocations, to the Accounts of the Participants in accordance with the provisions of Section 9.08. The Plan Administrator may direct the Trustee under Section 9.08(B) to maintain a temporary segregated investment Account in the name of a Participant to prevent a distortion of income, gain or loss allocations. The Plan Administrator must maintain records of its activities.

9.07 VALUE OF PARTICIPANT'S ACCOUNT BALANCE. If any or all Plan investment accounts are pooled, each Participant's Account has an undivided interest in the assets comprising the pooled account. In a pooled account, the value of each Participant's Account Balance consists of that proportion of the net worth (at fair market value) of the Trust Fund which the net credit balance in his/her Account (exclusive of the cash value of incidental benefit insurance contracts) bears to the total net credit balance in the Accounts (exclusive of the cash value of the incidental benefit insurance contracts) of all Participants plus the cash surrender value of any incidental benefit insurance contracts held by the Trustee on the Participant's life. If any or all Plan investment accounts are Participant directed, the directing Participant's Account Balance is comprised of the assets held within the Account and the value of the Account is the fair market value of such assets. For purposes of a distribution under the Plan, the value of a Participant's Account Balance is its value as of the valuation date immediately preceding the date of the distribution.

9.08 ALLOCATION AND DISTRIBUTION OF NET INCOME, GAIN OR LOSS. This Section 9.08 applies solely to the allocation of net income, gain or loss of the Trust Fund. The Plan Administrator will allocate Employer contributions and Participant forfeitures, if any, in accordance with Article III.

A "valuation date" under this Plan is each: (1) Accounting Date; (2) valuation date the Employer elects in its Adoption Agreement Section 10.15; or (3) valuation date the Plan Administrator establishes under Section 9.03. The Employer in its Adoption Agreement Section 10.15 or the Plan Administrator may elect alternative valuation dates for the different Account types which the Plan Administrator maintains under the Plan. As of each valuation date, the Plan Administrator must adjust Accounts to reflect net income, gain or loss since the last valuation date. The

valuation period is the period beginning on the day after the last valuation date and ending on the current valuation date.

The Plan Administrator will allocate net income, gain or loss to the Participant Accounts in accordance with the daily valuation method, balance forward method, weighted average method, or other method the Employer elects under its Adoption Agreement. The Employer in its Adoption Agreement may elect alternative methods under which the Plan Administrator will allocate the net income, gain or loss to the different Account types which the Plan Administrator maintains under the Plan. If the Employer in its Adoption Agreement elects to apply a weighted average allocation method, the Plan Administrator will treat a weighted portion of the applicable contributions as if includible in the Participant's Account as of the beginning of the valuation period. The weighted portion is a fraction, the numerator of which is the number of months in the valuation period, excluding each month in the valuation period which begins prior to the contribution date of the applicable contributions, and the denominator of which is the number of months in the valuation period. The Employer in its Adoption Agreement may elect to substitute a weighting period other than months for purposes of this weighted average allocation. If the Employer in its Adoption Agreement elects to apply the daily valuation method, the Plan Administrator will allocate the net income, gain or loss on each day of the Plan Year for which Plan assets are valued on an established market and the Trustee is conducting business. If the Employer in its Adoption Agreement elects to apply the balance forward method, the Plan Administrator first will adjust the Participant Accounts, as those Accounts stood at the beginning of the current valuation period, by reducing the Accounts for any forfeitures arising under the Plan, for amounts charged during the valuation period to the Accounts in accordance with Section 9.10 (relating to distributions and to loan disbursement payments) and Section 11.01 (relating to insurance premiums), and for the cash value of incidental benefit insurance contracts. The Plan Administrator then, subject to the restoration allocation requirements of the Plan, will allocate the net income, gain or loss pro rata to the adjusted Participant Accounts. The allocable net income, gain or loss is the net income (or net loss), including the increase or decrease in the fair market value of assets, since the last valuation date.

(A) Trust Fund (Pooled) Investment Accounts. A pooled investment account is an Account which is not a segregated investment Account or an individual investment Account.

(B) Segregated Investment Accounts. A segregated investment Account receives all income it earns and bears all expense or loss it incurs. Pursuant to the Plan Administrator's direction, the Trustee may establish for a Participant a segregated investment Account to prevent a distortion of Plan income, gain or loss allocations or for such other purposes as the Plan Administrator may direct. The Trustee will invest the assets of a segregated investment Account consistent with such purposes. As of each valuation date, the Plan Administrator must reduce a segregated Account for any forfeiture arising under Section 5.09 after the Plan Administrator has made all other allocations, changes or adjustments to the Account for the valuation period.

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(C) Individual (Directed) Investment Accounts. An individual investment Account is an Account which is subject to Participant or Beneficiary self-direction under Section 8.06. An individual investment Account receives all income it earns and bears all expense or loss it incurs. As of each valuation date, the Plan Administrator must reduce an individual Account for any forfeiture arising from Section 5.09 after the Plan Administrator has made all other allocations, changes or adjustment to the Account for the valuation period.

(D) Code §415 Excess Amounts. An Excess Amount or suspense account described in Part 2 of Article III does not share in the allocation of net income, gain or loss described in this Section 9.08.

(E) Interest Adjustment. Any distribution (other than a distribution from a segregated or individual Account) made to a Participant or Beneficiary more than 90 days after the most recent valuation date may include interest on the amount of the distribution as an expense of the Trust Fund. The interest, if any, accrues from such valuation date to the date of the distribution at the rate the Employer specifies in its Adoption Agreement.

(F) Contributions Prior to Accrual. If the Employer in its Adoption Agreement elects to impose one or more allocation conditions under Section 3.06 and the Employer contributes to the Plan amounts which at the time of the contribution have not accrued under the Plan terms ("pre-accrual contributions"), the Trustee will hold the pre-accrual contributions in the Trust and will invest such contributions as the Trustee determines, pending accrual and allocation to Participant Accounts. When the Plan Administrator allocates to Participants who have satisfied the Plan's allocation conditions the Employer's pre-accrual contributions, the Plan Administrator also will allocate the net income, gain or loss thereon pro rata in relation to each Participant's share of the pre-accrual contribution.

9.09 INDIVIDUAL STATEMENT. As soon as practicable after the Accounting Date of each Plan Year, but within the time prescribed by ERISA and the regulations under ERISA, the Plan Administrator will deliver to each Participant (and to each Beneficiary) a statement reflecting the condition of his/her Account Balance in the Trust as of that date and such other information ERISA requires be furnished the Participant or the Beneficiary. No Participant, except the Plan Administrator, has the right to inspect the records reflecting the Account of any other Participant.

9.10 ACCOUNT CHARGED. The Plan Administrator will charge a Participant's Account for all distributions made from that Account to the Participant, to his/her Beneficiary or to an alternate payee, including a disbursement payment for a Participant loan. The Plan Administrator, except as prohibited by the Code or ERISA, also will charge a Participant's Account for any reasonable administrative expenses incurred by the Plan directly related to that Account.

9.11 LOST PARTICIPANTS. If the Plan Administrator is unable to locate any Participant or Beneficiary whose Account becomes distributable under Article VI or under Section 13.06 (a "lost Participant"), the

Plan Administrator will apply the provisions of this Section 9.11.

(A) Attempt to Locate. The Plan Administrator will use one or more of the following methods to attempt to locate a lost Participant: (1) provide a distribution notice to the lost Participant at his/her last known address by certified or registered mail; (2) use of the IRS letter forwarding program under Rev. Proc. 94-22; (3) use of a commercial locator service, the internet or other general search method; or (4) use of the Social Security Administration search program.

(B) Failure to Locate. If a lost Participant remains unlocated for 6 months following the date of the Plan Administrator first attempts to locate the lost Participant using one or more of the methods described in Section 9.11(A), the Plan Administrator may forfeit the lost Participant's Account. If the Plan Administrator will forfeit the lost Participant's Account, the forfeiture occurs at the end of the above-described 6 month period and the Plan Administrator will allocate the forfeiture in accordance with Section 3.05. If a lost Participant whose Account was forfeited thereafter at any time but before the Plan has been terminated makes a claim for his/her forfeited Account, the Plan Administrator will restore the forfeited Account to the same dollar amount as the amount forfeited, unadjusted for net income, gains or losses occurring subsequent to the forfeiture. The Plan Administrator will make the restoration in the Plan Year in which the lost Participant makes the claim, first from the amount, if any, of Participant forfeitures the Plan Administrator otherwise would allocate for the Plan Year, then from the amount, if any, of Trust net income or gain for the Plan Year and last from the amount or additional amount the Employer contributes to the Plan for the Plan Year. The Plan Administrator will distribute the restored Account to the lost Participant not later than 60 days after the close of the Plan Year in which the Plan Administrator restores the forfeited Account. The Plan Administrator under this Section 9.11(B) will forfeit the entire Account of the lost Participant, including deferral contributions and Participant contributions.

(C) Nonexclusivity and Uniformity. The provisions of Section 9.11 are intended to provide permissible but not exclusive means for the Plan Administrator to administer the Accounts of lost Participants. The Plan Administrator may utilize any other reasonable method to locate lost Participants and to administer the Accounts of lost Participants, including the default rollover under Section 6.10(C) and such other methods as the Revenue Service or the U.S. Department of Labor ("DOL") may in the future specify. The Plan Administrator will apply Section 9.11 in a reasonable, uniform and nondiscriminatory manner, but may in determining a specific course of action as to a particular Account, reasonably take into account differing circumstances such as the amount of a lost Participant's Account, the expense in attempting to locate a lost Participant, the Plan Administrator's ability to establish and the expense of establishing a rollover IRA, and other factors. The Plan Administrator may charge to the Account of a lost Participant the reasonable expenses incurred under this Section 9.11 and which are associated with the lost Participant's Account.

9.12 PLAN CORRECTION. The Plan Administrator in conjunction with the Employer may undertake such

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correction of Plan errors as the Plan Administrator deems necessary, including correction to preserve tax qualification of the Plan under Code §401(a) or to correct a fiduciary breach under ERISA. Without limiting the Plan Administrator's authority under the prior sentence, the Plan Administrator, as it determines to be reasonable and appropriate, may undertake correction of Plan document, operational, demographic and employer eligibility failures under a method described in the Plan or under the Employee Plans Compliance Resolution System ("EPCRS") or any successor program to EPCRS. The Plan Administrator, as it determines to be reasonable and appropriate, also may undertake or assist the appropriate fiduciary or plan official in undertaking correction of a fiduciary breach, including correction under the Voluntary Fiduciary Correction Program ("VFC") or any successor program to VFC. If the Plan includes a 401(k) arrangement, the Plan Administrator to correct an operational error may require the Trustee to distribute from the Plan elective deferrals or vested matching contributions, including earnings, where such amounts result from an operational error other than a failure of Code §415, Code §402(g), a failure of the ADP or ACP tests, or a failure of the multiple use limitation.

9.13 NO RESPONSIBILITY FOR OTHERS. Except as required under ERISA, the Plan Administrator has no responsibility or obligation under the Plan to Participants or Beneficiaries for any act (unless the Plan Administrator also serves in such capacities) required of the Employer, the Trustee, the Custodian or of any other service provider to the Plan. The Plan Administrator is not responsible to collect any required plan contribution or to determine the correctness or deductibility of any Employer contribution. The Plan Administrator in administering the Plan is entitled to, but is not required to rely upon, information which a Participant, Beneficiary, Trustee, Custodian, the Employer, a Plan service provider or representatives thereof provide to the Plan Administrator.

9.14 NOTICE, DESIGNATION, ELECTION, CONSENT AND WAIVER. All notices under the Plan and all Participant or Beneficiary designations, elections, consents or waivers must be in writing and made in a form the Plan Administrator specifies or otherwise approves. To the extent permitted by Treasury regulations or other applicable guidance, any Plan notice, election, consent or waiver may be transmitted electronically. Any person entitled to notice under the Plan may waive the notice or shorten the notice period except as otherwise required by the Code or ERISA.

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**ARTICLE X
TRUSTEE AND CUSTODIAN, POWERS AND DUTIES**

10.01 ACCEPTANCE. The Trustee accepts the Trust created under the Plan and agrees to perform the obligations imposed. The Trustee must provide bond for the faithful performance of its duties under the Trust to the extent required by ERISA.

10.02 RECEIPT OF CONTRIBUTIONS. The Trustee is accountable to the Employer for the Plan contributions made by the Employer, but the Trustee does not have any duty to ensure that the contributions received comply with the provisions of the Plan. The Trustee is not obliged to collect any contributions from the Employer, nor is the Trustee obliged to ensure that funds deposited with it are deposited according to the provisions of the Plan.

10.03 INVESTMENT POWERS.

(A) Discretionary Trustee Designation. If the Employer, in its Adoption Agreement, designates the Trustee to administer the Trust as a discretionary Trustee, then the Trustee has full discretion and authority with regard to the investment of the Trust Fund, except with respect to a Plan asset under the control or the direction of a properly appointed Investment Manager or with respect to a Plan asset properly subject to Employer, or to Participant direction of investment. The Trustee must coordinate its investment policy with Plan financial needs as communicated to it by the Plan Administrator. The Trustee is authorized and empowered, but not by way of limitation, with the following powers, rights and duties:

(a) To invest consistent with and subject to applicable law any part or all of the Trust Fund in any common or preferred stocks, open-end or closed-end mutual funds (including proprietary funds), put and call options traded on a national exchange, United States retirement plan bonds, corporate bonds, debentures, convertible debentures, commercial paper, U.S. Treasury bills, U.S. Treasury notes and other direct or indirect obligations of the United States Government or its agencies, improved or unimproved real estate situated in the United States, limited partnerships, insurance contracts of any type, mortgages, notes or other property of any kind, real or personal, to buy or sell options on common stock on a nationally recognized exchange with or without holding the underlying common stock, to open and to maintain margin accounts, to engage in short sales, to buy and sell commodities, commodity options and contracts for the future delivery of commodities, and to make any other investments the Trustee deems appropriate, as a prudent person would do under like circumstances with due regard for the purposes of this Plan. Any investment made or retained by the Trustee in good faith is proper but must be of a kind constituting a diversification considered by law suitable for trust investments.

(b) To retain in cash so much of the Trust Fund as it may deem advisable to satisfy liquidity needs of the Plan and to deposit any cash held in the Trust Fund in a bank account at reasonable interest.

(c) To invest, if the Trustee is a bank or similar financial institution supervised by the United States or by a state, in any type of deposit of the Trustee (or of a bank related to the Trustee within the meaning of Code §414(b)) at a reasonable rate of interest or in a common trust fund, as described in Code §584, or in a collective investment fund, the provisions of which govern the investment of such assets and which the Plan incorporates by this reference, which the Trustee (or its affiliate, as defined in Code §1504) maintains exclusively for the collective investment of money contributed by the bank (or the affiliate) in its capacity as trustee and which conforms to the rules of the Comptroller of the Currency.

(d) To manage, sell, contract to sell, grant options to purchase, convey, exchange, transfer, abandon, improve, repair, insure, lease for any term even though commencing in the future or extending beyond the term of the Trust, and otherwise deal with all property, real or personal, in such manner, for such considerations and on such terms and conditions as the Trustee decides.

(e) To credit and distribute the Trust Fund as directed by the Plan Administrator. The Trustee is not obliged to inquire as to whether any payee or distributee is entitled to any payment or whether the distribution is proper or within the terms of the Plan, or as to the manner of making any payment or distribution. The Trustee is accountable only to the Plan Administrator for any payment or distribution made by it in good faith on the order or direction of the Plan Administrator.

(f) To borrow money, to assume indebtedness, extend mortgages and encumber by mortgage or pledge.

(g) To compromise, contest, arbitrate or abandon claims and demands, in the Trustee's discretion.

(h) To have with respect to the Trust all of the rights of an individual owner, including the power to exercise any and all voting rights associated with Trust assets, to give proxies, to participate in any voting trusts, mergers, consolidations or liquidations, to tender shares and to exercise or sell stock subscriptions or conversion rights.

(i) To lease for oil, gas and other mineral purposes and to create mineral severances by grant or reservation; to pool or unitize interests in oil, gas and other minerals; and to enter into operating agreements and to execute division and transfer orders.

(j) To hold any securities or other property in the name of the Trustee or its nominee, with depositories or agent depositories or in another form as it may deem best, with or without disclosing the trust relationship.

(k) To perform any and all other acts in its judgment necessary or appropriate for the proper and

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advantageous management, investment and distribution of the Trust.

(l) To retain any funds or property subject to any dispute without liability for the payment of interest, and to decline to make payment or delivery of the funds or property until a court of competent jurisdiction makes final adjudication.

(m) To file all information and tax returns required of the Trustee.

(n) To furnish to the Employer and to the Plan Administrator an annual statement of account showing the condition of the Trust Fund and all investments, receipts, disbursements and other transactions effected by the Trustee during the Plan Year covered by the statement and also stating the assets of the Trust held at the end of the Plan Year, which accounts are conclusive on all persons, including the Employer and the Plan Administrator, except as to any act or transaction concerning which the Employer of the Plan Administrator files with the Trustee written exceptions or objections within 90 days after the receipt of the accounts or for which ERISA authorizes a longer period within which to object.

(o) To begin, maintain or defend any litigation necessary in connection with the administration of the Plan, except the Trustee is not obliged nor required to do so unless indemnified to its satisfaction.

(B) Nondiscretionary Trustee Designation/ Appointment of Custodian. If the Employer, in its Adoption Agreement, designates the Trustee to administer the Trust as a nondiscretionary Trustee, then the Trustee will not have any discretion or authority with regard to the investment of the Trust Fund, but must act solely as a directed trustee of the funds contributed to it. A nondiscretionary Trustee, as directed trustee of the funds held by it under the Plan, is authorized and empowered, by way of limitation, with the following powers, rights and duties, each of which the nondiscretionary Trustee exercises solely as directed trustee in accordance with the written direction of the Named Fiduciary (except to the extent a Plan asset is subject to the control and the management of a properly appointed Investment Manager or subject to Employer or Participant direction of investment):

(a) To invest any part or all of the Trust Fund in any common or preferred stocks, open-end or closed-end mutual funds (including proprietary funds), put and call options traded on a national exchange, United States retirement plan bonds, corporate bonds, debentures, convertible debentures, commercial paper, U.S. Treasury bills, U.S. Treasury notes and other direct or indirect obligations of the United States Government or its agencies, improved or unimproved real estate situated in the United States, limited partnerships, insurance contracts of any type, mortgages, notes or other property of any kind, real or personal, to buy or sell options on common stock on a nationally recognized options exchange with or without holding the underlying common stock, to open and to maintain margin accounts, to engage in short sales, to buy and sell commodities, commodity options

and contracts for the future delivery of commodities, and to make any other investments the Named Fiduciary deems appropriate.

(b) To retain in cash so much of the Trust Fund as the Named Fiduciary may direct in writing to satisfy liquidity needs of the Plan and to deposit any cash held in the Trust Fund in a bank account at reasonable interest.

(c) To invest, if the Trustee is a bank or similar financial institution supervised by the United States or by a State, in any type of deposit of the Trustee (or of a bank related to the Trustee within the meaning of Code §414(b)) at a reasonable rate of interest or in a common trust fund, as described in Code §584, or in a collective investment fund, the provisions of which govern the investment of such assets and which the Plan incorporates by this reference, which the Trustee (or its affiliate, as defined in Code §1504) maintains exclusively for the collective investment of money contributed by the bank (or the affiliate) in its capacity as trustee and which conforms to the rules of the Comptroller of the Currency.

(d) To sell, contract to sell, grant options to purchase, convey, exchange, transfer, abandon, improve, repair, insure, lease for any term even though commencing in the future or extending beyond the term of the Trust, and otherwise deal with all property, real or personal, in such manner, for such considerations and on such terms and conditions as the Named Fiduciary directs in writing.

(e) To credit and distribute the Trust Fund as directed by the Plan Administrator. The Trustee is not obliged to inquire as to whether any payee or distributee is entitled to any payment or whether the distribution is proper or within the terms of the Plan, or as to the manner of making any payment or distribution. The Trustee is accountable only to the Plan Administrator for any payment or distribution made by it in good faith on the order or the direction of the Plan Administrator.

(f) To borrow money, to assume indebtedness, extend mortgages and encumber by mortgage or pledge in accordance with and at the written direction of the Named Fiduciary.

(g) To have with respect to the Trust all of the rights of an individual owner, including the power to exercise any and all voting rights associated with Trust assets, to give proxies, to participate in any voting trusts, mergers, consolidations or liquidations, to tender shares and to exercise or sell stock subscriptions or conversion rights, provided the exercise of any such powers is in accordance with and at the written direction of the Named Fiduciary.

(h) To lease for oil, gas and other mineral purposes and to create mineral severances by grant or reservation; to pool or unitize interests in oil, gas and other minerals; and to enter into operating agreements and to execute division and transfer orders, provided the exercise of any such powers is in accordance with and at the written direction of the Named Fiduciary.

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(i) To hold any securities or other property in the name of the nondiscretionary Trustee or its nominee, with depositories or agent depositories or in another form as the Named Fiduciary may direct in writing, with or without disclosing the custodial relationship.

(j) To retain any funds or property subject to any dispute without liability for the payment of interest, and to decline to make payment or delivery of the funds or property until a court of competent jurisdiction makes final adjudication.

(k) To file all information and tax returns required of the Trustee.

(l) To furnish to the Named Fiduciary, the Employer and the Plan Administrator an annual statement of account showing the condition of the Trust Fund and all investments, receipts, disbursements and other transactions effected by the nondiscretionary Trustee during the Plan Year covered by the statement and also stating the assets of the Trust held at the end of the Plan Year, which accounts are conclusive on all persons, including the Named Fiduciary, the Employer and the Plan Administrator, except as to any act or transaction concerning which the Named Fiduciary, the Employer or the Plan Administrator files with the nondiscretionary Trustee written exceptions or objections within 90 days after the receipt of the accounts or for which ERISA authorizes a longer period within which to object.

(m) To begin, maintain or defend any litigation necessary in connection with the administration of the Plan, except the Trustee is not obliged nor required to do so unless indemnified to its satisfaction.

Appointment of Custodian. The Employer may appoint a Custodian under the Plan, the acceptance by the Custodian indicated on the execution page of the Adoption Agreement. If the Employer appoints a Custodian, the Plan must have a discretionary Trustee, as described in Section 10.03(A). A Custodian has the same powers, rights and duties as a nondiscretionary Trustee, as described in this Section 10.03(B). The Custodian accepts the terms of the Plan and Trust by executing the Adoption Agreement. Any reference in the Plan to a Trustee also is a reference to a Custodian where the context of the Plan dictates. A limitation of the Trustee's liability by Plan provision also acts as a limitation of the Custodian's liability. Any action taken by the Custodian at the discretionary Trustee's direction satisfies any provision in the Plan referring to the Trustee's taking that action.

Modification of Powers/Limited Responsibility. The Employer and the nondiscretionary Trustee (or the Custodian), in writing, may limit the powers of the Custodian or the nondiscretionary Trustee to any combination of powers listed within this Section 10.03(B). If there is a Custodian or a nondiscretionary Trustee under the Plan, then the Employer, in adopting this Plan acknowledges the Custodian or the nondiscretionary Trustee does not have any discretion with respect to the investment or the re-investment of the Trust Fund and the Custodian or the nondiscretionary Trustee is acting solely

as a custodian or as a directed trustee with respect to the assets comprising the Trust Fund.

(C) Limitation of Powers of Certain Custodians. If a Custodian is a bank which, under its governing state law, does not possess trust powers, then Paragraphs (a), (c) as it relates to common trust funds or collective investment funds, (d), (f), (g) and (h) of Section 10.03(B), Section 10.17 and Article XI do not apply to that bank and that bank only has the power and the authority to exercise the remaining powers, rights and duties under Section 10.03(B).

(D) Named Fiduciary/Limitation of Liability of Nondiscretionary Trustee or Custodian. The Named Fiduciary under the Plan has the sole responsibility for the management and the control of the Trust Fund, except with respect to a Plan asset under the control or the direction of a properly appointed Investment Manager or with respect to a Plan asset properly subject to Participant or Employer direction of investment. If the Employer appoints a discretionary Trustee, the Named Fiduciary is the discretionary Trustee. If the Employer appoints a Custodian, the Named Fiduciary is the discretionary Trustee. Under a nondiscretionary Trustee designation, unless the Employer designates in writing another person or persons to serve as Named Fiduciary, the Named Fiduciary under the Plan is the president of a corporate Employer, the managing partner of a partnership Employer, the managing member of a limited liability company Employer or the sole proprietor, as appropriate. The Named Fiduciary will exercise its management and control of the Trust Fund through its written direction to the nondiscretionary Trustee or to the Custodian, whichever applies to the Plan.

The nondiscretionary Trustee or the Custodian does not have any duty to review or to make recommendations regarding investments made at the written direction of the Named Fiduciary. The nondiscretionary Trustee or the Custodian must retain any investment obtained at the written direction of the Named Fiduciary until further directed in writing by the Named Fiduciary to dispose of such investment. The nondiscretionary Trustee or the Custodian is not liable in any manner or for any reason for making, retaining or disposing of any investment pursuant to any written direction of the Named Fiduciary. The Employer will indemnify, defend and hold the nondiscretionary Trustee or the Custodian harmless from any damages, costs or expenses, including reasonable attorneys' fees, which the nondiscretionary Trustee or the Custodian may incur as a result of any claim asserted against the nondiscretionary Trustee, the Custodian or the Trust arising out of the nondiscretionary Trustee's or Custodian's full and timely compliance with any written direction of the Named Fiduciary.

(E) Participant Loans. This Section 10.03(E) specifically authorizes the Trustee to make loans on a nondiscriminatory basis to a Participant or to a Beneficiary in accordance with the loan policy established by the Plan Administrator, provided: (1) the loan policy satisfies the requirements of Section 9.04; (2) loans are available to all Participants and Beneficiaries on a reasonably equivalent basis and are not available in a greater amount for Highly Compensated Employees than for Nonhighly Compensated Employees; (3) any loan is adequately secured and bears a reasonable rate of interest; (4) the loan provides for

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repayment within a specified time (however, the loan policy may suspend loan payments pursuant to Code §414(u)(4)) or otherwise in accordance with applicable Treasury Regulations); (5) the default provisions of the note permit offset of the Participant's Vested Account Balance only at the time when the Participant has a distributable event under the Plan, but without regard to whether the Participant consents to distribution as otherwise may be required under Section 6.01(A)(5); (6) the amount of the loan does not exceed (at the time the Plan extends the loan) the present value of the Participant's Vested Account Balance; and (7) the loan otherwise conforms to the exemption provided by Code §4975(d)(1). The loan policy may provide a Participant's loan default is a distributable event with respect to the defaulted amount, irrespective of whether the Participant otherwise has incurred a distributable event at the time of default, except as to amounts which the Participant used to secure his/her loan which remain subject to distribution restrictions under Section 14.11 or are money purchase pension plan or target benefit plan balances which may not be distributed in-service at the time of default. If the joint and survivor requirements of Article VI apply to the Participant, the Participant may not pledge any portion of his/her Account Balance as security for a loan unless, within the 90 day period ending on the date the pledge becomes effective, the Participant's spouse, if any, consents (in a manner described in Section 6.05 other than the requirement relating to the consent of a subsequent spouse) to the security or, by separate consent, to an increase in the amount of security.

A Participant who is an Owner-Employee (including other persons described in Code §4975(f)(6)), or who is a Shareholder-Employee may not receive a loan from the Plan, unless he/she has obtained a prohibited transaction exemption from the DOL.

(F) Investment in Qualifying Employer Securities and Qualifying Employer Real Property. The Trustee (or as applicable, Investment Manager, Employer or Participant) may invest in qualifying Employer securities or in qualifying Employer real property, as defined in and as limited by ERISA. If the Employer's Plan is a profit sharing plan, the aggregate investments in qualifying Employer securities and in qualifying Employer real property may exceed 10% of the value of Plan assets, unless the Employer elects in its Adoption Agreement to restrict such investments to 10% (or to some other percentage which is less than 100%). Notwithstanding the foregoing, except where permitted under ERISA §407(b)(2), if the Plan includes a 401(k) arrangement, a participant's Deferral Contributions Account accumulated in Plan Years beginning after December 31, 1998, including earnings thereon, may not be invested more than 10% in qualifying employer securities and qualifying employer real property, unless such investments are directed by the Participant or the Participant's Beneficiary.

(G) Modifications to or Substitution of Trust. The Employer in its Standardized Adoption Agreement may not amend any provision of Article X (or any other provision of the Plan related to the Trust) except to specify the Trust year, the names of the Plan, the Employer, the Trustee, the Custodian, the Plan Administrator, other fiduciaries or the name of any pooled trust in which the Trust will participate. The Employer in its Nonstandardized Adoption

Agreement, in addition to the foregoing amendments, may amend or override the administrative provisions of Article X (or any other provision of the Plan related to the Trust), including provisions relating to Trust investment and Trustee duties. Any such amendment: (1) must not conflict with any other provisions of the Plan (except as expressly are intended to override an existing Trust provision); (2) must not cause the Plan to violate Code §401(a); and (3) must be made in accordance with Rev. Proc. 2000-20 or any successor thereto. The Employer using either a Standardized or Nonstandardized Adoption Agreement to establish its Plan, subject to the conditions (1), (2) and (3) described above, may elect to substitute in place of Article X and the remaining trust provisions of the basic plan document, any other trust or custodial account agreement. All Section 10.03(G) Trust modifications or substitutions are subject to Section 13.02 and require the written consent or signature of the Trustee.

(H) Cofiduciary Liability. Each fiduciary under the Plan is responsible solely for his/her or its own acts or omissions. A fiduciary does not have any liability for another fiduciary's breach of fiduciary responsibility with respect to the Plan and the Trust unless the fiduciary: (1) participates knowingly in or undertakes to conceal the breach; (2) has actual knowledge of the breach and fails to take reasonable remedial action to remedy the breach; or (3) through negligence in performing his/her or its own specific fiduciary responsibilities that give rise to fiduciary status, the fiduciary has enabled the other fiduciary to commit a breach of the latter's fiduciary responsibility.

10.04 RECORDS AND STATEMENTS. The records of the Trustee pertaining to the Plan must be open to the inspection of the Plan Administrator and the Employer at all reasonable times and may be audited from time to time by any person or persons as the Employer or Plan Administrator may specify in writing. The Trustee must furnish the Plan Administrator with whatever information relating to the Trust Fund the Plan Administrator considers necessary to perform its duties as Plan Administrator.

10.05 FEES AND EXPENSES FROM FUND. A Trustee or a Custodian will receive reasonable compensation as may be agreed upon from time to time between the Employer and the Trustee or the Custodian. No person who is receiving full pay from the Employer may receive compensation (except for reimbursement of Plan expenses) for services as Trustee or as Custodian. The Trustee will pay from the Trust Fund all fees and reasonable expenses incurred by the Plan, to the extent such fees and expenses are for the ordinary and necessary administration and operation of the Plan and are not "settlor expenses" as determined by the DOL unless the Employer pays such fees and expenses. Any fee or expense paid, directly or indirectly, by the Employer is not an Employer contribution to the Plan, provided the fee or the expense relates to the ordinary and necessary administration of the Trust Fund.

10.06 PARTIES TO LITIGATION. Except as otherwise provided by ERISA, a Participant or a Beneficiary is not a necessary party or required to receive notice of process in any court proceeding involving the Plan, the Trust Fund or any fiduciary of the Plan. Any final judgment entered in any such proceeding will be binding upon the Employer, the Plan Administrator, the Trustee,

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Custodian, Participants and Beneficiaries and upon their successors and assigns.

10.07 PROFESSIONAL AGENTS. The Trustee may employ and pay from the Trust Fund reasonable compensation to agents, attorneys, accountants and other persons to advise the Trustee as in its opinion may be necessary. The Trustee reasonably may delegate to any agent, attorney, accountant or other person selected by it any non-Trustee power or duty vested in it by the Plan, and the Trustee may reasonably act or refrain from acting on the advice or opinion of any agent, attorney, accountant or other person so selected.

10.08 DISTRIBUTION OF CASH OR PROPERTY. The Trustee will make Plan distributions in the form of cash except where: (1) the required form of distribution is a QJSA or QPSA which has not been waived; (2) the Plan is a restated Plan and under the prior Plan, distribution in the form of property ("in-kind distribution") is a Protected Benefit (3) the Plan Administrator adopts a written policy which provides for in-kind distribution; or (4) the Employer is terminating the Plan, and in the reasonable judgement of the Trustee, some or all Plan assets may not within a reasonable time for making final distribution of Plan assets, be liquidated to cash or may not be so liquidated without undue loss in value. The Plan Administrator's policy under clause (3) may restrict in-kind distributions to certain types of Trust investments or specify any other reasonable and nondiscriminatory condition or restriction applicable to in-kind distributions. Under clause (4), the Trustee will make Plan termination distributions to Participants and Beneficiaries in cash, in-kind or in a combination of these forms, in a reasonable and nondiscriminatory manner which may take into account the preferences of the distributees. All in-kind distributions will be made based on the current fair market value of the property, as determined by the Trustee.

10.09 PARTICIPANT OR BENEFICIARY INCAPACITATED. If, in the opinion of the Plan Administrator or of the Trustee, a Participant or Beneficiary entitled to a Plan distribution is not able to care for his/her affairs because of a mental condition, a physical condition, or by reason of age, at the direction of the Plan Administrator the Trustee may make the distribution to the Participant's or Beneficiary's guardian, conservator, trustee, custodian (including under a Uniform Transfers or Gifts to Minors Act) or to his/her attorney-in-fact or to other legal representative upon furnishing evidence of such status satisfactory to the Plan Administrator and to the Trustee. The Plan Administrator and the Trustee do not have any liability with respect to payments so made and neither the Plan Administrator nor the Trustee has any duty to make inquiry as to the competence of any person entitled to receive payments under the Plan.

10.10 DISTRIBUTION DIRECTIONS. The Trustee must promptly notify the Plan Administrator of any unclaimed Plan distribution and then dispose of the distribution in accordance with the Plan Administrator's subsequent direction.

10.11 THIRD PARTY RELIANCE. A person dealing with the Trustee is not obligated to see to the proper application of any money paid or property delivered to the Trustee, or to inquire whether the Trustee has acted

pursuant to any of the terms of the Plan. Each person dealing with the Trustee may act upon any notice, request or representation in writing by the Trustee, or by the Trustee's duly authorized agent, and is not liable to any person in so acting. The certificate of the Trustee that it is acting in accordance with the Plan is conclusive in favor of any person relying on the certificate.

10.12 MULTIPLE TRUSTEES. If more than two persons act as Trustee, a decision of the majority of such persons controls with respect to any decision regarding the administration or the investment of the Trust Fund or of any portion of the Trust Fund with respect to which such persons act as Trustee. If there is more than one Trustee, the Trustees jointly will manage and control the assets of the Trust Fund. However, the Trustees may allocate among themselves specific responsibilities or obligations or may authorize one or more of them, either individually or in concert, to exercise any or all of the powers granted to the Trustee under Article X. In addition, the signature of only one Trustee is necessary to effect any transaction on behalf of the Trust.

10.13 RESIGNATION AND REMOVAL. The Trustee or the Custodian may resign its position by giving written notice to the Employer and to the Plan Administrator. The Trustee's notice must specify the effective date of the Trustee's resignation, which date must be at least 30 days following the date of the Trustee's notice, unless the Employer consents in writing to shorter notice.

The Employer may remove a Trustee or a Custodian by giving written notice to the effected party. The Employer's notice must specify the effective date of removal which date must be at least 30 days following the date of the Employer's notice, except where the Employer reasonably determines a shorter notice period or immediate removal is necessary to protect Plan assets.

In the event of the resignation or the removal of a Trustee, where no other Trustee continues to service, the Employer must appoint a successor Trustee if it intends to continue the Plan. If two or more persons hold the position of Trustee, in the event of the removal of one such person, during any period the selection of a replacement is pending, or during any period such person is unable to serve for any reason, the remaining person or persons will act as the Trustee. If the Employer fails to appoint a successor Trustee as of the effective date of the Trustee resignation or removal and no other Trustee remains, the Trustee will treat the Employer as having appointed itself as Trustee and as having filed the Employer's acceptance of appointment as successor Trustee with the former Trustee. If state law prohibits the Employer from serving as successor Trustee, the appointed successor Trustee is the president of a corporate Employer, the managing partner of a partnership Employer, the managing member of a limited liability company Employer or the sole proprietor, as appropriate. If the Employer removes and does not replace a Custodian, the discretionary Trustee will assume possession of Plan assets held by the former Custodian.

10.14 SUCCESSOR TRUSTEE ACCEPTANCE. Each successor Trustee succeeds its predecessor Trustee by accepting in writing its appointment as successor Trustee and by filing the acceptance with the former Trustee and

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the Plan Administrator without the signing or filing of any further statement. The resigning or removed Trustee, upon receipt of acceptance in writing of the Trust by the successor Trustee, must execute all documents and do all acts necessary to vest the title of record in any successor Trustee. Each successor Trustee has and enjoys all of the powers, both discretionary and ministerial, conferred under the Plan upon its predecessor. A successor Trustee is not personally liable for any act or failure to act of any predecessor Trustee, except as required under ERISA. With the approval of the Employer and the Plan Administrator, a successor Trustee, with respect to the Plan, may accept the account rendered and the property delivered to it by a predecessor Trustee without liability.

10.15 VALUATION OF TRUST. The Trustee must value the Trust Fund as of each Accounting Date to determine the fair market value of each Participant's Account Balance in the Trust. The Trustee also must value the Trust Fund on such other valuation dates as directed in writing by the Plan Administrator or as the Adoption Agreement may require.

10.16 LIMITATION ON LIABILITY - IF INVESTMENT MANAGER, ANCILLARY TRUSTEE OR INDEPENDENT FIDUCIARY APPOINTED. The Trustee is not liable for the acts or omissions of any Investment Manager the Plan Administrator may appoint, nor is the Trustee under any obligation to invest or otherwise to manage any asset of the Trust Fund which is subject to the management of a properly appointed Investment Manager. The Plan Administrator, the Trustee and any properly appointed Investment Manager may execute a written agreement as a part of this Plan delineating the duties, responsibilities and liabilities of the Investment Manager with respect to any part of the Trust Fund under the control of the Investment Manager.

The limitation on liability described in this Section 10.16 also applies to the acts or omissions of any ancillary trustee or independent fiduciary properly appointed under Section 10.18. However, if a discretionary Trustee, pursuant to the delegation described in Section 10.18, appoints an ancillary trustee, the discretionary Trustee is responsible for the periodic review of the ancillary trustee's actions and must exercise its delegated authority in accordance with the terms of the Plan and in a manner consistent with ERISA. The Employer, the discretionary Trustee and an ancillary trustee may execute a written agreement as a part of this Plan delineating any indemnification agreement among the parties.

10.17 INVESTMENT IN GROUP TRUST FUND. The Employer, by adopting this Plan, specifically authorizes the Trustee to invest all or any portion of the assets comprising the Trust Fund in any group trust fund which at the time of the investment provides for the pooling of the assets of plans qualified under Code §401(a). This authorization applies solely to a group trust fund exempt from taxation under Code §501(a) and the trust agreement of which satisfies the requirements of Revenue Ruling 81-100, or any successor thereto. The provisions of the group trust fund agreement, as amended from time to time, are by this reference incorporated within this Plan and Trust. The provisions of the group trust fund will govern any investment of Plan assets in that fund. The Employer must specify in an Addendum to its Adoption Agreement

the group trust fund(s) to which this authorization applies. If the Trustee is acting as a nondiscretionary Trustee, the investment in the group trust fund is available only in accordance with a proper direction, by the Named Fiduciary, in accordance with Section 10.03(B). Pursuant to Paragraph (c) of Section 10.03(A), a Trustee has the authority to invest in certain common trust funds and collective investment funds without the need for the authorizing Addendum described in this Section 10.17.

Furthermore, at the Employer's direction, the Trustee, for collective investment purposes, may combine into one trust fund the Trust created under this Plan with the trust created under any other qualified retirement plan the Employer maintains. However, the Trustee must maintain separate records of account for the assets of each Trust in order to reflect properly each Participant's Account Balance under the qualified plans in which he/she is a participant.

10.18 APPOINTMENT OF ANCILLARY TRUSTEE OR INDEPENDENT FIDUCIARY. The Employer, in writing, may appoint any qualified person in any state to act as ancillary trustee with respect to a designated portion of the Trust Fund, subject to any consent required under Section 1.33. An ancillary trustee must acknowledge in writing its acceptance of the terms and conditions of its appointment as ancillary trustee and its fiduciary status under ERISA. The ancillary trustee has the rights, powers, duties and discretion as the Employer may delegate, subject to any limitations or directions specified in the agreement appointing the ancillary trustee and to the terms of the Plan or of ERISA. The investment powers delegated to the ancillary trustee may include any investment powers available under Section 10.03. The delegated investment powers may include the right to invest any portion of the assets of the Trust Fund in a common trust fund, as described in Code §584, or in any collective investment fund, the provisions of which govern the investment of such assets and which the Plan incorporates by this reference, but only if the ancillary trustee is a bank or similar financial institution supervised by the United States or by a state and the ancillary trustee (or its affiliate, as defined in Code §1504) maintains the common trust fund or collective investment fund exclusively for the collective investment of money contributed by the ancillary trustee (or its affiliate) in a trustee capacity and which conforms to the rules of the Comptroller of the Currency. The Employer also may appoint as an ancillary trustee, the trustee of any group trust fund designated for investment pursuant to the provisions of Section 10.17.

The ancillary trustee may resign its position and the Employer may remove an ancillary trustee as provided in Section 10.13 regarding resignation and removal of the Trustee or Custodian. In the event of such resignation or removal, the Employer may appoint another ancillary trustee or may return the assets to the control and management of the Trustee. The Employer may delegate its responsibilities under this Section 10.18 to a discretionary Trustee under the Plan, but not to a nondiscretionary Trustee or to a Custodian, subject to the acceptance by the discretionary Trustee of that delegation.

If the DOL requires engagement of an independent fiduciary to have control or management of all or a portion of the Trust Fund, the Employer will appoint such independent fiduciary, as directed by the DOL. The

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independent fiduciary will have the duties, responsibilities and powers prescribed by the DOL and will exercise those duties, responsibilities and powers in accordance with the terms, restrictions and conditions established by the DOL

and, to the extent not inconsistent with ERISA, the terms of the Plan. The independent fiduciary must accept its appointment in writing and must acknowledge its status as a fiduciary of the Plan.

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**ARTICLE XI
PROVISIONS RELATING TO INSURANCE AND INSURANCE COMPANY**

11.01 INSURANCE BENEFIT. The Employer may elect to provide incidental life insurance benefits for insurable Participants who consent to life insurance benefits by executing the appropriate insurance company application form. The Trustee will not purchase any incidental life insurance benefit for any Participant prior to a contribution allocation to the Participant's Account. At an insured Participant's written direction, the Trustee will use all or any portion of the Participant's Employee contributions, if any, to pay insurance premiums covering the Participant's life. This Section 11.01 also authorizes (except if the Plan is a money purchase pension plan) the purchase of life insurance, for the benefit of the Participant, on the life of a family member of the Participant or on any person in whom the Participant has an insurable interest. However, if the policy is on the joint lives of the Participant and another person, the Trustee may not maintain that policy if the other person predeceases the Participant.

The Employer will direct the Trustee as to the insurance company and insurance agent through which the Trustee is to purchase the insurance contracts, the amount of the coverage and the applicable dividend plan. Each application for a policy, and the policies themselves, must designate the Trustee as sole owner, with the right reserved to the Trustee to exercise any right or option contained in the policies, subject to the terms and provisions of this Plan. The Trustee must be the named beneficiary for the Account of the insured Participant. Proceeds of insurance contracts paid to the Participant's Account under this Article XI are subject to the distribution requirements of Article VI. The Trustee will not retain any such proceeds for the benefit of the Trust.

The Trustee will charge the premiums on any incidental benefit insurance contract covering the life of a Participant against the Account of that Participant and will treat the insurance contract as a directed investment of the Participant's Account, even if the Plan otherwise does not permit a Participant to direct the investment of his/her own Account. The Trustee will hold all incidental benefit insurance contracts issued under the Plan as assets of the Trust created and maintained under the Plan.

(A) Incidental insurance benefits. The aggregate of life insurance premiums paid for the benefit of a Participant, at all times, may not exceed the following percentages of the aggregate of the Employer's contributions (including Deferral Contributions and forfeitures) allocated to any Participant's Account: (i) 49% in the case of the purchase of ordinary life insurance contracts; or (ii) 25% in the case of the purchase of term life insurance or universal life insurance contracts. If the Trustee purchases a combination of ordinary life insurance contract(s) and term life insurance or universal life insurance contract(s), then the sum of one-half of the premiums paid for the ordinary life insurance contract(s) and the premiums paid for the term life insurance or universal life insurance contract(s) may not exceed 25% of the Employer contributions allocated to any Participant's Account.

(B) Exception for certain profit sharing plans. If the Plan is a profit sharing plan, the incidental insurance benefits requirement does not apply to the Plan if the Plan

purchases life insurance benefits only from Employer contributions accumulated in the Participant's Account for at least two years (measured from the allocation date).

(C) Exception for other amounts. The incidental insurance benefits requirement does not apply to life insurance purchased with Employee contributions, rollover contributions, or earnings on Employer contributions.

11.02 LIMITATION ON LIFE INSURANCE PROTECTION. The Trustee will not continue any life insurance protection for any Participant beyond his/her annuity starting date as defined in Section 6.01(A)(4). If the Trustee holds any incidental benefit insurance contract(s) for the benefit of a Participant when he/she terminates his/her employment (other than by reason of death), the Trustee must proceed as follows:

(a) If the entire cash value of the contract(s) is Vested in the terminating Participant, or if the contract(s) will not have any cash value at the end of the policy year in which Separation from Service occurs, the Trustee will transfer the contract(s) to the Participant endorsed so as to vest in the transferee all right, title and interest to the contract(s), free and clear of the Trust; subject however, to restrictions as to surrender or payment of benefits as the issuing insurance company may permit and as the Plan Administrator directs:

(b) If only part of the cash value of the contract(s) is Vested in the terminating Participant, the Trustee, to the extent the Participant's interest in the cash value of the contract(s) is not Vested, may adjust the Participant's interest in the value of his/her Account attributable to Trust assets other than incidental benefit insurance contracts and proceed as in (a), or the Trustee must effect a loan from the issuing insurance company on the sole security of the contract(s) for an amount equal to the difference between the cash value of the contract(s) at the end of the policy year in which termination of employment occurs and the amount of the cash value that is Vested in the terminating Participant, and the Trustee must transfer the contract(s) endorsed so as to vest in the transferee all right, title and interest to the contract(s), free and clear of the Trust; subject however, to the restrictions as to surrender or payment of benefits as the issuing insurance company may permit and the Plan Administrator directs:

(c) If no part of the cash value of the contract(s) is Vested in the terminating Participant, the Trustee must surrender the contract(s) for cash proceeds as may be available.

In accordance with the written direction of the Plan Administrator, the Trustee will make any transfer of contract(s) under this Section 11.02 on the Participant's annuity starting date (or as soon as administratively practicable after that date). The Trustee may not transfer any contract under this Section 11.02 which contains a method of payment not specifically authorized by Article VI or which fails to comply with the joint and survivor annuity requirements, if applicable, of Article VI. In this regard, the Trustee either must convert such a contract to cash and distribute the cash instead of the contract, or

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before making the transfer, must require the issuing company to delete the unauthorized method of payment option from the contract.

11.03 DEFINITIONS. For purposes of this Article XI:

(a) "Policy" means an ordinary life, term life or universal life insurance contract issued by an insurer on the life of a Participant.

(b) "Issuing insurance company" is any life insurance company which has issued a policy upon application by the Trustee under the terms of this Plan.

(c) "Contract" or "Contracts" means a policy of insurance. In the event of any conflict between the provisions of this Plan and the terms of any contract or policy of insurance issued in accordance with this Article XI, the provisions of the Plan control.

(d) "Insurable Participant" means a Participant to whom an insurance company, upon an application being submitted in accordance with the Plan, will issue insurance coverage, either as a standard risk or as a risk in an extra mortality classification.

11.04 DIVIDEND PLAN. The dividend plan is premium reduction unless the Plan Administrator directs the Trustee to the contrary. The Trustee must use all dividends for a contract to purchase insurance benefits or additional insurance benefits for the Participant on whose life the insurance company has issued the contract. Furthermore, the Trustee must arrange, where possible, for all policies issued on the lives of Participants under the Plan to have the same premium due date and all ordinary life insurance contracts to contain guaranteed cash values with as uniform basic options as are possible to obtain. The term "dividends" includes policy dividends, refunds of premiums and other credits.

11.05 INSURANCE COMPANY NOT A PARTY TO AGREEMENT. No insurance company, solely in its

capacity as an issuing insurance company, is a party to this Plan nor is the company responsible for its validity.

11.06 NO RESPONSIBILITY FOR OTHERS. Except as required by ERISA, an issuing insurance company has no responsibility or obligation under the Plan to Participants or Beneficiaries for any act (unless the insurance company also serves in such capacities) required of the Employer, the Plan Administrator, the Trustee, the Custodian or any other service provider to the Plan. No insurance company, solely in its capacity as an issuing insurance company, need examine the terms of this Plan. For the purpose of making application to an insurance company and in the exercise of any right or option contained in any policy, the insurance company may rely upon the signature of the Trustee and is held harmless and completely discharged in acting at the direction and authorization of the Trustee. An insurance company is discharged from all liability for any amount paid to the Trustee or paid in accordance with the direction of the Trustee, and is not obliged to see to the distribution or further application of any moneys the insurance company so pays.

11.07 DUTIES OF INSURANCE COMPANY. Each insurance company must keep such records, make such identification of contracts, funds and accounts within funds, and supply such information as may be necessary for the proper administration of the Plan under which it is carrying insurance benefits.

Note: The provisions of this Article XI are not applicable, and the Plan may not invest in insurance contracts, if a Custodian signatory to the Adoption Agreement is a bank which does not have trust powers from its governing state banking authority.

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ARTICLE XII
TOP-HEAVY PROVISIONS

12.01 DETERMINATION OF TOP-HEAVY STATUS. If this Plan is the only qualified plan maintained by the Employer, the Plan is top-heavy for a Plan Year if the top-heavy ratio as of the Determination Date exceeds 60%. The top-heavy ratio is a fraction, the numerator of which is the sum of the Account Balances of all Key Employees as of the Determination Date and the denominator of which is a similar sum determined for all Employees.

The Plan Administrator must include in the top-heavy ratio, as part of the Account Balances, any contribution not made as of the Determination Date but includible under Code §416 and the applicable Treasury regulations, and distributions made within the Determination Period. The Plan Administrator must calculate the top-heavy ratio by disregarding the Account Balance (and distributions, if any, of the Account Balance) of any Non-Key Employee who was formerly a Key Employee, and by disregarding the Account Balance (including distributions, if any, of the Account Balance) of an individual who has not received credit for at least one Hour of Service with the Employer during the Determination Period. The Plan Administrator must calculate the top-heavy ratio, including the extent to which it must take into account distributions, rollovers and transfers, in accordance with Code §416 and the regulations under that Code section.

If the Employer maintains other qualified plans (including a simplified employee pension plan), or maintained another such plan now terminated, this Plan is top-heavy only if it is part of the Required Aggregation Group, and the top-heavy ratio for the Required Aggregation Group and for the Permissive Aggregation Group, if any, each exceeds 60%. The Plan Administrator will calculate the top-heavy ratio in the same manner as required by the first two paragraphs of this Section 12.01, taking into account all plans within the Aggregation Group. To the extent the Plan Administrator must take into account distributions to a Participant, the Plan Administrator must include distributions from a terminated plan which would have been part of the Required Aggregation Group if it were in existence on the Determination Date. The Plan Administrator will calculate the present value of accrued benefits under defined benefit plans or the account balances under simplified employee pension plans included within the group in accordance with the terms of those plans, Code §416 and the regulations under that Code section.

If a Participant in a defined benefit plan is a Non-Key Employee, the Plan Administrator will determine his/her accrued benefit under the accrual method, if any, which is applicable uniformly to all defined benefit plans maintained by the Employer or, if there is no uniform method, in accordance with the slowest accrual rate permitted under the fractional rule accrual method described in Code §411(b)(1)(C). If the Employer maintains a defined benefit plan, the Plan Administrator will use the actuarial assumptions (interest and mortality only) stated in that plan to calculate the present value of benefits from that defined benefit plan. If an aggregated plan does not have a valuation date coinciding with the Determination Date, the Plan Administrator must value the Account Balance in the

aggregated plan as of the most recent valuation date falling within the twelve-month period ending on the Determination Date, except as Code §416 and applicable Treasury regulations require for the first and for the second plan year of a defined benefit plan. The Plan Administrator will calculate the top-heavy ratio with reference to the Determination Dates that fall within the same calendar year. The top-heavy provisions of the Plan apply only for Plan Years in which Code §416 requires application of the top-heavy rules.

12.02 DEFINITIONS. For purposes of applying the top-heavy provisions of the Plan:

(a) "Compensation" means Compensation as determined under Section 3.18(b) for Code §415 purposes and includes Compensation for the entire Plan Year.

(b) "Determination Date" means for any Plan Year, the Accounting Date of the preceding Plan Year or, in the case of the first Plan Year of the Plan, the Accounting Date of that Plan Year.

(c) "Determination Period" means the 5-year period ending on the Determination Date.

(d) "Employer" means the Employer that adopts this Plan and any Related Employer.

(e) "Key Employee" means, as of any Determination Date, any Employee or former Employee (or Beneficiary of such Employee) who, at any time during the Determination Period: (i) has Compensation in excess of 50% of the dollar amount prescribed in Code §415(b)(1)(A) (relating to defined benefit plans) and is an officer of the Employer; (ii) has Compensation in excess of the dollar amount prescribed in Code §415(c)(1)(A) (relating to defined contribution plans), owns a more than 1/2% interest in the Employer and is one of the Employees owning the ten largest interests in the Employer; (iii) is a more than 5% owner of the Employer; or (iv) is a more than 1% owner of the Employer and has Compensation of more than \$150,000. The constructive ownership rules of Code §318 (or the principles of that Code section, in the case of an unincorporated Employer,) will apply to determine ownership in the Employer. The number of officers taken into account under clause (i) will not exceed the greater of 3 or 10% of the total number (after application of the Code §414(q) exclusions) of Employees, but no more than 50 officers. The Plan Administrator will make the determination of who is a Key Employee in accordance with Code §416(i)(1) and the regulations under that Code section.

(f) "Non-Key Employee" means an Employee who does not meet the definition of Key Employee.

(g) "Participant" means any Employee otherwise eligible to participate in the Plan but who is not entitled to receive any allocation under the Plan (or would have received a lesser allocation) for the Plan Year because of his/her Compensation level or because of his/her failure: (i) to make elective deferrals under a 401(k) arrangement; (ii) to make Employee contributions; or (iii) to complete 1,000

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Hours of Service or any other service requirement the Employer specifies in its Adoption Agreement as a condition to receive an allocation except for employment on the last day of the Plan Year.

(h) "Permissive Aggregation Group" means the Required Aggregation Group plus any other qualified plans maintained by the Employer, but only if such group would satisfy in the aggregate the nondiscrimination requirements of Code §401(a)(4) and the coverage requirements of Code §410. The Plan Administrator will determine the Permissive Aggregation Group.

(i) "Required Aggregation Group" means: (i) each qualified plan of the Employer in which at least one Key Employee participates or participated at any time during the Determination Period (including terminated plans); and (ii) any other qualified plan of the Employer which enables a plan described in clause (i) to meet the requirements of Code §401(a)(4) or of Code §410.

12.03 TOP-HEAVY MINIMUM ALLOCATION. The top-heavy minimum allocation requirement applies to the Plan only in a Plan Year for which the Plan is top-heavy. If the Plan is top-heavy in any Plan Year:

(a) Each Non-Key Employee who is a Participant (as described in Section 12.02(g)) and employed by the Employer on the last day of the Plan Year will receive a top-heavy minimum allocation for that Plan Year.

(b) The top-heavy minimum allocation is equal to the lesser of 3% of the Non-Key Employee's Compensation for the Plan Year or the highest contribution rate for the Plan Year made on behalf of any Key Employee. However, if a defined benefit plan maintained by the Employer which benefits a Key Employee depends on this Plan to satisfy the nondiscrimination rules of Code §401(a)(4) or the coverage rules of Code §410 (or another plan benefiting the Key Employee so depends on such defined benefit plan), the top-heavy minimum allocation is 3% of the Non-Key Employee's Compensation regardless of the contribution rate for the Key Employees.

(c) If, for a Plan Year, there are no allocations of Employer contributions or of forfeitures for any Key Employee, the Plan does not require any top-heavy minimum allocation for the Plan Year, unless a top-heavy minimum allocation applies because of the maintenance by the Employer of more than one plan.

12.04 DETERMINING TOP-HEAVY CONTRIBUTION RATES. In determining under Section 12.03(b) the highest contribution rate for any Key Employee, the Plan Administrator takes into account all Employer contributions (including deferral contributions and including matching contributions but not including Employer contributions to Social Security) and forfeitures allocated to the Participant's Account for the Plan Year, divided by his/her Compensation for the entire Plan Year. For purposes of satisfying the Employer's top-heavy

minimum allocation requirement, the Plan Administrator disregards the elective deferrals and matching contributions allocated to a Non-Key Employee's Account in determining the Non-Key Employee's contribution rate. However, the Plan Administrator operationally may include in the contribution rate of a Non-Key Employee any matching contributions not necessary to satisfy the nondiscrimination requirements of Code §401(k) or of Code §401(m).

To determine a Participant's contribution rate, the Plan Administrator must treat all qualified top-heavy defined contribution plans maintained by the Employer (or by any Related Employer) as a single plan.

12.05 PLAN WHICH WILL SATISFY TOP-HEAVY. The Plan will satisfy the top-heavy minimum allocation requirement in accordance with the following requirements:

(a) If the Employer makes the top-heavy minimum allocation to this Plan, the Employer will make any necessary additional contribution to this Plan. The Plan Administrator first will allocate the Employer contributions (and Participant forfeitures, if any) for the Plan Year in accordance with the provisions of Adoption Agreement Section 3.04. The Employer then will contribute an additional amount for the Account of any Participant entitled under Section 12.03 to a top-heavy minimum allocation and whose contribution rate for the Plan Year, under this Plan and any other plan aggregated under Section 12.02, is less than the top-heavy minimum allocation. The additional amount is the amount necessary to increase the Participant's contribution rate to the top-heavy minimum allocation. The Plan Administrator will allocate the additional contribution to the Account of the Participant on whose behalf the Employer makes the contribution.

(b) If the Employer makes the top-heavy minimum allocation under another plan, this Plan does not provide the top-heavy minimum allocation and the Plan Administrator will allocate the annual Employer contributions (and Participant forfeitures) under the Plan solely in accordance with the allocation method selected under Adoption Agreement Section 3.04.

12.06 TOP-HEAVY VESTING. If the Plan is top-heavy and the Employer in its Adoption Agreement does not elect immediate vesting, the Employer must elect a top-heavy (or modified top-heavy) vesting schedule. The specified top-heavy vesting schedule applies to the Plan's first top-heavy Plan Year and to all subsequent Plan Years, except as the Employer otherwise elects in its Adoption Agreement. If the Employer elects in its Adoption Agreement to apply the specified top-heavy vesting schedule only in Plan Years in which the Plan is top-heavy, any change in the Plan's vesting schedule resulting from this election is subject to Section 5.11.

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**ARTICLE XIII
EXCLUSIVE BENEFIT, AMENDMENT, TERMINATION**

13.01 EXCLUSIVE BENEFIT. Except as provided under Article III, the Employer does not have any beneficial interest in any asset of the Trust Fund and no part of any asset in the Trust Fund may ever revert to or be repaid to the Employer, either directly or indirectly; nor, prior to the satisfaction of all liabilities with respect to the Participants and their Beneficiaries under the Plan, may any part of the corpus or income of the Trust Fund, or any asset of the Trust Fund, be (at any time) used for, or diverted to, purposes other than the exclusive benefit of the Participants or their Beneficiaries and for defraying reasonable expenses of administering the Plan.

However, if the Commissioner of Internal Revenue, upon the Employer's application for initial approval of this Plan, determines the Trust created under the Plan is not a qualified trust exempt from Federal income tax, then (and only then) the Trustee, upon written notice from the Employer, will return the Employer's contributions (and the earnings thereon) to the Employer. The immediately preceding sentence applies only if the Employer makes the application for the determination by the time prescribed by law for filing the Employer's tax return for the taxable year in which the Employer adopted the Plan, or by such later date as the Internal Revenue Service may prescribe. The Trustee must make the return of the Employer contribution under this Section 13.01 within one year of a final disposition of the Employer's request for initial approval of the Plan. The Employer's Plan and Trust will terminate upon the Trustee's return of the Employer's contributions.

13.02 AMENDMENT BY EMPLOYER. The Employer, consistent with this Section 13.02 and other applicable Plan provisions, has the right, at any time:

- (a) To amend the elective provisions of the Adoption Agreement in any manner it deems necessary or advisable;
- (b) To add overriding language in the Adoption Agreement to satisfy Code §§415 or 416 because of the required aggregation of multiple plans; and
- (c) To add model amendments published by the Revenue Service (the adoption of which the Revenue Service provides will not cause the Plan to be individually designed).

(A) Amendment Formalities. The Employer must make all Plan amendments in writing by means of substituted Adoption Agreement pages or by restatement of the Adoption Agreement. The Employer (and Trustee if the Trustee's written consent to the amendment is required under Section 10.03(G)), must execute a new Adoption Agreement Execution Page each time the Employer amends the Plan. Each amendment must specify the date as of which the amendment is either retroactively or prospectively effective. See Section 7.12 for the effect of certain amendments adopted by the Employer which will result in the Employer's Plan losing Prototype Plan status.

(B) Impermissible Amendment/Protected Benefits. An amendment may not authorize or permit any of the Trust Fund (other than the part required to pay taxes and

reasonable administration expenses) to be used for or diverted to purposes other than for the exclusive benefit of the Participants or their Beneficiaries or estates. An amendment may not cause or permit any portion of the Trust Fund to revert to or become a property of the Employer. Furthermore, the Employer may not make any amendment which affects the rights, duties or responsibilities of the Trustee or of the Plan Administrator without the written consent of the affected Trustee or the Plan Administrator.

An amendment (including the adoption of this Plan as a restatement of an existing plan) may not decrease a Participant's Account Balance, except to the extent permitted under Code §412(c)(8), and except as provided in Treasury regulations, may not reduce or eliminate Protected Benefits determined immediately prior to the adoption date (or, if later, the effective date) of the amendment. An amendment reduces or eliminates Protected Benefits if the amendment has the effect of either (1) eliminating or reducing an early retirement benefit or a retirement-type subsidy (as defined in Treasury regulations), or (2) except as provided by Treasury regulations, eliminating an optional form of benefit.

The Plan Administrator must disregard an amendment to the extent application of the amendment would fail to satisfy this Section 13.02(B). If the Plan Administrator must disregard an amendment because the amendment would violate clause (1) or clause (2), the Plan Administrator must maintain a schedule of the early retirement option or other optional forms of benefit the Plan must continue for the affected Participants.

13.03 AMENDMENT BY PROTOTYPE PLAN SPONSOR. The Prototype Plan Sponsor (or the mass submitter, as agent of the Prototype Plan Sponsor), without the Employer's consent, may amend the Plan and Trust, from time to time, in order to conform the Plan and Trust to any requirement for qualification of the Plan and Trust under the Internal Revenue Code. The Prototype Plan Sponsor may not amend the Plan in any manner which would modify any election made by the Employer under the Plan without the Employer's written consent. Furthermore, the Prototype Plan Sponsor may not amend the Plan in any manner which would violate the proscriptions of Section 13.02(B). If the Prototype Plan Sponsor does not adopt the amendments made by the mass submitter, it will no longer be the sponsor of an identical or minor modifier Prototype Plan of the mass submitter.

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13.04 PLAN TERMINATION OR SUSPENSION.

The Employer subject to Section 13.02(B) and by proper Employer action has the right, at any time, to suspend or discontinue its contributions under the Plan and thereafter to continue to maintain the Plan (subject to such suspension or discontinuance) until the Employer terminates the Plan. The Employer subject to Section 13.02(B) and by proper Employer action has the right, at any time, to terminate this Plan and the Trust created and maintained under the Plan. The Plan will terminate upon the first to occur of the following:

- (a) The date terminated by proper action of the Employer; or
- (b) The dissolution or merger of the Employer, unless a successor makes provision to continue the Plan, in which event the successor must substitute itself as the Employer under this Plan. Any termination of the Plan resulting from this Paragraph (b) is not effective until compliance with any applicable notice requirements under ERISA.

13.05 FULL VESTING ON TERMINATION. Upon either full or partial termination of the Plan, or, if applicable, upon complete discontinuance of profit sharing plan contributions to the Plan, an affected Participant's right to his/her Account Balance is 100% Vested, irrespective of the Vested percentage which otherwise would apply under Article V.

13.06 POST TERMINATION PROCEDURE AND DISTRIBUTION.

(A) **General Procedure.** Upon termination of the Plan, the distribution provisions of Article VI remain operative, with the following exceptions:

- (1) if the Participant's Vested Account Balance does not exceed \$5,000 (or exceeds \$5,000 but is not "immediately distributable" in accordance with Section 6.01(A)(5)), the Plan Administrator will direct the Trustee to distribute in cash (subject to Section 10.08) the Participant's Vested Account Balance to him/her in lump sum as soon as administratively practicable after the Plan terminates; and
- (2) if the present value of the Participant's Vested Account Balance exceeds \$5,000 and is immediately distributable, the Participant or the Beneficiary, may elect to have the Trustee commence distribution in cash (subject to Section 10.08) of his/her Vested Account Balance in a lump sum as soon as administratively practicable after the Plan terminates. If a Participant with consent rights under this paragraph (2) does not elect an immediate lump sum distribution with spousal consent if required, to liquidate the Trust, the Plan Administrator will purchase a deferred annuity contract for each Participant which protects the Participant's distribution rights under the Plan.

(B) **Profit Sharing Plan.** If the Plan is a profit sharing plan, in lieu of applying Section 13.06(A) and the distribution provisions of Article VI, the Plan

Administrator will direct the Trustee to distribute in cash (subject to Section 10.08) each Participant's Vested Account Balance, in lump sum, as soon as administratively practicable after the termination of the Plan, irrespective of the Participant's Vested Account Balance, the Participant's age and whether the Participant consents to that distribution. This paragraph does not apply if: (1) the Plan at termination provides an annuity option which is a Protected Benefit and which the Employer may not eliminate by Plan amendment; or (2) as of the period between the Plan termination date and the final distribution of assets, the Employer maintains any other defined contribution plan (other than an ESOP). The Employer, in an Addendum to its Adoption Agreement, may elect not to have this paragraph apply.

(C) **Distribution restrictions under Code §401(k).** If the Plan includes a 401(k) arrangement or if the Plan holds transferred assets described in Section 13.07 such that in either case, the distribution restrictions of Sections 14.03(d) and 14.11 apply, a Participant's restricted balances are distributable on account of Plan termination, as described in this Section 13.06, only if: (a) the Employer does not maintain a successor plan and the Plan Administrator distributes the Participant's entire Vested Account Balance in a lump sum; or (b) the Participant otherwise is entitled under the Plan to a distribution of his/her Vested Account Balance.

A successor plan under clause (b) is a defined contribution plan (other than an ESOP) maintained by the Employer (or by a Related Employer) at the time of the termination of the Plan or within the period ending twelve months after the final distribution of assets. However, a plan is not a successor plan if less than 2% of the Employees eligible to participate in the terminating Plan are eligible to participate (beginning 12 months prior to and ending 12 months after the Plan's termination date) in the potential successor plan.

(D) **"Lost Participants."** If the Plan Administrator is unable to locate any Participant or Beneficiary whose Account becomes distributable upon Plan termination, the Plan Administrator will apply Section 9.11 except Section 9.11(B) does not apply.

(E) **Continuing Trust Provisions.** The Trust will continue until the Trustee in accordance with the direction of the Plan Administrator has distributed all of the benefits under the Plan. On each valuation date, the Plan Administrator will credit any part of a Participant's Account Balance retained in the Trust with its share of the Trust net income, gains or losses. Upon termination of the Plan, the amount, if any, in a suspense account under Article III will revert to the Employer, subject to the conditions of the Treasury regulations permitting such a reversion. A resolution or an amendment to discontinue all future benefit accrual but otherwise to continue maintenance of this Plan, is not a termination for purposes of this Section 13.06.

13.07 MERGER/DIRECT TRANSFER. The Trustee possesses the specific authority to enter into merger agreements or direct transfer of assets agreements with the trustees of other retirement plans described in Code §401(a), including an elective transfer, and to accept the direct transfer of plan assets, or to transfer plan assets, as a

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party to any such agreement. Except as provided in Section 13.07(A), the Trustee may not consent to, or be a party to, any merger or consolidation with another plan, or to a transfer of assets or liabilities to another plan (or from the other plan to this Plan), unless immediately after the merger, consolidation or transfer, the surviving plan provides each Participant a benefit equal to or greater than the benefit each Participant would have received had the transferring plan terminated immediately before the merger or the consolidation or the transfer. The Trustee will hold, administer and distribute the transferred assets as a part of the Trust Fund and the Trustee must maintain a separate Employer contribution Account for the benefit of the Employee on whose behalf the Trustee accepted the transfer in order to reflect the value of the transferred assets.

The Trustee may accept a direct transfer of plan assets on behalf of an Employee prior to the date the Employee satisfies the Plan's eligibility conditions. If the Trustee accepts such a direct transfer of plan assets, the Plan Administrator and the Trustee must treat the Employee as a limited Participant as described in Section 4.04.

Sections 13.07(A) and (B) are effective for elective transfers made on or following September 6, 2000. Under an elective transfer which is made pursuant to Section 13.07(A) or (B), the Protected Benefits in the transferring plan are not required to be preserved under Section 13.02(B), except as provided in Section 13.07(B).

(A) Distributable Event Elective Transfer. The Trustee may consent to, or be a party to, a merger, consolidation or transfer of assets with another qualified plan in accordance with this Section 13.07(A).

A transfer between qualified plans is a distributable event elective transfer if: (1) the Participant has a right to immediate distribution from the transferor plan; (2) the transfer is voluntary, under a fully informed election by the Participant; (3) the Participant has an alternative that retains his/her Protected Benefits (including an option to leave his/her benefit in the transferor plan, if that plan is not terminating); (4) the transferor plan satisfies applicable consent and joint and survivor annuity requirements of the Code; (5) the amount transferred, together with the amount of any contemporaneous direct rollover of the Participant's remaining Vested Account Balance, constitutes the Participant's entire Vested Account Balance; (6) the Participant has a 100% Vested interest in the transferred benefit in the transferee plan; and (7) if the transfer is from this Plan to a defined benefit plan, the transferee plan provides a benefit for the affected Participant equal to the benefit (expressed as an annuity payable at normal retirement age) derived solely with respect to the transferred assets.

An elective transfer under this Section 13.07(A) may occur between qualified plans of any type. Any direct

transfer of assets from a defined benefit plan to this Plan which does not satisfy the requirements of this Section 13.07(A) renders the Plan individually-designed. See Section 7.12.

Commencing January 1, 2002, the Trustee may not undertake an elective transfer of a Participant's Account under this Section 13.07(A) if the Participant is eligible to receive an immediate distribution of his/her entire Vested Account Balance which would consist entirely of an eligible rollover distribution as described in Section 6.10(D).

(B) Transaction/Employment Change Elective Transfer. The Trustee may consent to, or be a party to, a merger, consolidation or transfer of assets with another qualified defined contribution plan in accordance with this Section 13.07(B).

A transfer is a transaction or employment change transfer irrespective of whether the Participant has a right to an immediate distribution from the transferor plan provided: (1) the transfer satisfies requirements (2) and (3) of Section 13.07(A); (2) the transfer only may occur as between plans described in applicable Treasury regulations; (3) the transfer must occur in connection with a merger, asset or stock acquisition, or change in employment resulting in the participant's loss of right to additional allocations in the transferor plan or in such other circumstances as described in applicable Treasury regulations; (4) the transfer must consist of the Participant's entire Vested and non-Vested Account Balance within the transferor plan; and (5) the transferee plan must protect the QJSA and QPSA benefits (if any) in the transferor plan.

(C) Other Transfers. Any transfer which is not an elective transfer under Sections 13.07(A) or 13.07(B) and which includes Protected Benefits is subject to Section 13.02(B). The trustee of the transferee plan in receipt of assets which are Protected Benefits must preserve the Protected Benefits in accordance with applicable Treasury regulations. If the transferor plan contains a 401(k) arrangement with restricted balances as described in Section 14.11, such balances remain subject in the transferee plan to the distribution restrictions described in Section 14.03(d). Any transfer under this Section 13.07(C) from a defined benefit plan to this Plan must be in the form of the transfer of a paid up individual annuity contract which guarantees the payment of benefits in accordance with the transferor plan. Notwithstanding any Plan language to the contrary, if this Plan is a target benefit or money purchase pension plan, and the Trustee merges or the Employer converts by amendment the Plan into another type of defined contribution plan, the Employer operationally may elect whether to vest immediately the Participants' Account Balances.

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**ARTICLE XIV
CODE SECTION 401(k) AND CODE SECTION 401(m) ARRANGEMENTS**

14.01 **APPLICATION.** This Article XIV applies to the Plan only if the Employer is maintaining its Plan under a Code §401(k) Adoption Agreement.

14.02 **401(k) ARRANGEMENT.** The Employer under Article III of its Adoption Agreement will elect the terms of the 401(k) arrangement as described in Code §401(k)(2), if any, under the Plan. If the Plan is a Standardized Plan, the 401(k) arrangement must be a salary reduction arrangement. If the Plan is a Nonstandardized Plan, the 401(k) arrangement may be a salary reduction arrangement or a cash or deferred arrangement, or both.

(A) Salary Reduction Arrangement. If the Employer in its Adoption Agreement Section 3.01 elects a salary reduction arrangement, a Participant (or an Employee in anticipation of becoming a Participant) may file a salary reduction agreement with the Plan Administrator. The salary reduction agreement may not be effective earlier than the following date which occurs last: (1) the Participant's Plan Entry Date (or, in the case of a re-employed Employee, his/her re-participation date under Article II); (2) the execution date of the Participant's salary reduction agreement; (3) the date the Employer adopts the 401(k) arrangement by executing the Adoption Agreement; or (4) the effective date of the 401(k) arrangement, as specified in the Adoption Agreement.

A salary reduction agreement must specify the dollar amount of Compensation or percentage of Compensation the Participant wishes to defer. The salary reduction agreement will apply only to Compensation which becomes currently available to the Participant after the effective date of the salary reduction agreement. The Employer will apply a salary reduction election to the Participant's Compensation as determined under Section 1.07 (and to increases in such Compensation) unless the Participant elects in his/her salary reduction agreement to limit the reduction to certain Compensation. The Plan Administrator in the Plan's salary reduction agreement form, subject to the Plan terms and applicable Revenue Service guidance, will specify additional rules and restrictions applicable to a Participant's salary reduction agreement.

(B) Cash or Deferred Arrangement. If the Employer in its Adoption Agreement Section 3.02 elects a cash or deferred arrangement, a Participant may elect to make a cash election against his/her proportionate share of the Employer's cash or deferred contribution, in accordance with the Employer's Adoption Agreement elections. A Participant's proportionate share of the Employer's cash or deferred contribution is the percentage of the total cash or deferred contribution which bears the same ratio that the Participant's Compensation for the Plan Year bears to the total Compensation of all Participants for the Plan Year. For purposes of determining each Participant's proportionate share of the cash or deferred contribution, a Participant's Compensation is his/her Compensation as determined under Section 1.07, excluding any effect the proportionate share may have on the Participant's Compensation for the Plan Year. The Plan Administrator will determine the proportionate share prior to the Employer's actual contribution to the Trust, to provide the Participants the opportunity to file cash elections. The

Employer will pay directly to the Participant the portion of his/her proportionate share the Participant has elected to receive in cash.

(C) Negative Election. The Employer in its Adoption Agreement may elect to apply prospectively to its Plan the negative election provisions of this Section 14.02(C). Under a negative election, the Employer automatically will reduce the Compensation of each Participant who is not deferring an amount at least equal to the negative election amount, by the required election amount, except those Participants who timely make a contrary election under Section 14.02(C)(1). Participants deferring an amount equal to or greater than the negative election amount are not subject to the Plan's negative election provisions. Amounts deferred under negative election are treated as elective deferrals for all purposes under the Plan. An Employer in its Adoption Agreement must elect whether the negative election applies to all Participants as of the effective date of the negative election or only to Employees whose Plan Entry Date is on or following the effective date of the negative election.

(1) Participant's contrary election. A Participant may at any time elect not to defer any Compensation or to defer an amount which is less than the negative election amount ("contrary election"). A Participant's contrary election generally is effective as of the first payroll period for the month which follows the Participant's contrary election. However, a Participant may make a contrary election which is effective: (1) for the first payroll period in which he/she becomes a Participant if the Participant makes a contrary election within a reasonable period following the Participant's Entry Date and before the Compensation to which the election applies becomes currently available; or (2) for the first payroll period following the effective date of the Employer's adoption of the negative election, if the Participant makes contrary election not later than the effective date of the negative election. A Participant's contrary election continues in effect until the Participant subsequently changes his/her Salary Reduction Agreement.

(2) Negative election notice. If the Employer in its Adoption Agreement adopts the negative election provision, the Plan Administrator must provide a notice to each Eligible Employee which explains the effect of the negative election and a Participant's right to make a contrary election, including the procedure and timing applicable to the contrary election. The Plan Administrator must provide the notice to an Eligible Employee a reasonable period prior to that Employee's commencement of participation in the Plan subject to the negative election. A Plan Administrator also must notify annually those Participants then subject to the negative election of the existing negative election deferral percentage and the Participant's right to make a contrary election, including the procedure and timing applicable to the contrary election.

(D) Safe Harbor 401(k) Plan. The Employer in its Adoption Agreement may elect to apply to its Plan the safe harbor provisions of this Section 14.02(D). Except as otherwise provided in this Plan, in the Code or in other applicable guidance, an Employer must elect the safe harbor plan provisions of this Section 14.02(D) and must

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satisfy the applicable notice requirements prior to the beginning of the Plan Year to which the safe harbor provisions apply. In addition, except as otherwise indicated, the electing Employer must apply the safe harbor provisions for the entire safe harbor Plan Year, including any short Plan Year. The provisions of this Section 14.02(D) apply to an electing Employer notwithstanding any contrary provision of the Plan and all other remaining Plan terms continue to apply to the Employer's safe harbor plan. An Employer which elects and operationally satisfies the safe harbor provisions of this Section 14.02(D) is not subject to the nondiscrimination provisions of Section 14.08 (ADP test). An electing Employer which provides additional matching contributions as described in Section 14.02(D)(3) is subject to the nondiscrimination provisions of Section 14.09 (ACP test), unless the additional matching contributions satisfy the ACP test safe harbor described in Section 14.02(D)(3).

(1) **Safe Harbor - Compensation.** For purposes of this Section 14.02(D), Compensation is limited as described in Section 1.07(E) and for purposes of allocating the Employer's safe harbor contribution and safe harbor matching contribution, the Employer must elect under its Adoption Agreement a nondiscriminatory definition of Compensation as described in Section 1.07(F). An Employer in its Adoption Agreement also may elect to limit the amount of Compensation which is subject to deferral to any reasonable definition which: (a) permits a Participant to receive the maximum matching contribution, if any, available under the Plan; or (b) limits deferrals under the Plan to a whole percentage or dollar amount.

(2) **Safe Harbor Contributions/ADP test safe harbor.** An Employer which elects under this Section 14.02(D) to apply the safe harbor provisions, must make a contribution to the Plan which will satisfy the ADP test safe harbor ("safe harbor contribution"). The Employer in its Adoption Agreement must elect whether the Employer will make its safe harbor contribution in the form of: (a) a safe harbor nonelective contribution; (b) a basic matching contribution; or (c) an enhanced matching contribution. A safe harbor nonelective contribution is a fixed nonelective contribution in an amount the Employer elects in its Adoption Agreement and must equal at least 3% of each Participant's Compensation. A basic matching contribution is a fixed matching contribution equal to 100% of a Participant's elective deferrals which do not exceed 3% of Compensation, plus 50% of elective deferrals which exceed 3%, but which do not exceed 5% of Compensation. An enhanced matching contribution is a fixed matching contribution made in accordance with any formula the Employer elects in its Adoption Agreement under which, at any rate of elective deferrals, a Participant receives a matching contribution which is at least equal to the match the Participant would receive under the basic matching contribution formula and under which the rate of match does not increase as the rate of deferrals increases. Under a basic or enhanced safe harbor match, a Highly Compensated Employee may not receive a greater rate of match than any Nonhighly Compensated Employee. The Employer in its Adoption Agreement must elect the applicable time period for computing the Employer's safe harbor basic or enhanced matching contributions. The Plan Administrator must allocate the Employer's safe harbor contribution without regard to the Section 3.06 allocation conditions, but the Plan Administrator will not allocate a

safe harbor contribution where the allocation would exceed a Participant's Code §§415 or 402(g) limitation or where the Participant is suspended from making deferrals under Section 14.11(A)(1). The Plan Administrator must allocate the safe harbor contribution to all Participants unless the Employer in an Addendum to its Adoption Agreement elects to limit the safe harbor allocation to Nonhighly Compensated Employees. A Participant's Account Balance attributable to safe harbor contributions at all times 100% Vested and subject to the distribution restrictions described in Section 14.03(d). An Employer's safe harbor contribution is not subject to nondiscrimination testing under Section 14.08 (ADP test) and if the safe harbor contribution is in the form of a basic matching contribution, it is not subject to nondiscrimination testing under Section 14.09 (ACP test). The Employer in its Adoption Agreement must elect whether to satisfy the ACP test safe harbor Section 14.02(D)(3)(a) amount limitation with respect to the Employer's enhanced matching contributions or to test, using current year testing, its enhanced matching contributions under Section 14.09 (ACP test).

An Employer electing Section 14.02(D) which in its Adoption Agreement also elects to apply permitted disparity in allocating the Employer's nonelective contributions, may not include within the permitted disparity formula allocation, any of the Employer's safe harbor contributions. An Employer in its Adoption Agreement may elect to make the safe harbor contribution to another defined contribution plan maintained by the Employer provided: (i) the Employer maintains its safe harbor 401(k) Plan using a Nonstandardized 401(k) Adoption Agreement; or (ii) the Employer makes its safe harbor contribution to another defined contribution plan paired with the Employer's safe harbor 401(k) Plan.

(3) **Additional Matching Contributions/ACP test safe harbor.** An Employer which satisfies the ADP test safe harbor under Section 14.02(D)(2), in its Adoption Agreement may elect to make matching contributions to the Plan which are in addition to the Employer's safe harbor contributions and which the Employer does not use to satisfy the ADP test safe harbor ("additional matching contributions"). The Employer in its Adoption Agreement must elect whether to subject the additional matching contributions to the ACP test safe harbor requirements of this Section 14.02(D)(3), or for the Plan Administrator to test, using current year testing, the additional matching contributions for nondiscrimination under Section 14.09 (ACP test). Under the ACP test safe harbor: (a) the Employer may not make matching contributions with respect to a Participant's deferral contributions which exceed 6% of Plan Year Compensation; (b) the amount of any discretionary matching contribution allocated to any Participant in Plan Years commencing after 1999 may not exceed 4% of the Participant's Plan Year Compensation; (c) the rate of matching contributions may not increase as the rate of deferrals increases; and (d) subject to application of any Section 3.06 allocation conditions, a Highly Compensated Employee may not receive a greater rate of match than any Nonhighly Compensated Employee. The Employer must elect in its Adoption Agreement the vesting schedule, allocation conditions and distribution provisions applicable to the Employer's additional matching contributions described in this Section 14.02(D)(3). If the Employer in its Adoption Agreement has elected to permit Employee contributions under the Plan: (i) any Employee

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contributions do not satisfy the ACP test safe harbor and the Plan Administrator must test the Employee contributions under Section 14.09 (ACP test) using current year testing; and (ii) if the Employer in its Adoption Agreement elects to match the Employee contributions, the Plan Administrator in applying the 6% amount limit in clause (a) must aggregate a Participant's deferral contribution and Employee contributions which are subject to the 6% limit.

(4) **Safe Harbor notice.** The Plan Administrator annually must provide a safe harbor notice to each Participant a reasonable period prior to each Plan Year for which the Employer in its Adoption Agreement has elected to apply the safe harbor provisions. For this purpose, the Plan Administrator is deemed to provide timely notice if the Plan Administrator provides the safe harbor notice at least 30 days and not more than 90 days prior to the beginning of the safe harbor Plan Year. The safe harbor notice must provide comprehensive information regarding the Participants' rights and obligations under the Plan and must be written in a manner calculated to be understood by the average Participant. If an Employee becomes eligible to participate in the Plan after the Plan Administrator has provided the annual safe harbor notice, the Plan Administrator must provide the safe harbor notice no later than the Employee's Plan Entry Date. A Participant may make or modify a salary reduction agreement under the Employer's safe harbor 401(k) Plan for 30 days following receipt of the safe harbor notice, or if greater, for the period the Plan Administrator specifies in the salary reduction agreement.

(5) **Mid-year changes in safe harbor status.** The Employer may amend its 401(k) Plan during any Plan Year to become a safe harbor plan under this Section 14.02(D) for that Plan Year, provided: (a) the Plan then is using current year testing; (b) the Employer amends the Plan to add the safe harbor provisions not later than 30 days prior to the end of the Plan Year and to apply the safe harbor provisions for the entire Plan Year; (c) the Employer elects to satisfy the safe harbor contribution requirement using the safe harbor nonelective contribution; and (d) the Plan Administrator provides a notice to Participants prior to the beginning of the Plan Year for which the safe harbor amendment may become effective, that the Employer later may amend the Plan to a safe harbor plan for that Plan Year using the safe harbor nonelective contribution and if the Employer so amends the Plan, the Plan Administrator will provide a supplemental notice to Participants at least 30 days prior to the end of that Plan Year informing Participants of the amendment. The Plan Administrator then must timely provide any supplemental notice required under this Section 14.02(D)(5). Except as otherwise specified, the Participant notices described in this Section 14.02(D)(5) also must satisfy the requirements applicable to safe harbor notices under Section 14.02(D)(4).

The Employer may amend its safe harbor 401(k) Plan during a Plan Year to reduce or eliminate prospectively, any safe harbor contribution which is a basic matching or enhanced matching contribution (under Section 14.02(D)(2)) provided: (i) the Plan Administrator provides a notice to the Participants which explains the effect of the amendment, specifies the amendment's effective date and informs Participants they will have a reasonable opportunity to modify their salary reduction agreements,

and if applicable, Employee contributions; (ii) Participants have a reasonable opportunity and period prior to the effective date of the amendment to modify their salary reduction agreements, and if applicable, Employee contributions; and (iii) the amendment is not effective earlier than the later of: (a) 30 days after the Plan Administrator gives notice of the amendment; or (b) the date the Employer adopts the amendment. An Employer which amends its safe harbor Plan to eliminate or reduce the safe harbor matching contribution under this Section 14.02(D)(5), or which terminates the Plan under Section 13.04 effective during the Plan Year, must continue to apply all of the safe harbor requirements of this Section 14.02(D) until the amendment or termination becomes effective and also must apply for the entire Plan Year, using current year testing, the nondiscrimination test under Section 14.08 (ADP test), and if applicable, the nondiscrimination test under Section 14.09 (ACP test).

An Employer maintaining a profit sharing plan, stock bonus plan or pre-ERISA money purchase pension plan may during a Plan Year amend prospectively its Plan to become a safe harbor 401(k) plan provided: (a) the Employer's Plan is not a successor plan as described in Notice 98-1 or any subsequent applicable guidance; (b) the 401(k) arrangement is in effect for at least 3 months during the Plan Year; (c) the Plan Administrator provides the safe harbor notice described in Section 14.02(D)(4) a reasonable time prior to and not later than the effective date of the amendment; and (d) the Plan satisfies commencing on the effective date of the amendment, all of the safe harbor requirements of this Section 14.02(D).

(E) **SIMPLE 401(k) Plan.** The Employer in its Standardized Code §401(k) Adoption Agreement may elect to apply prospectively to its Plan the SIMPLE 401(k) provisions of this Section 14.02(E) if: (1) the Plan Year is the calendar year; (2) the Employer (including Related Employers under Section 1.26) has no more than 100 Employees who received Compensation of at least \$5,000 in the immediately preceding calendar year; and (3) the Employer does not maintain any other plan as described in Code §219(g)(5), with respect to which contributions were made or benefits were accrued for Service by an eligible Employee in the Plan Year to which the SIMPLE 401(k) provisions apply. If an electing Employer fails for any subsequent calendar year to satisfy all of the foregoing requirements, including where the Employer is involved in an acquisition, disposition or similar transaction under which the Employer satisfies Code §410(b)(6)(C)(1), the Employer remains eligible to maintain the SIMPLE 401(k) Plan for two additional calendar years following the last year in which the Employer satisfied the requirements. The provisions of this Section 14.02(E) apply to an electing Employer notwithstanding any contrary provision in the Plan.

(1) **SIMPLE - Compensation.** For purposes of this Section 14.02(E), Compensation is limited as described in Section 1.07(E) and: (a) in the case of an Employee, means W-2 wages but increased by the Employee's elective deferrals under a 401(k) arrangement, SIMPLE IRA, SARSEP or 403(b) annuity; and (b) in the case of a Self Employed Individual, means Earned Income determined without regard to contributions made to this Plan.

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(2) **Participant deferral contributions.** Each eligible Employee may enter into a salary reduction agreement to make deferral contributions into the SIMPLE 401(k) Plan in an amount not exceeding \$6,000 per calendar year, or such other amount as in effect under Code §408(p)(2)(E). A Participant may elect to make deferral contributions or modify a salary reduction agreement at any time in accordance with the Plan Administrator's SIMPLE 401(k) salary reduction agreement form, but must be provided at least 60 days prior to the beginning of each SIMPLE Plan Year or commencement of participation for this purpose. A Participant also may at any time terminate prospectively, his/her salary reduction agreement applicable to the Employer's SIMPLE 401(k) Plan.

(3) **Employer SIMPLE 401(k) contributions.** An Employer which elects under this Section 14.02(E) to apply the SIMPLE 401(k) provisions, annually must make a SIMPLE 401(k) contribution to the Plan as described in this Section 14.02(E)(3). The Employer operationally must elect whether the Employer will contribute: (1) a matching contribution equal to each Participant's deferral contributions but not exceeding 3% of Plan Year Compensation or such lower percentage as the Employer may elect under Code §408(p)(2)(C)(ii)(II); or (2) a nonelective contribution equal to 2% of Plan Year Compensation for each Participant whose Compensation is at least \$5,000. The Employer in its Adoption Agreement may not elect to apply any Section 3.06 allocation conditions to the Plan Administrator's allocation of Employer SIMPLE contributions.

(4) **SIMPLE 401(k) notice.** The Plan Administrator must provide notice to each Participant a reasonable period of time before the 60th day prior to the beginning of each SIMPLE 401(k) Plan Year, describing the Participant's deferral election rights and the Employer's matching or nonelective contributions which the Employer will make for the Plan Year described in the notice.

(5) **Application of remaining Plan provisions.** All contributions to the SIMPLE 401(k) Plan are Annual Additions subject to the limitations set forth in Article III. No contributions other than those described in this Section 14.02(E) or rollover contributions described in Section 4.04 may be made to the SIMPLE 401(k) Plan. All contributions to the SIMPLE 401(k) Plan are 100% Vested at all times and in the event of a conversion of a non SIMPLE Plan into a SIMPLE 401(k) Plan, all Account Balances in existence on the first day of the Plan Year to which the SIMPLE 401(k) provisions apply, become 100% Vested. A SIMPLE 401(k) Plan is not subject to nondiscrimination testing under Section 14.08 (ADP test) or Section 14.09 (ACP test) of the Plan and is not subject to the top heavy provisions of Article XII. Except as otherwise described in this Section 14.03(E), if an Employer has elected in its Adoption Agreement to apply the SIMPLE 401(k) provisions of this Section 14.03(E), the Plan Administrator will apply the remaining Plan provisions to Employer's Plan.

(F) **Election not to participate.** A Participant's or Employee's election not to participate, pursuant to Section 2.06, includes his/her right to enter into a salary reduction agreement or to share in the allocation of a cash or deferred contribution.

14.03 **DEFINITIONS.** For purposes of this Article XIV:

(a) "Compensation" means, except as otherwise provided in this Article XIV, Compensation as defined for nondiscrimination purposes in Section 1.07(F).

(b) "Current year testing" means for purposes of the ADP test described in Section 14.08 and the ACP test described in Section 14.09, the use of data from the testing year in determining the ADP or ACP for the Nonhighly Compensated Group.

(c) "Deferral contributions" are salary reduction contributions and cash or deferred contributions the Employer contributes to the Trust on behalf of an eligible Employee, irrespective of whether, in the case of cash or deferred contributions, the contribution is at the election of the Employee. For salary reduction contributions, the terms "deferral contributions" and "elective deferrals" have the same meaning.

(d) "Distribution restrictions" means the Employee may not receive a distribution of the restricted balances described in Section 14.11 (nor earnings on those contributions) except in the event of: (1) the Participant's death, Disability, Separation from Service (which for purposes of this Section 14.03(d), means as the Plan Administrator determines under applicable Revenue Service guidance, including the "same desk" rule and Revenue Ruling 2000-27 with respect to certain asset sale transactions) or attainment of age 59 1/2, (2) financial hardship satisfying Section 14.11(A), (3) Plan termination, without establishment of a successor defined contribution plan (other than an ESOP), (4) a sale by a corporate Employer of substantially all of the assets (within the meaning of Code §409(d)(2)) used in a trade or business of the Employer, to another corporation, but only to an Employee who continues employment with the corporation acquiring those assets, or (5) a sale by a corporate Employer of its interest in a subsidiary (within the meaning of Code §409(d)(3)), but only to an Employee who continues employment with the subsidiary. A distribution described in clauses (3), (4) or (5) must be a lump sum distribution, and otherwise must satisfy Code §401(k)(10).

(e) "Elective deferrals" are all salary reduction contributions and that portion of any cash or deferred contribution which the Employer contributes to the Plan at the election of an eligible Employee. Any portion of a cash or deferred contribution contributed to the Trust because of the Employee's failure to make a cash election is an elective deferral. However, any portion of a cash or deferred contribution over which the Employee does not have a cash election is not an elective deferral. Elective deferrals do not include amounts which have become currently available to the Employee prior to the election nor amounts designated as an Employee contribution at the time of deferral or contribution. Elective deferrals are 100% vested at all times.

(f) "Eligible Employee" means, for purposes of the ADP test described in Section 14.08, an Employee who is eligible to enter into a salary reduction

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agreement for all or any portion of the Plan Year, irrespective of whether he/she actually enters into such an agreement, and a Participant who is eligible for an allocation of the Employer's cash or deferred contribution for the Plan Year. For purposes of the ACP test described in Section 14.09, an eligible Employee is a Participant who is eligible to receive an allocation of matching contributions (or would be eligible if he/she made the type of contributions necessary to receive an allocation of matching contributions) and a Participant who is eligible to make Employee contributions, irrespective of whether he/she actually makes Employee contributions. An Employee continues to be an eligible Employee during a period the Plan suspends the Employee's right to make elective deferrals or Employee contributions following a hardship distribution.

(g) "Employee contributions" are nondeductible contributions made by a Participant and designated, at the time of contribution, as an Employee contribution. Elective deferrals and deferral contributions are not Employee contributions. Employee contributions are subject to Article IV.

(h) "Highly Compensated Employee" means an eligible Employee who satisfies the definition in Section 1.14 of the Plan.

(i) "Highly Compensated Group" means the group of eligible Employees who are Highly Compensated Employees for the Plan Year.

(j) "Matching contributions" are contributions made by the Employer on account of elective deferrals under a 401(k) arrangement or on account of Employee contributions. Matching contributions also include Participant forfeitures allocated on account of such elective deferrals or Employee contributions.

(k) "Nonelective contributions" are contributions made by the Employer which are not subject to a deferral election by an Employee and which are not matching contributions.

(l) "Nonhighly Compensated Employee" means an eligible Employee who is not a Highly Compensated Employee.

(m) "Nonhighly Compensated Group" means the group of eligible Employees who are Nonhighly Compensated Employees for the Plan Year.

(n) "Prior year testing" means for purposes of the ADP test described in Section 14.08 and the ACP test described in Section 14.09, the use of data from the Plan Year immediately prior to the testing year in determining the ADP or ACP for the Nonhighly Compensated Group.

(o) "Qualified matching contributions" are matching contributions which are 100% Vested at all times and which are subject to the distribution restrictions described in Section 14.03(d). Matching contributions are not 100% Vested at all times if the Employee has a 100% Vested interest because of his/her Years of Service taken into account under a vesting schedule.

Any matching contributions allocated to a Participant's qualified matching contributions Account under the Plan automatically satisfy and are subject to the definition of qualified matching contributions.

(p) "Qualified nonelective contributions" are nonelective contributions which are 100% Vested at all times and which are subject to the distribution restrictions described in Section 14.03(d). Nonelective contributions are not 100% Vested at all times if the Employee has a 100% Vested interest because of his/her Years of Service taken into account under a vesting schedule. Any nonelective contributions allocated to a Participant's qualified nonelective contributions Account under the Plan automatically satisfy and are subject to the definition of qualified nonelective contributions.

(q) "Regular matching contributions" are matching contributions which are not qualified matching contributions.

(r) "Safe harbor contributions" are Employer nonelective or matching contributions which the Plan Administrator applies to satisfy the ADP test safe harbor under Code §401(k)(12)(B) or (C) and which are 100% Vested at all times and subject to the distribution restrictions described in Section 14.03(d). Safe harbor contributions are not 100% Vested at all times if the Employee has a 100% Vested interest because of his/her Years of Service taken into account under a vesting schedule. Any nonelective contributions allocated to a Participant's safe harbor contributions Account, automatically satisfy and are subject to the definition of safe harbor contributions.

(s) "Salary reduction agreement" is a written election by a Participant to make salary reduction contributions as described in Section 14.02(A).

(t) "Salary reduction contributions" mean Employer contributions elected by a Participant to be made from the Participant's Compensation pursuant to a salary reduction agreement and which the Plan Administrator must allocate to the electing Participant's Account.

(u) "Testing year" means for purposes of the ADP test described in Section 14.08 and the ACP test described in Section 14.09, the Plan Year for which the ADP or ACP test is being performed.

14.04 MATCHING CONTRIBUTIONS/
EMPLOYEE CONTRIBUTIONS. The Employer in Adoption Agreement Section 3.01 may elect to provide matching contributions. The Employer in Adoption Agreement Section 4.02 also may elect to permit a Participant to make Employee contributions.

14.05 DEFERRAL DEPOSIT TIMING/EMPLOYER CONTRIBUTION STATUS. The Employer must make salary reduction contributions to the Trust after withholding the corresponding Compensation from the Participant at the earliest date on which the contributions can reasonably be segregated from the Employer's general assets. Furthermore, the Employer must make to the Trust salary reduction contributions, cash or deferred contributions, matching contributions (including qualified matching

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contributions), qualified nonelective contributions, safe harbor contributions and SIMPLE contributions no later than the time prescribed by the Code or ERISA. Salary reduction contributions and cash or deferred contributions are Employer contributions for all purposes under this Plan, except to the extent the Code prohibits the use of these contributions to satisfy the qualification requirements of the Code.

14.06 SPECIAL ACCOUNTING AND ALLOCATION PROVISIONS. To make allocations under the Plan, the Plan Administrator must establish for each Participant, consistent with the Employer's elections under its Adoption Agreement, a deferral contributions Account, a nonelective contributions Account, a qualified matching contributions Account, a regular matching contributions Account, a qualified nonelective contributions Account, a safe harbor contributions Account and a SIMPLE contributions account.

(A) Deferral contributions. The Plan Administrator will allocate to each Participant's deferral contributions Account the amount of deferral contributions the Employer makes to the Trust on behalf of the Participant. The Plan Administrator will make this allocation as of the last day of each Plan Year or more frequently as it may determine to be appropriate and consistent with the Plan terms, including those providing for allocation of net income, gain or loss.

(B) Matching contributions. The Plan Administrator will allocate the Employer's matching contributions as of the last day of each Plan Year or more frequently as the Plan Administrator may determine to be appropriate and consistent with the Plan terms, including those providing for allocation of net income, gain or loss. The Plan Administrator may not allocate any fixed or discretionary matching contributions with respect to deferral contributions that are excess deferrals under Section 14.07. For this purpose: (a) excess deferrals relate first to deferral contributions for the Plan Year not otherwise eligible for a matching contribution; and (b) if the Plan Year is not a calendar year, the excess deferrals for a Plan Year are the last elective deferrals made for a calendar year. The Plan Administrator may not allocate a matching contribution to a Participant's Account to the extent the matching contribution exceeds the Participant's Annual Additions limitation in Part 2 of Article III. The provisions of Section 3.05 govern the treatment of any matching contribution the Plan Administrator allocates contrary to this Section 14.06(B), and the Plan Administrator will compute a Participant's ACP under Section 14.09 by disregarding the forfeiture.

(1) Fixed match. To the extent the Employer makes matching contributions under a fixed matching contribution formula set forth in the Employer's Adoption Agreement, the Plan Administrator will allocate the matching contribution to the Account of the Participant on whose behalf the Employer makes that contribution. A fixed matching contribution formula is a formula under which the Employer contributes a specified percentage or dollar amount on behalf of a Participant based on that Participant's deferral contributions or Employee contributions eligible for a match. The Employer may contribute on a Participant's behalf under a specific matching contribution formula only if the Participant satisfies

the allocation conditions for matching contributions, if any, the Employer elects in Adoption Agreement Section 3.06. The Employer in its Adoption Agreement may elect whether the Plan Administrator will allocate a fixed matching contribution as a qualified matching contribution or as a regular matching contribution.

(2) Discretionary match. To the extent the Employer makes matching contributions under a discretionary formula, the Plan Administrator will allocate the discretionary matching contributions to the Account of each Participant who satisfies the allocation conditions, if any, for matching contributions the Employer elects in Adoption Agreement Section 3.06. The allocation of discretionary matching contributions to a Participant's Account is in the same proportion that each Participant's deferral contributions bear to the total deferral contributions of all Participants. If the discretionary formula is a tiered formula, the Plan Administrator will make this allocation separately with respect to each tier of deferral contributions, allocating in such manner the amount of the matching contributions made with respect to that tier. The Employer operationally may direct the Plan Administrator to allocate any discretionary match as a regular matching contribution or as a qualified matching contribution.

(3) Match on deferrals and Employee contributions. If the matching contribution formula applies both to deferral contributions and to Employee contributions, the matching contributions apply first to deferral contributions.

(C) Qualified nonelective contributions. If the Employer operationally designates a nonelective contribution to be a qualified nonelective contribution for the Plan Year, the Plan Administrator will allocate that qualified nonelective contribution to the qualified nonelective contributions Account of each Participant eligible for an allocation of that designated contribution, as the Employer elects in Adoption Agreement Section 3.04.

(D) Nonelective contributions. If the Employer makes a nonelective contribution for the Plan Year which the Employer does not designate as a qualified nonelective contribution, the Plan Administrator will allocate the nonelective contribution in accordance with Adoption Agreement Section 3.04. For purposes of the nondiscrimination tests described in Sections 14.08 (ADP test), 14.09 (ACP test) and 14.10 (multiple use limitation), the Plan Administrator may treat nonelective contributions allocated under this Section 14.06(D) as qualified nonelective contributions, if the contributions otherwise satisfy the definition of qualified nonelective contributions. The Employer, to facilitate the Plan Administrator's correction of test failures under Sections 14.08, 14.09 and 14.10, also may make qualified nonelective contributions to the Plan irrespective of whether the Employer in its Adoption Agreement has elected to provide nonelective contributions.

(E) Safe harbor contributions. If the Employer elects under Section 14.02(D) to apply the safe harbor provisions to the Plan, the Employer will allocate the safe harbor

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contributions to the safe harbor contributions Account of each Participant unless the Employer in an Addendum to its Adoption Agreement elects to limit safe harbor allocations to Nonhighly Compensated Employees.

(F) **SIMPLE 401(k) Plan contributions.** If the Employer elects under Section 14.02(E) to apply the SIMPLE 401(k) provisions to the Plan, the Employer will allocate the SIMPLE contributions to the SIMPLE contributions Account of Participants eligible to receive an allocation of the Employer's SIMPLE contribution (including Participants who make deferral contributions), as specified in Section 14.02(E).

14.07 ANNUAL ELECTIVE DEFERRAL LIMITATION.

(A) **Annual Elective Deferral Limitation.** An Employee's elective deferrals for a calendar year may not exceed the Code §402(g) limitation ("402(g) limitation"). The 402(g) limitation is the greater of \$7,000 or the adjusted amount determined by the Secretary of the Treasury. If, pursuant to a salary reduction agreement or pursuant to a cash or deferral election, the Employer determines the Employee's elective deferrals to the Plan for a calendar year would exceed the 402(g) limitation, the Employer will suspend the Employee's salary reduction agreement, if any, until the following January 1 and pay in cash the portion of a deferral election which would result in the Employee's elective deferrals for the calendar year exceeding the 402(g) limitation. If the Plan Administrator determines an Employee's elective deferrals already contributed to the Plan for a calendar year exceed the 402(g) limitation, the Plan Administrator will distribute the amount in excess of the 402(g) limitation (the "excess deferral"), as adjusted for allocable income under Section 14.07(C), no later than April 15 of the following calendar year. If the Plan Administrator distributes the excess deferral by the appropriate April 15, the excess deferral is not an Annual Addition under Article III, and the Plan Administrator may make the distribution irrespective of any other provision under this Plan or under the Code. The Plan Administrator will reduce the amount of excess deferrals for a calendar year distributable to the Employee by the amount of excess contributions (as determined in Section 14.08), if any, previously distributed to the Employee for the Plan Year beginning in that calendar year. Elective deferrals distributed to an Employee as excess Annual Additions in accordance with Article III are not taken into account under the Employee's 402(g) limitation.

(B) **More than One Plan.** If an Employee participates in another plan subject to the 402(g) limitation under which he/she makes elective deferrals pursuant to a 401(k) arrangement, elective deferrals under a SARSEP, elective contributions under a SIMPLE IRA or salary reduction contributions to a tax-sheltered annuity (irrespective of whether the Employer maintains the other plan), the Employee may provide to the Plan Administrator a written claim for excess deferrals made to the Plan for a calendar year. The Employee must submit the claim no later than the March 1 following the close of the particular calendar year and the claim must specify the amount of the Employee's elective deferrals under this Plan which are excess deferrals. If the Plan Administrator receives a timely claim, it will distribute the excess deferral (as adjusted for

allocable income) the Employee has assigned to this Plan, in accordance with the distribution procedure described in Section 14.07(A).

(C) **Allocable Income.** For purposes of making a distribution of excess deferrals pursuant to this Section 14.07, allocable income means net income or net loss allocable to the excess deferrals for the calendar year (but not beyond the calendar year) in which the Employee made the excess deferral, determined in a manner which is uniform, nondiscriminatory and reasonably reflective of the manner used by the Plan Administrator to allocate income to Participants' Accounts.

14.08 ACTUAL DEFERRAL PERCENTAGE (ADP) TEST. For each Plan Year, the Plan Administrator must determine whether the Plan's 401(k) arrangement satisfies either of the following ADP tests:

(i) The ADP for the Highly Compensated Group does not exceed 1.25 times the ADP of the Nonhighly Compensated Group; or

(ii) The ADP for the Highly Compensated Group does not exceed the ADP for the Nonhighly Compensated Group by more than two percentage points (or the lesser percentage permitted by the multiple use limitation in Section 14.10) and the ADP for the Highly Compensated Group is not more than twice the ADP for the Nonhighly Compensated Group.

(A) **Calculation of ADP.** The ADP for a group is the average of the separate deferral percentages calculated for each eligible Employee who is a member of that group. An eligible Employee's deferral percentage for a Plan Year is the ratio of the eligible Employee's deferral contributions for the Plan Year to the Employee's Compensation for the Plan Year. In determining the ADP, the Plan Administrator must include any Highly Compensated Employee's excess deferrals, as described in Section 14.07(A), to this Plan or to any other Plan of the Employer and the Plan Administrator will disregard any Nonhighly Compensated Employee's excess deferrals. The Plan Administrator operationally may include in the ADP test, qualified nonelective contributions and qualified matching contributions the Plan Administrator does not use in the ACP test. The Plan Administrator, under prior year testing, may include qualified nonelective contributions or qualified matching contributions in determining the Nonhighly Compensated Employee ADP only if the Employer makes such contribution to the Plan by the end of the testing year and the Plan Administrator allocates the contribution to the prior Plan Year. In determining whether the Plan's 401(k) arrangement satisfies either ADP test, the Plan Administrator will use prior year testing, unless the Employer in Adoption Agreement Appendices A or B elects to use current year testing. An Employer may not change from current year testing to prior year testing except as provided in the Code or in other applicable guidance. For the first Plan Year the Employer permits elective deferrals and the Plan is not a successor plan (as provided in the Code or in other applicable guidance), under prior year testing, the prior year ADP for the Nonhighly Compensated Group is 3% unless the Employer in an Addendum to its Adoption Agreement elects to use the

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actual first year ADP for the Nonhighly Compensated Group.

(B) Special aggregation rule for Highly Compensated Employees. To determine the deferral percentage of any Highly Compensated Employee, the Plan Administrator must take into account any elective deferrals made by the Highly Compensated Employee under any other 401(k) arrangement maintained by the Employer, unless the elective deferrals are to an ESOP. If the plans containing the 401(k) arrangements have different plan years, the Plan Administrator will determine the combined deferral contributions on the basis of the plan years ending in the same calendar year.

(C) Aggregation of certain 401(k) arrangements. If the Employer treats two or more plans as a single plan for coverage or nondiscrimination purposes, the Employer must combine the 401(k) arrangements under such plans to determine whether the plans satisfy the ADP test. This aggregation rule applies to the ADP determination for all eligible Employees, irrespective of whether an eligible Employee is a Highly Compensated Employee or a Nonhighly Compensated Employee. An Employer may aggregate 401(k) arrangements under this Section 14.08(C) only if the plans have the same plan years and use the same testing method. An Employer may not aggregate an ESOP (or the ESOP portion of a plan) with a non-ESOP plan (or non-ESOP portion of a plan). If the Employer aggregating 401(k) arrangements under this Section 14.08(C) is using prior year testing, the Plan Administrator must adjust the Nonhighly Compensated Group ADP for the prior year as provided in the Code or in other applicable guidance.

(D) Characterization of excess contributions. If, pursuant to this Section 14.08, the Plan Administrator has elected to include qualified matching contributions in the ADP test, the excess contributions are attributable proportionately to deferral contributions and to qualified matching contributions allocated on the basis of those deferral contributions. The Plan Administrator will reduce the amount of excess contributions for a Plan Year distributable to a Highly Compensated Employee by the amount of excess deferrals (as determined in Section 14.07), if any, previously distributed to that Employee for the Employee's taxable year ending in that Plan Year.

(E) Distribution of excess contributions. If the Plan Administrator determines the Plan fails to satisfy the ADP test for a Plan Year, the Trustee, as directed by the Plan Administrator, must distribute the excess contributions, as adjusted for allocable income under Section 14.08(F), during the next Plan Year. However, the Employer may incur an excise tax with respect to the amount of excess contributions for a Plan Year not distributed to the appropriate Highly Compensated Employees during the first 2 1/2 months of that next Plan Year. The excess contributions are the amount of deferral contributions made by the Highly Compensated Employees which causes the Plan to fail the ADP test. The Plan Administrator will determine the total amount of the excess contributions to the Plan by starting with the Highly Compensated Employee(s) who has the greatest deferral percentage, reducing his/her deferral percentage (but not below the next highest deferral percentage), then, if necessary, reducing the deferral percentage of the Highly Compensated Employee(s) at the next highest deferral percentage level,

including the deferral percentage of the Highly Compensated Employee(s) whose deferral percentage the Plan Administrator already has reduced (but not below the next highest deferral percentage), and continuing in this manner until the ADP for the Highly Compensated Group satisfies the ADP test.

After the Plan Administrator has determined the total excess contribution amount, the Trustee, as directed by the Plan Administrator, then will distribute to each Highly Compensated Employee his/her respective share of the excess contributions. The Plan Administrator will determine each Highly Compensated Employee's share of excess contributions by starting with the Highly Compensated Employee(s) who has the highest dollar amount of elective deferrals, reducing his/her elective deferrals (but not below the next highest dollar amount of elective deferrals), then, if necessary, reducing the elective deferrals of the Highly Compensated Employee(s) at the next highest dollar amount of elective deferrals including the elective deferrals of the Highly Compensated Employee(s) whose elective deferrals the Plan Administrator already has reduced (but not below the next highest dollar amount of elective deferrals), and continuing in this manner until the Trustee has distributed all excess contributions.

(F) Allocable income. To determine the amount of the corrective distribution required under this Section 14.08, the Plan Administrator must calculate the allocable income for the Plan Year (but not beyond the Plan Year) in which the excess contributions arose. "Allocable income" means net income or net loss. To calculate allocable income for the Plan Year, the Plan Administrator will use a uniform and nondiscriminatory method which reasonably reflects the manner used by the Plan Administrator to allocate income to Participants' Accounts.

14.09 ACTUAL CONTRIBUTION PERCENTAGE (ACP) TEST. For each Plan Year, the Plan Administrator must determine whether the annual Employer matching contributions (other than qualified matching contributions used in the ADP test under Section 14.08), if any, and the Employee contributions, if any, satisfy either of the following ACP tests:

(i) The ACP for the Highly Compensated Group does not exceed 1.25 times the ACP of the Nonhighly Compensated Group; or

(ii) The ACP for the Highly Compensated Group does not exceed the ACP for the Nonhighly Compensated Group by more than two percentage points (or the lesser percentage permitted by the multiple use limitation in Section 14.10) and the ACP for the Highly Compensated Group is not more than twice the ACP for the Nonhighly Compensated Group.

(A) Calculation of ACP. The ACP for a group is the average of the separate contribution percentages calculated for each eligible Employee who is a member of that group. An eligible Employee's contribution percentage for a Plan Year is the ratio of the eligible Employee's aggregate contributions for the Plan Year to the Employee's Compensation for the Plan Year. "Aggregate contributions" are Employer matching contributions (other than qualified matching contributions used in the ADP test under Section

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14.08) and Employee contributions (as defined in Section 14.03). The Plan Administrator operationally may include in the ACP test, qualified nonelective contributions and elective deferrals not used in the ADP test. The Plan Administrator, under prior year testing, may include qualified nonelective contributions or qualified matching contributions in determining the Nonhighly Compensated Employee ACP only if the Employer makes such contribution to the Plan by the end of the testing year and the Plan Administrator allocates the contribution to the prior Plan Year. In determining whether the Plan satisfies either ACP test, the Plan Administrator will use prior year testing, unless the Employer in Appendix A to its Adoption Agreement elects to use the current year testing. An Employer may not change from current year testing to prior year testing except as provided in the Code or in other applicable guidance. For the first Plan Year the Plan permits matching contributions or Employee contributions and the Plan is not a successor plan (as defined in the Code or in other applicable guidance), under prior year testing, the prior year ACP for the Nonhighly Compensated Group is 3% unless the Employer in an Addendum to its Adoption Agreement elects to use the actual first year ACP for the Nonhighly Compensated Group.

(B) Special aggregation rule for Highly Compensated Employees. To determine the contribution percentage of any Highly Compensated Employee, the aggregate contributions taken into account must include any matching contributions (other than qualified matching contributions used in the ADP test) and any Employee contributions made on his/her behalf to any other plan maintained by the Employer, unless the other plan is an ESOP. If the plans have different plan years, the Plan Administrator will determine the combined aggregate contributions on the basis of the plan years ending in the same calendar year.

(C) Aggregation of certain 401(m) arrangements. If the Employer treats two or more plans as a single for coverage or nondiscrimination purposes, the Employer must combine the 401(m) arrangements under such plans to determine whether the plans satisfy the ACP test. This aggregation rule applies to the ACP determination for all eligible Employees, irrespective of whether an eligible Employee is a Highly Compensated Employee or a Nonhighly Compensated Employee. An Employer may aggregate 401(m) arrangements under this Section 14.09(C) if where the plans have the same plan year and use the same testing method. An Employer may not aggregate an ESOP (or the ESOP portion of a plan) with a non-ESOP plan (or non-ESOP portion of a plan). If the Employer aggregating 401(m) arrangements under this Section 14.09(C) is using prior year testing, the Plan Administrator must adjust the Nonhighly Compensated Group ACP for the prior year as provided in the Code or in other applicable guidance.

(D) Distribution of excess aggregate contributions. The Plan Administrator will determine excess aggregate contributions after determining excess deferrals under Section 14.07 and excess contributions under Section 14.08. If the Plan Administrator determines the Plan fails to satisfy the ACP test for a Plan Year, the Trustee, as directed by the Plan Administrator, must distribute the Vested excess aggregate contributions, as adjusted for allocable income, during the next Plan Year. However, the Employer may incur an excise tax with respect to the amount of excess aggregate contributions for a Plan Year

not distributed to the appropriate Highly Compensated Employees during the first 2 1/2 months of that next Plan Year. The excess aggregate contributions are the amount of aggregate contributions allocated on behalf of the Highly Compensated Employees which causes the Plan to fail the ACP test. The Plan Administrator will determine the total amount of the excess aggregate contributions by starting with the Highly Compensated Employee(s) who has the greatest contribution percentage, reducing his/her contribution percentage (but not below the next highest contribution percentage), then, if necessary, reducing the contribution percentage of the Highly Compensated Employee(s) at the next highest contribution percentage level, including the contribution percentage of the Highly Compensated Employee(s) whose contribution percentage the Plan Administrator already has reduced (but not below the next highest contribution percentage), and continuing in this manner until the ACP for the Highly Compensated Group satisfies the ACP test.

After the Plan Administrator has determined the total excess aggregate contribution amount, the Trustee, as directed by the Plan Administrator, then will distribute (to the extent Vested) to each Highly Compensated Employee his/her respective share of the excess aggregate contributions. The Plan Administrator will determine each Highly Compensated Employee's share of excess aggregate contributions by starting with the Highly Compensated Employee(s) who has the highest dollar amount of aggregate contributions, reducing the amount of his/her aggregate contributions (but not below the next highest dollar amount of the aggregate contributions), then, if necessary, reducing the amount of aggregate contributions of the Highly Compensated Employee(s) at the next highest dollar amount of aggregate contributions, including the aggregate contributions of the Highly Compensated Employee(s) whose aggregate contributions the Plan Administrator already has reduced (but not below the next highest dollar amount of aggregate contributions), and continuing in this manner until the Trustee has distributed all excess aggregate contributions.

(E) Allocable income. To determine the amount of the corrective distribution required under this Section 14.09, the Plan Administrator must calculate the allocable income for the Plan Year (but not beyond the Plan Year) in which the excess aggregate contributions arose. "Allocable income" means net income or net loss. The Plan Administrator will determine allocable income in the same manner as described in Section 14.08(F) for excess contributions.

(F) Characterization of excess aggregate contributions. The Plan Administrator will treat a Highly Compensated Employee's allocable share of excess aggregate contributions in the following priority: (1) first as attributable to his/her Employee contributions, if any; (2) then as matching contributions allocable with respect to excess contributions determined under the ADP test described in Section 14.08; (3) then on a pro rata basis to matching contributions and to the deferral contributions relating to those matching contributions which the Plan Administrator has included in the ACP test; and (4) last to qualified nonelective contributions used in the ACP test. To the extent the Highly Compensated Employee's excess aggregate contributions are attributable to matching contributions, and he/she is not 100% Vested in his/her

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Account Balance attributable to matching contributions, the Plan Administrator will distribute only the Vested portion and forfeit the nonVested portion. The Vested portion of the Highly Compensated Employee's excess aggregate contributions attributable to Employer matching contributions is the total amount of such excess aggregate contributions (as adjusted for allocable income) multiplied by his/her Vested percentage (determined as of the last day of the Plan Year for which the Employer made the matching contribution).

14.10 MULTIPLE USE LIMITATION. If at least one Highly Compensated Employee is includible in the ADP test under Section 14.08 and in the ACP test under Section 14.09, the sum of the Highly Compensated Group's ADP and ACP may not exceed the multiple use limitation.

The multiple use limitation is the sum of (i) and (ii):

- (i) 125% of the greater of: (a) the ADP of the Nonhighly Compensated Group for the prior Plan Year; or (b) the ACP of the Nonhighly Compensated Group for the Plan Year beginning with or within the prior Plan Year of the 401(k) arrangement.
- (ii) 2% plus the lesser of (i)(a) or (i)(b), but no more than twice the lesser of (i)(a) or (i)(b).

The Plan Administrator, in lieu of determining the multiple use limitation as the sum of (i) and (ii), may elect to determine the multiple use limitation as the sum of (iii) and (iv):

- (iii) 125% of the lesser of: (a) the ADP of the Nonhighly Compensated Group for the prior Plan Year; or (b) the ACP of the Nonhighly Compensated Group for the Plan Year beginning with or within the prior Plan Year of the 401(k) arrangement.
- (iv) 2% plus the greater of (iii)(a) or (iii)(b), but no more than twice the greater of (iii)(a) or (iii)(b).

If the Employer has elected in its Adoption Agreement to use current year testing, the multiple use limitation is calculated using the Nonhighly Compensated Group's current Plan Year data. The Plan Administrator will determine whether the Plan satisfies the multiple use limitation after applying the ADP test under Section 14.08 and the ACP test under Section 14.09 and using the deemed maximum corrected ADP and ACP percentages in the event the Plan failed either or both tests. If, after applying this Section 14.10, the Plan Administrator determines the Plan has failed to satisfy the multiple use limitation, the Plan Administrator will correct the failure by treating the excess amount as excess contributions under Section 14.08 or as excess aggregate contributions under Section 14.09, as the Plan Administrator determines in its sole discretion. This Section 14.10 does not apply unless, prior to application of the multiple use limitation, the ADP and the ACP of the Highly Compensated Group each exceeds 125% of the respective percentages for the Nonhighly Compensated Group.

14.11 DISTRIBUTION RESTRICTIONS. The Employer in Adoption Agreement Section 6.01 must elect the distribution events permitted under the Plan. The distribution events applicable to the Participant's deferral contributions Account, qualified nonelective contributions Account, qualified matching contributions Account and safe harbor contributions Account (collectively, "restricted balances") must satisfy the distribution restrictions described in Section 14.03(d).

(A) Hardship Distributions from Deferral Contributions Account. The Employer must elect in Adoption Agreement Section 6.01 whether a Participant may receive hardship distribution (as defined in Section 6.09) from his/her deferral contributions Account prior to the Participant's Separation from Service. A hardship distribution from the deferral contributions Account also must satisfy the requirements of this Section 14.11(A). A hardship distribution option may not apply to a Participant's qualified nonelective contributions Account, qualified matching contributions Account, nor to his/her safe harbor contributions Account except as provided in Paragraph (2).

(1) **Restrictions.** The following restrictions apply to a Participant who receives a hardship distribution from his/her deferral contributions Account: (a) the Participant may not make elective deferrals or Employee contributions to the Plan for the 12-month period following the date of his/her hardship distribution; (b) the distribution may not exceed the amount of the Participant's immediate and heavy financial need (including any amounts necessary to pay any federal, state or local income taxes or penalties reasonably anticipated to result from the distribution); (c) the Participant must have obtained all distributions, other than hardship distributions, and all nontaxable loans (determined at the time of the loan) currently available under this Plan and all other qualified plans maintained by the Employer; and (d) the Participant must limit elective deferrals under this Plan and under any other qualified plan maintained by the Employer, for the Participant's taxable year immediately following the taxable year of the hardship distribution, to the 402(g) limitation (as described in Section 14.07), reduced by the amount of the Participant's elective deferrals made in the taxable year of the hardship distribution. The suspension of elective deferrals and Employee contributions described in clause (a) also must apply to all other qualified plans and to all nonqualified plans of deferred compensation maintained by the Employer, other than any mandatory employee contribution portion of a defined benefit plan, including stock option, stock purchase and other similar plans, but not including health or welfare benefit plans (other than the cash or deferred arrangement portion of a cafeteria plan). The Plan Administrator, absent actual contrary knowledge, may rely on a Participant's written representation that the distribution is on account of hardship (as defined in Section 6.09) and also satisfies clause (b). In addition, clause (c) regarding loans does not apply if the loan to the Participant would increase the Participant's hardship need.

(2) **Earnings.** A hardship distribution may not include earnings on an Employee's elective deferrals credited after December 31, 1988. Qualified matching

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contributions and qualified nonelective contributions, and any earnings on such contributions, credited as of December 31, 1988, are subject to withdrawal for a hardship distribution only if the Employer in an Addendum to its Adoption Agreement elects to permit such withdrawals. The Addendum may modify the December 31, 1988, date for purposes of determining credited amounts, provided the date is not later than the end of the last Plan Year ending before July 1, 1989.

(B) Distributions after Separation from Service. Following the Participant's Separation from Service, the

distribution events applicable to the Participant apply equally to all of the Participant's Accounts.

14.12 SPECIAL ALLOCATION AND VALUATION RULES. If the 401(k) arrangement provides for salary reduction contributions, if the Plan accepts Employee contributions, or if the Plan allocates matching contributions as of any date other than the last day of the Plan Year, the Employer in Adoption Agreement Sections 9.08 and 10.15 must elect the method the Plan Administrator will apply to allocate net income, gain or loss to such contributions made during the Plan Year and any alternative valuation dates for the different Account types which the Plan Administrator maintains under the Plan.

MISCELLANEOUS

CERTIFICATE OF CORPORATE RESOLUTION

The undersigned Secretary of Mortgages Ltd. (the Corporation) hereby certifies that the following resolutions were duly adopted by the Corporation on March 15, 2002, and that such resolutions have not been modified or rescinded as of the date hereof:


RESOLVED, that the form of amended 401(k) Plan and Trust effective January 1, 2001, presented to this meeting is hereby approved and adopted and that the proper officers of the Corporation are hereby authorized and directed to execute and deliver to the Trustee of the Plan one or more counterparts of the Plan.

RESOLVED, that for purposes of the limitations on contributions and benefits under the Plan prescribed by Section 415 of the Internal Revenue Code, the "limitation year" shall be the Plan Year.

RESOLVED, that not later than the due date (including extensions hereof) of the Corporation's federal income tax return for each of its fiscal years hereafter, the Corporation shall contribute to the Plan for each such fiscal year such amount as shall be determined by the Corporation and that the Treasurer of the Corporation is authorized and directed to pay such contribution to the Trustee of the Plan in cash or property and to designate to the Trustee the year for which such contribution is made.

RESOLVED, that the proper officers of the Corporation shall act as soon as possible to notify the employees of the Corporation of the adoption of the 401(k) Plan by delivering to each employee a copy of the summary description of the Plan in the form of the Summary Plan Description presented to this meeting, which form is hereby approved.

The undersigned further certifies that attached hereto as Exhibits A and B respectively, are true copies of Mortgages Ltd. 401(k) Plan as amended and restated and the Summary Plan Description approved and adopted in the foregoing resolutions.



Secretary

Dated this 15th day of March, 2002

Scott
Angela

MORTGAGES LTD. 401(K) PLAN
DESIGNATION OF BENEFICIARY

Participant: _____

I hereby acknowledge receipt of the Summary Plan Description and agree to abide by all of the rules and regulations set forth in Mortgages Ltd. 401(k) Plan (the "Plan").

I have become a Participant of the Plan and I hereby make an election of beneficiary(ies).

I am already a Participant of the Plan and I hereby update my DESIGNATION OF BENEFICIARY form for death benefits to be paid under the Plan.

Regarding any amount payable under the Plan by reason of my death, I hereby mark the option applicable to my situation, and designate the following beneficiary(ies):

MARRIED PARTICIPANT

I understand that the death benefit must be paid to my surviving spouse, unless my spouse consents in writing to an alternative beneficiary. The Plan Administrator has provided me with a detailed explanation of these rights concerning the death benefit (PRE-RETIREMENT SURVIVOR BENEFIT EXPLANATION, ELECTION TO WAIVE PRE-RETIREMENT SURVIVOR BENEFIT, and SPOUSE'S CONSENT TO WAIVER OF PRE-RETIREMENT SURVIVOR BENEFIT forms).

I understand that I must immediately inform the Plan Administrator of any change in my marital status.

Understanding my options, I choose to:

keep my spouse as primary beneficiary. But if my spouse does not survive me, I name as contingent beneficiary(ies):

name someone other than my spouse as the primary beneficiary. I understand that my spouse must agree to this waiver. I have made this election on the ELECTION TO WAIVE PRE-RETIREMENT SURVIVOR BENEFIT form, and my spouse has consented to this on the SPOUSE'S CONSENT TO WAIVER OF PRE-RETIREMENT SURVIVOR BENEFIT form.

() UNMARRIED PARTICIPANT

I designate as beneficiary the person(s) named below. However, if I thereafter marry, this will revoke the designation. I will therefore immediately inform the Plan Administrator of any change in my marital status.

Primary Beneficiary(ies): _____

Contingent Beneficiary(ies): _____

EXECUTED this _____ day of _____, 20_____.

Witness

Signature of Participant

Birth Date

Social Security Number

MORTGAGES LTD. 401(K) PLAN

INSTRUCTIONS FOR DESIGNATING OR CHANGING BENEFICIARY

These instructions will assist you in properly completing the DESIGNATION OF BENEFICIARY form.

1. To designate one person, insert the name and relationship in the spaces provided. If your beneficiary is not related to or married to you, show relationship as "Friend."

2. If you wish to name your estate, insert "Estate" in the blank space.

3. Show a member of a religious order in this manner:

Mary L. Jones, niece, known in religious life as Sister Mary Agnes.

4. It is inadvisable to name a beneficiary who is a permanent resident of a foreign country. If you name a person who is a permanent resident of a foreign country, you must furnish that person's full address, including country.

5. If you wish to designate a trust, insert the name of the Trustee and trust in the blank space using language substantially as follows:

To X Bank as Trustee, or its successor Trustee, of the Bruce E. Roberts Trust dated the 26th day of May, 2000, including any amendments to the Trust.

6. More than one beneficiary -- here are the most common examples:

Three or more beneficiaries James O. Smith, brother; Peter I. Smith, brother; and
Martha N. Smith, sister

Unnamed children My children living at my death

One contingent beneficiary Lois P. Smith, wife, if living; otherwise, Herbert I. Smith,
son

More than one contingent beneficiary Lois P. Smith, wife, if living; otherwise, Herbert I. Smith,
son; Alice B. Smith, daughter; and Ann Y. Smith,
daughter

Unnamed children as contingent beneficiaries Lois P. Smith, wife, if living; otherwise, my children
living at my death

If one of the above examples fits your wishes, insert your designation in the blank space, using the language of the selected example. Contingent beneficiaries only receive benefits if all named primary beneficiaries predecease you. If a primary beneficiary survives you, but dies prior to receiving his or her share of the death benefit, that primary beneficiary's estate will receive the death benefit unless your DESIGNATION OF BENEFICIARY form provides otherwise.

7. If none of the above is suitable, explain in the blank space what is desired, or attach a note.

Note: If you name a trust as a beneficiary, you also must provide additional information to the Plan Administrator. The Plan Administrator will notify you as to what additional information is needed.

Note: Unless you provide otherwise in completing the DESIGNATION OF BENEFICIARY form, all sums payable to more than one beneficiary will be paid equally to all beneficiaries.

MORTGAGES LTD. 401(K) PLAN

PRE-RETIREMENT SURVIVOR BENEFIT EXPLANATION

Participant: _____

This form explains the pre-retirement death benefit under the Plan. The pre-retirement death benefit provides a benefit for your surviving spouse if you die prior to beginning distributions from the Plan. Your surviving spouse will be entitled to 100% of your account balances in the Plan. You need to read the balance of this explanation only if you have designated, or wish to designate, someone other than your spouse to receive this death benefit.

If you are not married at the time of your death, then the death benefit will be paid to your designated beneficiary.

Pre-retirement death benefit. If you are married at the time of your death, then the Plan requires the Trustee to distribute your account balance to your surviving spouse if your death occurs prior to commencement of benefits under the Plan and your spouse survives you. Generally, the Trustee may not commence payment of the pre-retirement death benefit prior to the date you would have attained the later of Normal Retirement Age under the Plan or age 62 without the consent of your surviving spouse. However, your surviving spouse may elect to have distribution of the pre-retirement death benefit at any time following your death. If, at the time of your death, your account balance (excluding amounts attributable to rollovers) is not greater than \$5,000, the Plan Administrator will direct the Trustee to make a lump sum distribution to your surviving spouse.

Waiver Election. The Plan requires payment of the pre-retirement death benefit to your surviving spouse unless you have a valid waiver election in effect on the date of your death. To have a valid waiver you must complete the waiver election form enclosed with this explanation. Your waiver election is not valid unless your spouse also consents in writing to your beneficiary designation or to any change in your beneficiary designation, unless your spouse is the sole primary beneficiary. A notary public or Plan representative also must witness your spouse's consent to the beneficiary designation. You may revoke a waiver election without your spouse's consent, but your spouse would have to consent to a new waiver. A waiver election is valid only for the spouse consenting to the waiver. Therefore, you should inform the Plan Administrator of any change in your marital status.

Procedure. If you wish to have the pre-retirement death benefit distributed to your surviving spouse, you do not need to make any election. If you wish to have the pre-retirement death benefit distributed to someone other than your surviving spouse, execute the enclosed **ELECTION TO WAIVE PRE-RETIREMENT SURVIVOR BENEFIT and SPOUSE'S CONSENT TO WAIVER OF PRE-RETIREMENT SURVIVOR BENEFIT** forms. We also have enclosed a **DESIGNATION OF BENEFICIARY** form.

If you have questions regarding the information provided in this explanation, or you wish further information, please contact the Plan Administrator.

MORTGAGES LTD. 401(K) PLAN

ELECTION TO WAIVE PRE-RETIREMENT SURVIVOR BENEFIT

Participant: _____

As a Participant in Mortgages Ltd. 401(k) Plan (the "Plan"), I hereby acknowledge that I have been informed by the Plan Administrator that if I should die prior to my retirement, my spouse and I have the right to have the full account balance under the Plan paid to my spouse; that I have the right to waive the designation of my spouse as the sole direct beneficiary of my death benefit only if my spouse consents to such waiver; and that I have the right to revoke such waiver which may be made by me at any time without my spouse's consent.

I hereby waive the right to have my spouse be the sole direct beneficiary of my pre-retirement death benefit. I designate the following beneficiary in lieu of my spouse (revoking any prior designation or contingent designation made by me):

Designated Beneficiary: _____

_____ ,

if living at the time of my death, or, if not living, then

_____ .

EXECUTED this _____ day of _____, 20 _____ .

Witness

Signature of Participant

MORTGAGES LTD. 401(K) PLAN

SPOUSE'S CONSENT TO WAIVER OF PRE-RETIREMENT SURVIVOR BENEFIT

I, _____, spouse of _____, hereby consent to the designation made by my spouse to have the pre-retirement death benefit paid to the named beneficiary specified in the foregoing election. Further, I hereby acknowledge that I understand (1) that the effect of such designation is to cause my spouse's death benefit to be paid to a beneficiary other than me in the form specified therein; (2) that such beneficiary designation is not valid unless I consent to it; and (3) that my consent is irrevocable unless my spouse revokes the beneficiary designation.

EXECUTED this _____ day of _____, 20_____.

Signature of Participant's Spouse

NOTE: In order to consent, there must be a witness by either a Plan Representative or a Notary.

Witness by Plan Representative.

Signature of spouse witnessed this _____ day of _____, 20_____.

Plan Representative

OR

Witness by Notary.

STATE OF _____

COUNTY OF _____

BEFORE ME, the undersigned, a Notary Public, personally appeared _____ who executed the above Consent of Spouse as a free and voluntary act.

IN WITNESS WHEREOF, I have signed my name and affixed my official notarial seal this _____ day of _____, 20_____.

(SEAL) Notary Public _____

My Commission expires: _____

SALARY REDUCTION AGREEMENT
MORTGAGES LTD. 401(K) PLAN

Enrollment/Change Form

[Last Name]

[First Name]

[MI]

[Social Security Number]

In accordance with Mortgages Ltd. 401(k) Plan (the "Plan"), I enter into this Salary Reduction Agreement ("Agreement") with Mortgages Ltd.

As a participant in the Plan, I understand the Plan permits me to defer a portion of my compensation. The amount that I elect to defer will be withheld from my paycheck and paid into the Plan on my behalf.

This Salary Reduction Agreement remains in effect until I revoke or modify it. Modifications to the Agreement are permitted any subsequent Plan Entry Date. I am also permitted to revoke my Agreement at any time during the Plan Year.

The Plan permits me to defer my compensation from 1% of compensation to the maximum prescribed by law.

The Plan also permits me to make "catch-up" contributions if I am age 50 or older. These are additional amounts that I may defer to the Plan regardless of any other limitations imposed by the Plan. You must contribute the maximum amount allowed by the plan before you can make any additional catch-up contributions.

() In accordance with my rights as a Participant and the provisions of the Plan, I hereby elect to defer my pay by _____%. I understand that the total amount of my salary deferrals in any calendar year cannot exceed \$11,000 (for 2002), \$12,000 (for 2003), \$13,000 (for 2004), \$14,000 (for 2005), and \$15,000 (for 2006). This amount will be adjusted to reflect any annual cost-of-living increases announced by the IRS. Any questions regarding this election should be directed to the Plan Administrator.

() In accordance with my rights as a Participant and the provisions of the Plan, I hereby elect to defer my pay by an additional _____% since I am at least age 50, am entitled to make "catch-up" contributions, and, pursuant to my election in the immediately preceding paragraph, I am deferring the maximum amount permitted by the Plan. I understand that the total amount of my "catch-up" contributions in any calendar year cannot exceed \$1,000 (for 2002), \$2,000 (for 2003), \$3,000 (for 2004), \$4,000 (for 2005) and \$5,000 (for 2006). This amount will be adjusted to reflect any annual cost-of-living increases announced by the IRS. Any questions regarding this election should be directed to the Plan Administrator.

() In accordance with my rights as a Participant and the provisions of the Plan, I hereby elect NOT to participate at this time. I understand that I may elect to participate at a later date as the Plan allows.

This election supersedes all previous elections. Any questions regarding this election should be directed to the Plan Administrator.

Signature of Participant

Date

MORTGAGES LTD. 401(K) PLAN

PARTICIPANT LOAN PROGRAM

Mortgages Ltd. 401(k) Plan (the "Plan") permits loans to be made to Participants and their beneficiaries. However, before any loan is made, the Plan requires that a written loan program be established which sets forth the rules and guidelines for making Participant loans. This document shall serve as the required written loan program. In addition, the Plan Administrator may use this document to serve as, or supplement, any required notice of the loan program to Participants and their beneficiaries. All references to Participants in this loan program shall include Participants and their Beneficiaries or alternate payee with respect to the Plan who are "parties in interest" as defined by ERISA Section 3(14).

The Plan Administrator is authorized to administer the Participant loan program. All applications for loans shall be made by a Participant to the Plan Administrator on forms which the Plan Administrator will make available for such purpose.

1. **LOAN APPLICATION.** Any Plan Participant may apply for a loan from the Plan. A Participant must apply for each loan in writing with an application that specifies the amount of the loan desired, the requested duration for the loan, and the source of security for the loan.

The Plan Administrator will consider all loan applications within a reasonable time after the Participant makes formal application. The Participant will be required to provide any supporting information deemed necessary by the Plan Administrator. This may include a financial statement, tax returns, and such other financial information that the Plan Administrator may consider necessary and appropriate to determine whether a loan should be granted. The Participant will also authorize the Plan Administrator to obtain a credit report on the Participant.

The Plan Administrator will determine whether a Participant qualifies for a loan, applying such criteria as a commercial lender of funds would apply in like circumstances with respect to the Participant. Such criteria shall include, but need not be limited to, the creditworthiness of the Participant and his or her general ability to repay the loan, the period of time such Participant has been employed by the Employer, whether adequate security has been provided for the loan, and whether the Participant agrees, as a condition for receiving the loan, to make repayments through direct, after-tax payroll deduction.

2. **PARTY IN INTEREST.** Plan loans shall be made only to those individuals who are considered to be parties in interest.

3. **LOAN LIMITATIONS.** The Plan Administrator will not approve any loan to a participant in an amount that exceeds 50% of his or her nonforfeitable (account balances). The maximum aggregate dollar amount of loans outstanding to any participant may not exceed \$50,000, reduced by the excess of the Participant's highest outstanding Participant loan balance during the 12-month period ending on the date of the loan over the Participant's current outstanding Participant loan balance on the date of the loan. With regard to any loan made pursuant to this program, the following rule(s) and limitation(s) shall apply, in addition to such other requirements set forth in the Plan:

- No loan in an amount less than \$1,000 will be granted to any Participant.
- A Participant can have no more than 2 loan(s) outstanding from the Plan.
- All loans made pursuant to this program will be considered a directed investment from the account(s) of the Participant maintained under the Plan. As such, all payments of principal and interest made by the Participant will be credited only to the account(s) of such Participant. The Plan also will charge that portion of the Participant's account balances with expenses directly related to the origination, maintenance and collection of the note.
- Loans may be made from all of a Participant's accounts.

4. **EVIDENCE AND TERMS OF LOAN.** The Plan Administrator will document every loan in the form of a promissory note signed by the Participant for the face amount of the loan, together with a commercially reasonable rate of interest.

Any loan granted or renewed under this program will bear a reasonable rate of interest. In determining such rate of interest, the Plan will require a rate of return commensurate with the prevailing interest rate charged on similar commercial loans under like circumstances by persons in the business of lending money. Such prevailing interest rate standard will permit the Plan Administrator to consider factors pertaining to the opportunity for gain and risk of loss that a professional lender would consider on a similar arms-length transaction, such as the creditworthiness of the Participant and the security given for the loan. Therefore, in establishing the rate of interest, the Plan Administrator will conduct a reasonable and prudent inquiry with professional lenders in the same geographic locale where the Participant and Employer reside to determine such prevailing interest rate for loans under like circumstances.

The loan must provide at least quarterly payments under a level amortization schedule. If the participant is currently employed by the Employer, the Plan Administrator will require the Participant receiving a loan from the Plan to enter into a payroll deduction agreement to repay the loan. If the Participant is not currently employed by the Employer, the Plan Administrator may require additional collateral for the loan.

The Plan Administrator will fix the term for repayment of any loan, however, in no instance may the term of repayment be greater than five years, unless the loan qualifies as a home loan. A "home loan" is a loan used to acquire a dwelling unit that, within a reasonable time, the Participant will use as a principal residence.

A loan, if not otherwise due and payable, is due and payable on termination of the Plan, notwithstanding any contrary provision in the promissory note. Nothing in this loan policy restricts the Employer's right to terminate the Plan at any time.

Participants should note the law treats the amount of any loan (other than a "home loan") not repaid five years after the date of the loan as a taxable distribution on the last day of the five year period or, if sooner, at the time the loan is in default. If a Participant extends a non-home loan having a five-year or less repayment term beyond five years, the balance of the loan at the time of the extension is a taxable distribution to the Participant.

5. SECURITY FOR LOAN. The Plan will require that the Participant provide adequate security before a loan is granted. For this purpose, the Plan will consider a Participant's interest under the Plan to be adequate security. However, in no event will more than 50% of a Participant's vested interest in the Plan (determined immediately after origination of the loan) be used as security for the loan. Generally, it will be the policy of the Plan not to make loans that require security other than the Participant's vested interest in the Plan. However, if additional security is necessary to adequately secure the loan, then the Plan Administrator will require that such security be provided before the loan will be granted.

6. FORM OF PLEDGE. The pledge and assignment of a Participant's account balances will be in the form prescribed by the Plan Administrator.

7. DEFAULT. The Plan Administrator will treat a loan in default if:

- any scheduled payment remains unpaid beyond the last day of the calendar quarter following the calendar quarter in which the Participant missed the scheduled payment; or
- the Participant makes or furnishes any false representation or statement to the Plan.

The Participant will have the opportunity to repay the loan, resume current status of the loan by paying any missed payment plus interest or, if distribution is available under the Plan, request distribution of the note. If the loan remains in default, the Plan Administrator will offset the Participant's vested account balances by the outstanding balance of the loan to the extent permitted by law. The Plan Administrator will treat the note as repaid to the extent of any permissible offset. Pending final disposition of the note, the Participant remains obligated for any unpaid principal and accrued interest.

Adopted this 15th day of March, 2002. This loan program may be amended from time to time.



Plan Administrator

Ex. 35

MORTGAGES LTD. 401(K) PLAN

**ADOPTION AGREEMENT #
CROSS-TESTED/AGE-WEIGHTED 401(k) PROFIT SHARING PLAN**

The undersigned, Mortgages Ltd. ("Employer"), by executing this Adoption Agreement, elects to establish a retirement plan and trust ("Plan") under the Volume Submitter Cross-Tested Defined Contribution Prototype Plan and Trust (basic plan document # 01). The Employer, subject to the Employer's Adoption Agreement elections, adopts fully the Prototype Plan and Trust provisions. This Adoption Agreement, the basic plan document and any attached appendices or addenda, constitute the Employer's entire plan and trust document. *All section references within this Adoption Agreement are Adoption Agreement section references unless the Adoption Agreement or the context indicate otherwise. All article references are basic plan document and Adoption Agreement references as applicable. Numbers in parenthesis which follow headings are references to basic plan document sections.* This Plan is established under the IRS volume submitter program. References in the basic plan document to the prototype plan are not applicable to this Plan or mean volume submitter plan as the context requires. References to the prototype sponsor or to the mass submitter mean the volume submitter practitioner. For all purposes under the basic plan document, the Plan Administrator shall treat this Adoption Agreement as a nonstandardized adoption agreement. The Employer makes the following elections granted under the corresponding provisions of the basic plan document.

**ARTICLE I
DEFINITIONS**

1. **PLAN (1.21).** The name of the Plan as adopted by the Employer is Mortgages Ltd. 401(k) Plan.
2. **TRUSTEE (1.33).** The Trustee executing this Adoption Agreement is: *(Choose one of (a), (b) or (c))*
 - (a) **A discretionary Trustee.** See Plan Section 10.03[A].
 - (b) **A nondiscretionary Trustee.** See Plan Section 10.03[B].
 - (c) **A Trustee under a separate trust agreement.** See Plan Section 10.03[G].
3. **EMPLOYEE (1.11).** The following Employees are not eligible to participate in the Plan: *(Choose (a) or one or more of (b) through (f) as applicable)*
 - (a) **No exclusions.**
 - (b) **Collective bargaining Employees.**
 - (c) **Nonresident aliens.**
 - (d) **Leased Employees.**
 - (e) **Reclassified Employees.**
 - (f) **Exclusions by types of contributions.** The following classification(s) of Employees are not eligible for the specified contributions:
 - Employee classification:** _____
 - Contribution type:** _____
4. **COMPENSATION (1.07).** The Employer makes the following election(s) regarding the definition of Compensation for purposes of the contribution allocation formula under Article III: *(Choose one of (a), (b) or (c))*
 - (a) **W-2 wages increased by Elective Contributions.**
 - (b) **Code §3401(a) federal income tax withholding wages increased by Elective Contributions.**
 - (c) **415 compensation.**

[Note: Each of the Compensation definitions in (a), (b) and (c) includes Elective Contributions. See Plan Section 1.07(D). To exclude Elective Contributions, the Employer must elect (g).]

Compensation taken into account. For the Plan Year in which an Employee first becomes a Participant, the Plan Administrator will determine the allocation of Employer contributions (excluding deferral contributions) by taking into account: (Choose one of (d) or (e))

- (d) **Plan Year.** The Employee's Compensation for the entire Plan Year.
- (e) **Compensation while a Participant.** The Employee's Compensation only for the portion of the Plan Year in which the Employee actually is a Participant.

Modifications to Compensation definition. The Employer elects to modify the Compensation definition elected in (a), (b) or (c) as follows. (Choose one or more of (f) through (k) as applicable)

- (f) **Fringe benefits.** The Plan excludes all reimbursements or other expense allowances, fringe benefits (cash and noncash), moving expenses, deferred compensation and welfare benefits.
- (g) **Elective Contributions.** The Plan excludes a Participant's Elective Contributions. See Plan Section 1.07(D).
- (h) **Exclusion.** The Plan excludes Compensation in excess of: _____.
- (i) **Bonuses.** The Plan excludes bonuses.
- (j) **Overtime.** The Plan excludes overtime.
- (k) **Commissions.** The Plan excludes commissions.

5. **PLAN YEAR/LIMITATION YEAR (1.24).** Plan Year and Limitation Year mean the 12-consecutive month period (except for a short Plan Year) ending every: (Choose one of (a) or (b). Choose (c) if applicable)

- (a) **December 31.**
- (b) **Other:** _____.
- (c) **Short Plan Year:** commencing on: _____ and ending on: _____.

6. **EFFECTIVE DATE (1.10).** The Employer's adoption of the Plan is a: (Choose one of (a) or (b))

- (a) **New Plan.** The Effective Date of the Plan is: _____.
- (b) **Restated Plan.** The restated Effective Date is: January 1, 2001.

This Plan is an amendment and restatement of an existing retirement plan(s) originally established effective as of: January 1, 2001.

7. **HOUR OF SERVICE/ELAPSED TIME METHOD (1.15).** The crediting method for Hours of Service is: (Choose one or more of (a) through (d) as applicable)

- (a) **Actual Method.** See Plan Section 1.15(B).
- (b) **Equivalency Method.** The Equivalency Method is: _____. [Note: Insert "daily," "weekly," "semi-monthly payroll periods" or "monthly."] See Plan Section 1.15(C).
- (c) **Combination Method.** In lieu of the Equivalency Method specified in (b), the Actual Method applies for purposes of: _____.

- (d) **Elapsed Time Method.** In lieu of crediting Hours of Service, the Elapsed Time Method applies for purposes of crediting Service for: *(Choose one or more of (1), (2) or (3) as applicable)*
 - (1) Eligibility under Article II.
 - (2) Vesting under Article V.
 - (3) Contribution allocations under Article III.

8. **PREDECESSOR EMPLOYER SERVICE (1.30).** In addition to the predecessor service the Plan must credit by reason of Section 1.30 of the Plan, the Plan credits as Service under this Plan service with the following predecessor employer(s):
N/A

[Note: The Plan Administrator may not credit more than five years of service immediately preceding the Plan Year in which the service credit first becomes effective. If the Plan does not credit any additional predecessor service under this Section 1.30, insert "N/A" in the blank line. The Employer also may elect to credit predecessor service with specified Participating Employers only. See the Participation Agreement.] Service with the designated predecessor employer(s) applies: *(Choose one or more of (a) through (d) as applicable)*

- (a) **Eligibility.** For eligibility under Article II. See Plan Section 1.30 for time of Plan entry.
- (b) **Vesting.** For vesting under Article V.
- (c) **Contribution allocation.** For contribution allocations under Article III.
- (d) **Exceptions.** Except for the following Service: _____.

**ARTICLE II
ELIGIBILITY REQUIREMENTS**

9. **ELIGIBILITY (2.01).**

Eligibility conditions. To become a Participant in the Plan, an Employee must satisfy the following eligibility conditions: *(Choose one or more of (a) through (e) as applicable)* *[Note: If the Employer does not elect (c), the Employer's elections under (a) and (b) apply to all types of contributions. The Employer as to deferral contributions may not elect (b)(2) and may not elect more than 12 months in (b)(4) and (b)(5).]*

- (a) **Age.** Attainment of age 18 (not to exceed age 21).
- (b) **Service.** Service requirement. *(Choose one of (1) through (5))*
 - (1) One Year of Service.
 - (2) Two Years of Service, without an intervening Break in Service. See Plan Section 2.03(A).
 - (3) One Hour of Service (immediate completion of Service requirement). The Employee satisfies the Service requirement on his/her Employment Commencement Date.
 - (4) _____ months (not exceeding 24).
 - (5) An Employee must complete _____ Hours of Service within the _____ time period following the Employee's Employment Commencement Date. If an Employee does not complete the stated Hours of Service during the specified time period (if any), the Employee is subject to the One Year of Service requirement. *[Note: The number of hours may not exceed 1,000 and the time period may not exceed 24 months. If the Plan does not require the Employee to satisfy the Hours of Service requirement within a specified time period, insert "N/A" in the second blank line.]*
- (c) **Alternative 401(k)/401(m) eligibility conditions.** In lieu of the elections in (a) and (b), the Employer elects the following eligibility conditions for the following types of contributions: *(Choose (1) or (2) or both if the Employer wishes to impose less restrictive eligibility conditions for deferral/Employee contributions or for matching contributions)*
 - (1) **Deferral/Employee contributions:** *(Choose one of a. through d. Choose e. if applicable)*

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- a. One Year of Service
- b. One Hour of Service (immediate completion of Service requirement)
- c. _____ months (not exceeding 12)
- d. An Employee must complete _____ Hours of Service within the _____ time period following an Employee's Employment Commencement Date. If an Employee does not complete the stated Hours of Service during the specified time period (if any), the Employee is subject to the One Year of Service requirement. [Note: The number of hours may not exceed 1,000 and the time period may not exceed 12 months. If the Plan does not require the Employee to satisfy the Hours of Service requirement within a specified time period, insert "N/A" in the second blank line.]
- e. Age _____ (not exceeding age 21)
- (2) **Matching contributions:** (Choose one of f. through i. Choose j. if applicable)
- f. One Year of Service
- g. One Hour of Service (immediate completion of Service requirement)
- h. _____ months (not exceeding 24)
- i. An Employee must complete _____ Hours of Service within the _____ time period following an Employee's Employment Commencement Date. If an Employee does not complete the stated Hours of Service during the specified time period (if any), the Employee is subject to the One Year of Service requirement. [Note: The number of hours may not exceed 1,000 and the time period may not exceed 24 months. If the Plan does not require the Employee to satisfy the Hours of Service requirement within a specified time period, insert "N/A" in the second blank line.]
- j. Age _____ (not exceeding age 21)

(d) **Service requirements:** _____.
 [Note: Any Service requirement the Employer elects in (d) must be available under other Adoption Agreement elections or a combination thereof.]

(e) **Dual eligibility.** The eligibility conditions of this Section 2.01 apply solely to an Employee employed by the Employer after _____. If the Employee was employed by the Employer by the specified date, the Employee will become a Participant on the latest of: (i) the Effective Date; (ii) the restated Effective Date; (iii) the Employee's Employment Commencement Date; or (iv) on the date the Employee attains age _____ (not exceeding age 21).

Plan Entry Date. "Plan Entry Date" means the Effective Date and: (Choose one of (f) through (j). Choose (k) if applicable)
 [Note: If the Employer does not elect (k), the elections under (f) through (j) apply to all types of contributions. The Employer must elect at least one Entry Date per Plan Year.]

(f) **Semi-annual Entry Dates.** The first day of the Plan Year and the first day of the seventh month of the Plan Year.

(g) **The first day of the Plan Year.**

(h) **Employment Commencement Date** (immediate eligibility).

(i) **The first day of each:** _____ (e.g., "Plan Year quarter").

(j) **The following Plan Entry Dates:** _____.

(k) **Alternative 401(k)/401(m) Plan Entry Date(s).** For the alternative 401(k)/401(m) eligibility conditions under (c), Plan Entry Date means: (Choose (1) or (2) or both as applicable)

(1) **Deferral/Employee contributions**
 (Choose one of a. through d.)

- a. Semi-annual Entry Dates
- b. The first day of the Plan Year
- c. Employment Commencement Date (immediate eligibility)
- d. The first day of each:

(2) **Matching contributions**
 (Choose one of e. through h.)

- e. Semi-annual Entry Dates
- f. The first day of the Plan Year
- g. Employment Commencement Date (immediate eligibility)
- h. The first day of each:

—?

Time of participation. An Employee will become a Participant, unless excluded under Section 1.11, on the Plan Entry Date (if employed on that date): (Choose one of (l), (m) or (n). Choose (o) if applicable): [Note: If the Employer does not elect (o), the election under (l), (m) or (n) applies to all types of contributions.]

- (l) **Immediately following or coincident with**
- (m) **Immediately preceding or coincident with**
- (n) **Nearest**
- (o) **Alternative 401(k)/401(m) election(s):** (Choose (1) or (2) or both as applicable)
 - (1) **Deferral contributions**
 - a. **Immediately following or coincident with**
 - (2) **Matching contributions**
(Choose one of b., c. or d.)
 - b. **Immediately following or coincident with**
 - c. **Immediately preceding or coincident with**
 - d. **Nearest**

the date the Employee completes the eligibility conditions described in this Section 2.01. [Note: Unless otherwise excluded under Section 1.11, an Employee must become a Participant by the earlier of: (1) the first day of the Plan Year beginning after the date the Employee completes the age and service requirements of Code §410(a); or (2) 6 months after the date the Employee completes those requirements.]

10. **YEAR OF SERVICE - ELIGIBILITY (2.02).** (Choose (a) and (b) as applicable): [Note: If the Employer does not elect a Year of Service condition or elects the Elapsed Time Method, the Employer should not complete (a) or (b).]

- (a) **Year of Service.** An Employee must complete _____ Hour(s) of Service during an eligibility computation period to receive credit for a Year of Service under Article II: [Note: The number may not exceed 1,000. If left blank, the requirement is 1,000.]
- (b) **Eligibility computation period.** After the initial eligibility computation period described in Plan Section 2.02, the Plan measures the eligibility computation period as: (Choose one of (1) or (2))
 - (1) The Plan Year beginning with the Plan Year which includes the first anniversary of the Employee's Employment Commencement Date.
 - (2) The 12-consecutive month period beginning with each anniversary of the Employee's Employment Commencement Date.

11. **PARTICIPATION - BREAK IN SERVICE (2.03).** The one year hold-out rule described in Plan Section 2.03(B): (Choose one of (a), (b) or (c))

- (a) **Not applicable.** Does not apply to the Plan.
- (b) **Applicable.** Applies to the Plan and to all Participants.
- (c) **Limited application.** Applies to the Plan, but only to a Participant who has incurred a Separation from Service.

12. **ELECTION NOT TO PARTICIPATE (2.06).** The Plan: (Choose one of (a) or (b))

- (a) **Election not permitted.** Does not permit an eligible Employee to elect not to participate.
- (b) **Irrevocable election.** Permits an Employee to elect not to participate if the Employee makes a one-time irrevocable election prior to the Employee's Plan Entry Date.

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**ARTICLE III
EMPLOYER CONTRIBUTIONS, DEFERRAL CONTRIBUTIONS AND FORFEITURES**

13. **AMOUNT AND TYPE (3.01).** The amount and type(s) of the Employer's contribution to the Trust for a Plan Year or other specified period will equal: *(Choose one or more of (a) through (e) as applicable)*

(a) **Deferral contributions (401(k) arrangement).** The dollar or percentage amount by which each Participant has elected to reduce his/her Compensation, as provided in the Participant's salary reduction agreement and in accordance with Section 3.02.

(b) **Matching contributions (other than safe harbor matching contributions under Section 3.01(d)).** The matching contributions made in accordance with Section 3.03.

(c) **Nonelective contributions (profit sharing).** The following nonelective contribution *(Choose (1) or (2) or both as applicable): [Note: The Employer may designate as a qualified nonelective contribution, all or any portion of its nonelective contribution. See Plan Section 3.04(F). The Employer may make qualified nonelective contributions to correct an ADP test failure only if the Plan Administrator is using current year testing.]*

(1) **Discretionary.** An amount the Employer in its sole discretion may determine.

(2) **Fixed.** The following amount: _____

(d) **401(k) safe harbor contributions.** The following 401(k) safe harbor contributions described in Plan Section 14.02(D): *(Choose one of (1), (2) or (3). Choose (4), if applicable)*

(1) **Safe harbor nonelective contribution.** The safe harbor nonelective contribution equals _____% of a Participant's Compensation *[Note: the amount in the blank must be at least 3%.]*

(2) **Basic safe harbor matching contribution.** A matching contribution equal to 100% of each Participant's deferral contributions not exceeding 3% of the Participant's Compensation, plus 50% of each Participant's deferral contributions in excess of 3% but not in excess of 5% of the Participant's Compensation. For this purpose, "Compensation" means Compensation for: _____. *[Note: The Employer must complete the blank line with the applicable time period for computing the Employer's basic safe harbor match, such as "each payroll period," "each month," "each Plan Year quarter" or "the Plan Year".]*

(3) **Enhanced safe harbor matching contribution.** *(Choose one of a. or b.)*

a. **Uniform percentage.** An amount equal to _____% of each Participant's deferral contributions not exceeding _____% of the Participant's Compensation. For this purpose, "Compensation" means Compensation for: _____. *[See the Note in (d)(2).]*

b. **Tiered formula.** An amount equal to the specified matching percentage for the corresponding level of each Participant's deferral contribution percentage. For this purpose, "Compensation" means Compensation for: _____. *[See the Note in (d)(2).]*

Deferral Contribution Percentage

Matching Percentage

[Note: The matching percentage may not increase as the deferral contribution percentage increases and the enhanced matching formula otherwise must satisfy the requirements of Code §§401(k)(12)(B)(ii) and (iii). If the Employer wishes to avoid ACP testing on its enhanced safe harbor matching contribution, the Employer also must limit deferral contributions taken into account (the "Deferral Contribution Percentage") for the matching contribution to 6% of Plan Year Compensation.]

(4) **Another plan.** The Employer will satisfy the 401(k) safe harbor contribution in the following plan: _____.

(e) **Frozen Plan.** This Plan is a frozen Plan effective: _____. For any period following the specified date, the Employer will not contribute to the Plan, a Participant may not contribute and an otherwise eligible Employee will not become a Participant in the Plan.

14. **DEFERRAL CONTRIBUTIONS (3.02).** The following limitations and terms apply to an Employee's deferral contributions: *(If the Employer elects Section 3.01(a), the Employer must elect (a). Choose (b) or (c) as applicable)*

(a) **Limitation on amount.** An Employee's deferral contributions are subject to the following limitation(s) in addition to those imposed by the Code: *(Choose (1), (2) or (3) as applicable)*

(1) Maximum deferral amount: _____.

(2) Minimum deferral amount: 1%.

(3) No limitations.

For the Plan Year in which an Employee first becomes a Participant, the Plan Administrator will apply any percentage limitation the Employer elects in (1) or (2) to the Employee's Compensation: *(Choose one of (4) or (5) unless the Employer elects (3))*

(4) Only for the portion of the Plan Year in which the Employee actually is a Participant.

(5) For the entire Plan Year.

(b) **Negative deferral election.** The Employer will withhold _____% from the Participant's Compensation unless the Participant elects a lesser percentage (including zero) under his/her salary reduction agreement. See Plan Section 14.02(C). The negative election will apply to: *(Choose one of (1) or (2))*

(1) All Participants who have not deferred at least the automatic deferral amount as of: _____.

(2) Each Employee whose Plan Entry Date is on or following the negative election effective date.

(c) **Cash or deferred contributions.** For each Plan Year for which the Employer makes a designated cash or deferred contribution under Plan Section 14.02(B), a Participant may elect to receive directly in cash not more than the following portion (or, if less, the 402(g) limitation) of his/her proportionate share of that cash or deferred contribution: *(Choose one of (1) or (2))*

(1) All or any portion.

(2) _____%.

Modification/revocation of salary reduction agreement. A Participant prospectively may modify or revoke a salary reduction agreement, or may file a new salary reduction agreement following a prior revocation, at least once per Plan Year or during any election period specified by the basic plan document or required by the Internal Revenue Service. The Plan Administrator also may provide for more frequent elections in the Plan's salary reduction agreement form.

15. **MATCHING CONTRIBUTIONS (INCLUDING ADDITIONAL SAFE HARBOR MATCH UNDER PLAN SECTION 14.02(D)(3)) (3.03).** The Employer matching contribution is: *(If the Employer elects Section 3.01(b), the Employer must elect one or more of (a), (b) or (c) as applicable. Choose (d) if applicable)*

(a) **Fixed formula.** An amount equal to 25% of each Participant's deferral contributions.

(b) **Discretionary formula.** An amount (or additional amount) equal to a matching percentage the Employer from time to time may deem advisable of the Participant's deferral contributions. The Employer, in its sole discretion, may designate as a qualified matching contribution, all or any portion of its discretionary matching contribution. The portion of the Employer's discretionary matching contribution for a Plan Year not designated as a qualified matching contribution is a regular matching contribution.

(c) **Multiple level formula.** An amount equal to the following percentages for each level of the Participant's deferral contributions. *[Note: The matching percentage only will apply to deferral contributions in excess of the previous level and not in excess of the stated deferral contribution percentage.]*

Deferral Contributions

Matching Percentage

(d) **Related Employers.** If two or more Related Employers contribute to this Plan, the Plan Administrator will allocate matching contributions and matching contribution forfeitures only to the Participants directly employed by the

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contributing Employer. The matching contribution formula for the other Related Employer(s) is: _____. [Note: If the Employer does not elect (d), the Plan Administrator will allocate all matching contributions and matching forfeitures without regard to which contributing Related Employer directly employs the Participant.]

Time period for matching contributions. The Employer will determine its matching contribution based on deferral contributions made during each: (Choose one of (e) through (h))

- (e) **Plan Year.**
- (f) **Plan Year quarter.**
- (g) **Payroll period.**
- (h) **Alternative time period:** _____. [Note: Any alternative time period the Employer elects in (h) must be the same for all Participants and may not exceed the Plan Year.]

Deferral contributions taken into account. In determining a Participant's deferral contributions taken into account for the above-specified time period under the matching contribution formula, the following limitations apply: (Choose one of (i), (j) or (k))

- (i) **All deferral contributions.** The Plan Administrator will take into account all deferral contributions.
- (j) **Specific limitation.** The Plan Administrator will disregard deferral contributions exceeding ____% of the Participant's Compensation. [Note: To avoid the ACP test in a safe harbor 401(k) plan, the Employer must limit deferrals and Employee contributions which are subject to match to 6% of Plan Year Compensation.]
- (k) **Discretionary.** The Plan Administrator will take into account the deferral contributions as a percentage of the Participant's Compensation as the Employer determines.

Other matching contribution requirements. The matching contribution formula is subject to the following additional requirements: (Choose (l) or (m) or both as applicable)

- (l) **Matching contribution limits.** A Participant's matching contributions may not exceed: (Choose one of (1) or (2))
 - (1) 1.75% of a Participant's compensation for the Plan Year under the Matching Contribution formula. [Note: The Employer may elect (1) to place an overall dollar or percentage limit on matching contributions.]
 - (2) 4% of a Participant's Compensation for the Plan Year under the discretionary matching contribution formula. [Note: The Employer must elect (2) if it elects a discretionary matching formula with the safe harbor 401(k) contribution formula and wishes to avoid the ACP test.]
- (m) **Qualified matching contributions.** The Plan Administrator will allocate as qualified matching contributions, the matching contributions specified in Adoption Agreement Section: _____. The Plan Administrator will allocate all other matching contributions as regular matching contributions. [Note: If the Employer elects two matching formulas, the Employer may use (m) to designate one of the formulas as a qualified matching contribution. The Employer may make qualified matching contributions to correct an ACP test failure only if the Plan Administrator is using current year testing.]

16. CONTRIBUTION ALLOCATION (3.04).

Employer nonelective contributions (3.04(A)). The Plan Administrator will allocate the Employer's nonelective contribution under the following contribution allocation formula which are in lieu of those under Plan Section 3.04(E). (Choose one of (a), (b) or (c))

- (a) **Allocation by classifications of Participants.** The Employer annually will notify the Trustee, in writing, of the amounts of the contribution (if any) it is making for each classification of Participants (described below) for the Plan Year. Subject to any restoration allocation required under the Plan, the Plan Administrator will allocate and credit for the Plan Year the Employer contribution (and forfeitures, if any) for a particular classification to the Account of each Participant within the classification who satisfies the conditions of Section 3.06, in the same ratio that each Participant's Compensation in that classification bears to the total Compensation of all Participants in that classification for the Plan Year. The allocation formula applies the following classifications of Participants: (Choose one of (1) or (2))
 - (1) Nonhighly Compensated Employees and Highly Compensated Employees.
 - (2) Specify the classifications: each Participant will comprise a separate classification.

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[Note: The Adoption Agreement must clearly define the classifications to satisfy the predetermined allocation formula requirements of Treas. Reg. §1.401-1(b)(1)(ii).]

- (b) **Super-integrated allocation formula.** Subject to any restoration allocation required under the Plan, the Plan Administrator will allocate and credit for the Plan Year each annual Employer contribution (and Participant forfeitures, if any) to the Account of each Participant who satisfies the conditions of Section 3.06, in the following tiers of priority (Complete the second tier blanks): [Note: The Plan Administrator may not proceed to the next tier unless the Plan Administrator has allocated the specified maximum percentage under the preceding tier.]

First tier. Under the first tier, the Plan Administrator will allocate the annual Employer contribution in the same ratio that each Participant's Compensation bears to the total Compensation of all Participants, but in an amount not exceeding 3% of each Participant's Compensation.

Second tier. Under the second tier, the Plan Administrator will allocate any remaining Employer contribution in the same ratio that each Participant's Excess Compensation bears to the total Excess Compensation of all Participants, but in an amount not exceeding _____% of each Participant's Excess Compensation receiving an allocation under this second tier. For purposes of this second tier allocation, Excess Compensation means Compensation in excess of: \$_____.

Third tier. Under the third tier, the Plan Administrator then will allocate any Employer contribution remaining after the first two tiers of allocation in the same ratio that each Nonhighly Compensated Employee Participant's Compensation bears to the total of all Nonhighly Compensated Employee Participant's Compensation.

- (c) **Age-based allocation formula.** The Plan Administrator will allocate the annual Employer contribution (and Participant forfeitures, if any) in the same ratio that each Participant's Benefit Factor for the Plan Year bears to the sum of the Benefit Factors of all Participants for the Plan Year. A Participant's Benefit Factor is his/her Compensation for the Plan Year multiplied by the Actuarial Factor in Appendix C. If Normal Retirement Age is 65, use Table I. If Normal Retirement Age is not 65, use Table II. In Appendix C, the Plan Administrator will use the Actuarial Factors based on the following assumptions: (Complete (1) and (2))

- (1) **Interest rate.** (Choose one of (i), (ii) or (iii)):

(i) 7.5% (ii) 8% (iii) 8.5%.

- (2) **Mortality.** (Choose one of (i) or (ii)):

(i) UP-1984. (ii) Alternative: _____ (Specify 1983 GAM, 1983 IAM, 1971 GAM or 1971 IAM and attach tables as determined using such mortality table and the specified interest rate.)

Qualified nonelective contributions. (3.04(F)). The Plan Administrator will allocate the Employer's qualified nonelective contributions to: (Choose one of (d) or (e))

- (d) **Nonhighly compensated Employees only.**

- (e) **All Participants.**

Related Employers. (Choose (f) if applicable)

- (f) **Allocate only to directly employed Participants.** If two or more Related Employers adopt this Plan, the Plan Administrator will allocate all nonelective contributions and forfeitures attributable to nonelective contributions only to the Participants directly employed by the contributing Employer. If a Participant receives Compensation from more than one contributing Employer, the Plan Administrator will determine the allocations under this Section 3.04 by prorating the Participant's Compensation between or among the participating Related Employers. [Note: If the Employer does not elect 3.04(f), the Plan Administrator will allocate all nonelective contributions and forfeitures without regard to which contributing Related Employer directly employs the Participant. The Employer may not elect 3.04(f) under a safe harbor 401(k) Plan.]

17. **FORFEITURE ALLOCATION (3.05).** The Plan Administrator will allocate a Participant forfeiture: (Choose one or more of (a), (b) or (c) as applicable) [Note: Even if the Employer elects immediate vesting, the Employer should complete Section 3.05. See Plan Section 9.11.]

- (a) **Matching contribution forfeitures.** To the extent attributable to matching contributions: (Choose one of (1) through (4))

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- (1) As a discretionary matching contribution.
 - (2) To reduce matching contributions.
 - (3) As a discretionary nonelective contribution.
 - (4) To reduce nonelective contributions.
- (b) **Nonelective contribution forfeitures.** To the extent attributable to Employer nonelective contributions: *(Choose one of (1) through (4))*
- (1) As a discretionary nonelective contribution.
 - (2) To reduce nonelective contributions.
 - (3) As a discretionary matching contribution.
 - (4) To reduce matching contributions.
- (c) **Reduce administrative expenses.** First to reduce the Plan's ordinary and necessary administrative expenses for the Plan Year and then allocate any remaining forfeitures in the manner described in Sections 3.05(a) or (b) as applicable.

Timing of forfeiture allocation. The Plan Administrator will allocate forfeitures under Section 3.05 in the Plan Year: *(Choose one of (d) or (e))*

- (d) In which the forfeiture occurs.
- (e) Immediately following the Plan Year in which the forfeiture occurs.

18. ALLOCATION CONDITIONS (3.06).

Allocation conditions. The Plan does not apply any allocation conditions to deferral contributions, or to 401(k) safe harbor contributions (under Section 3.01(d)). To receive an allocation of matching contributions, nonelective contributions, qualified nonelective contributions or Participant forfeitures, a Participant must satisfy the following allocation condition(s): *(Choose one or more of (a) through (i) as applicable)*

- (a) **Hours of Service condition.** The Participant must complete at least the specified number of Hours of Service (not exceeding 1,000) during the Plan Year: _____.
- (b) **Employment condition.** The Participant must be employed by the Employer on the last day of the _____ *(designate time period)*.
- (c) **No allocation conditions.**
- (d) **Elapsed Time Method.** The Participant must complete at least the specified number (not exceeding 182) of consecutive calendar days of employment with the Employer during the Plan Year: _____.
- (e) **Termination of Service/501 Hours of Service coverage rule.** The Participant either must be employed by the Employer on the last day of the Plan Year or must complete at least 501 Hours of Service during the Plan Year. If the Plan uses the Elapsed Time Method of crediting Service, the Participant must complete at least 91 consecutive calendar days of employment with the Employer during the Plan Year.
- (f) **Special allocation conditions for matching contributions.** The Participant must complete at least _____ Hours of Service during the _____ *(designate time period)* for the matching contributions made for that time period.
- (g) **Death, Disability or Normal Retirement Age.** Any condition specified in Section 3.06 _____(e) applies if the Participant incurs a Separation from Service during the Plan Year on account of: death, Disability or Normal Retirement Age (e.g., death, Disability or Normal Retirement Age).
- (h) **Suspension of allocation conditions for coverage.** The suspension of allocation conditions of Plan Section 3.06(E) applies to the Plan, except that the Plan Administrator must apply Section 3.06(E) using the Ratio Percentage Test only.

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- (i) **Limited allocation conditions.** The Plan does not impose an allocation condition for the following types of contributions: _____. [Note: Any election to limit the Plan's allocation conditions to certain contributions must be the same for all Participants, be definitely determinable and not discriminate in favor of Highly Compensated Employees.]

**ARTICLE IV
PARTICIPANT CONTRIBUTIONS**

19. **EMPLOYEE (AFTER TAX) CONTRIBUTIONS (4.02).** The following elections apply to Employee contributions: (Choose one of (a) or (b). Choose (c) if applicable)

- (a) **Not permitted.** The Plan does not permit Employee contributions.
- (b) **Permitted.** The Plan permits Employee contributions subject to the following limitations: _____. [Note: Any designated limitation(s) must be the same for all Participants, be definitely determinable and not discriminate in favor of Highly Compensated Employees.]
- (c) **Matching contribution.** For each Plan Year, the Employer's matching contribution made with respect to Employee contributions is: _____.

**ARTICLE V
VESTING REQUIREMENTS**

20. **NORMAL/EARLY RETIREMENT AGE (5.01).** A Participant attains Normal Retirement Age (or Early Retirement Age, if applicable) under the Plan on the following date: (Choose one of (a) or (b). Choose (c) if applicable)

- (a) **Specific age.** The date the Participant attains age _____. [Note: The age may not exceed age 65.]
- (b) **Age/participation.** The later of the date the Participant attains 62 years of age or the 5th anniversary of the first day of the Plan Year in which the Participant commenced participation in the Plan. [Note: The age may not exceed age 65 and the anniversary may not exceed the 5th.]
- (c) **Early Retirement Age.** Early Retirement Age is the later of: (i) the date a Participant attains age _____ or (ii) the date a Participant reaches his/her _____ anniversary of the first day of the Plan Year in which the Participant commenced participation in the Plan.

21. **PARTICIPANT'S DEATH OR DISABILITY (5.02).** The 100% vesting rule under Plan Section 5.02 does not apply to: (Choose (a) or (b) or both as applicable)

- (a) **Death.**
- (b) **Disability.**

22. **VESTING SCHEDULE (5.03).** A Participant has a 100% Vested interest at all times in his/her deferral contributions, qualified nonelective contributions, qualified matching contributions and 401(k) safe harbor contributions. The following vesting schedule applies to Employer regular matching contributions and to Employer nonelective contributions: (Choose one or more of (a) through (f) as applicable)

- (a) **Immediate vesting.** 100% Vested at all times. [Note: The Employer must elect (a) if the Service condition under Section 2.01 exceeds One Year of Service or more than twelve months.]
- (b) **Top-heavy vesting schedules.** [Note: The Employer must choose one of (b)(1), (2) or (3) if it does not elect (a).]

- (1) 6-year graded as specified in the Plan. (3) Modified top-heavy schedule
- (2) 3-year cliff as specified in the Plan.

<u>Years of Service</u>	<u>Vested Percentage</u>
Less than 1	___%
1	___%
2	___%
3	___%
4	___%
5	___%
6 or more	100%

(c) **Non-top-heavy vesting schedules.** [Note: The Employer may elect one of (c)(1), (2) or (3) in addition to (b).]

- (1) 7-year graded as specified in the Plan.
 (2) 5-year cliff as specified in the Plan.

(3) Modified non-top-heavy schedule

<u>Years of Service</u>	<u>Vested Percentage</u>
Less than 1	___%
1	___%
2	___%
3	___%
4	___%
5	___%
6	___%
7 or more	100%

If the Employer does not elect (c), the vesting schedule elected in (b) applies to all Plan Years. [Note: The modified top-heavy schedule of (b)(3) must satisfy Code §416. If the Employer elects (c)(3), the modified non-top-heavy schedule must satisfy Code §411(a)(2).]

(d) **Separate vesting election for regular matching contributions.** In lieu of the election under (a), (b) or (c), the following vesting schedule applies to a Participant's regular matching contributions: (Choose one of (1) or (2))

(1) 100% Vested at all times.

(2) Regular matching vesting schedule: _____.
 [Note: The vesting schedule completed under (d)(2) must comply with Code §411(a)(4).]

(e) **Application of top-heavy schedule.** The non-top-heavy schedule elected under (c) applies in all Plan Years in which the Plan is not a top-heavy plan. [Note: If the Employer does not elect (e), the top-heavy vesting schedule will apply for the first Plan Year in which the Plan is top-heavy and then in all subsequent Plan Years.]

(f) **Special vesting provisions:** _____. [Note: Any special vesting provision must satisfy Code §411(a). Any special vesting provision must be definitely determinable, not discriminate in favor of Highly Compensated Employees and not violate Code §401(a)(4).]

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23. YEAR OF SERVICE - VESTING (5.06). (Choose (a) and (b)): [Note: If the Employer elects the Elapsed Time Method or elects immediate vesting, the Employer should not complete (a) or (b).]

(a) **Year of Service.** An Employee must complete at least 1,000 Hours of Service during a vesting computation period to receive credit for a Year of Service under Article V. [Note: The number may not exceed 1,000. If left blank, the requirement is 1,000.]

(b) **Vesting computation period.** The Plan measures a Year of Service on the basis of the following 12-consecutive month period: (Choose one of (1) or (2))

(1) Plan Year.

(2) Employment year (anniversary of Employment Commencement Date).

24. EXCLUDED YEARS OF SERVICE - VESTING (5.08). The Plan excludes the following Years of Service for purposes of vesting: (Choose (a) or choose one or more of (b) through (f) as applicable)

(a) **None.** None other than as specified in Plan Section 5.08(a).

(b) **Age 18.** Any Year of Service before the Year of Service during which the Participant attained the age of 18.

(c) **Prior to Plan establishment.** Any Year of Service during the period the Employer did not maintain this Plan or a predecessor plan.

(d) **Parity Break in Service.** Any Year of Service excluded under the rule of parity. See Plan Section 5.10.

(e) **Prior Plan terms.** Any Year of Service disregarded under the terms of the Plan as in effect prior to this restated Plan.

(f) **Additional exclusions.** Any Year of Service before: _____.
[Note: Any exclusion specified under (f) must comply with Code §411(a)(4). Any exclusion must be definitely determinable, not discriminate in favor of Highly Compensated Employees and not violate Code §401(a)(4). If the Employer elects immediate vesting, the Employer should not complete Section 5.08.]

ARTICLE VI DISTRIBUTION OF ACCOUNT BALANCE

25. TIME OF PAYMENT OF ACCOUNT BALANCE (6.01). The following time of distribution elections apply to the Plan:

Separation from Service/Vested Account Balance not exceeding \$5,000. Subject to the limitations of Plan Section 6.01(A)(1), the Trustee will distribute in a lump sum (regardless of the Employer's election under Section 6.04) a separated Participant's Vested Account Balance not exceeding \$5,000: (Choose one of (a) through (d))

(a) **Immediate.** As soon as administratively practicable following the Participant's Separation from Service.

(b) **Designated Plan Year.** As soon as administratively practicable in the _____ Plan Year beginning after the Participant's Separation from Service.

(c) **Designated Plan Year quarter.** As soon as administratively practicable in the _____ Plan Year quarter beginning after the Participant's Separation from Service.

(d) **Designated distribution.** As soon as administratively practicable in the: _____ following the Participant's Separation from Service. [Note: The designated distribution time must be the same for all Participants, be definitely determinable, not discriminate in favor of Highly Compensated Employees and not violate Code §401(a)(4).]

Separation from Service/Vested Account Balance exceeding \$5,000. A separated Participant whose Vested Account Balance exceeds \$5,000 may elect to commence distribution of his/her Vested Account Balance no earlier than: (Choose one of (e) through (i). Choose (j) if applicable)

(e) **Immediate.** As soon as administratively practicable following the Participant's Separation from Service.

(f) **Designated Plan Year.** As soon as administratively practicable in the _____ Plan Year beginning after the Participant's Separation from Service.

- (g) **Designated Plan Year quarter.** As soon as administratively practicable in the _____ Plan Year quarter following the Plan Year quarter in which the Participant elects to receive a distribution.
- (h) **Normal Retirement Age.** As soon as administratively practicable after the close of the Plan Year in which the Participant attains Normal Retirement Age and within the time required under Plan Section 6.01(A)(2).
- (i) **Designated distribution.** As soon as administratively practicable in the: _____ following the Participant's Separation from Service. [Note: The designated distribution time must be the same for all Participants, be definitely determinable, not discriminate in favor of Highly Compensated Employees and not violate Code §401(a)(4).]
- (j) **Limitation on Participant's right to delay distribution.** A Participant may not elect to delay commencement of distribution of his/her Vested Account Balance beyond the later of attainment of age 62 or Normal Retirement Age. [Note: If the Employer does not elect (j), the Plan permits a Participant who has Separated from Service to delay distribution until his/her required beginning date. See Plan Section 6.01(A)(2).]

Participant elections prior to Separation from Service. A Participant, prior to Separation from Service may elect any of the following distribution options in accordance with Plan Section 6.01(C). (Choose (k) or choose one or more of (l) through (o) as applicable). [Note: If the Employer elects any in-service distributions option, a Participant may elect to receive one in-service distribution per Plan Year unless the Plan's in-service distribution form provides for more frequent in-service distributions.]

- (k) **None.** A Participant does not have any distribution option prior to Separation from Service, except as may be provided under Plan Section 6.01(C).
- (l) **Deferral contributions.** Distribution of all or any portion (as permitted by the Plan) of a Participant's Account Balance attributable to deferral contributions if: (Choose one or more of (1), (2) or (3) as applicable)
 - (1) **Hardship (safe harbor hardship rule).** The Participant has incurred a hardship in accordance with Plan Sections 6.09 and 14.11(A).
 - (2) **Age.** The Participant has attained age 59 1/2 (Must be at least age 59 1/2).
 - (3) **Disability.** The Participant has incurred a Disability.
- (m) **Qualified nonelective contributions/qualified matching contributions/safe harbor contributions.** Distribution of all or any portion of a Participant's Account Balance attributable to qualified nonelective contributions, to qualified matching contributions, or to 401(k) safe harbor contributions if: (Choose (1) or (2) or both as applicable)
 - (1) **Age.** The Participant has attained age 59 1/2 (Must be at least age 59 1/2).
 - (2) **Disability.** The Participant has incurred a Disability.
- (n) **Nonelective contributions/regular matching contributions.** Distribution of all or any portion of a Participant's Vested Account Balance attributable to nonelective contributions or to regular matching contributions if: (Choose one or more of (1) through (5) as applicable)
 - (1) **Age/Service conditions.** (Choose one or more of a. through d. as applicable):
 - a. **Age.** The Participant has attained age 62.
 - b. **Two-year allocations.** The Plan Administrator has allocated the contributions to be distributed for a period of not less than _____ Plan Years before the distribution date. [Note: The minimum number of years is 2.]
 - c. **Five years of participation.** The Participant has participated in the Plan for at least _____ Plan Years. [Note: The minimum number of years is 5.]
 - d. **Vested.** The Participant is 100 % Vested in his/her Account Balance. See Plan Section 5.03(A). [Note: If an Employer makes more than one election under Section 6.01(n)(1), a Participant must satisfy all conditions before the Participant is eligible for the distribution.]
 - (2) **Hardship.** The Participant has incurred a hardship in accordance with Plan Section 6.09.

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- (3) **Hardship (safe harbor hardship rule).** The Participant has incurred a hardship in accordance with Plan Sections 6.09 and 14.11(A).
- (4) **Disability.** The Participant has incurred a Disability.
- (5) **Designated condition.** The Participant has satisfied the following condition(s): attain Normal Retirement Age.
 [Note: Any designated condition(s) must be the same for all Participants, be definitely determinable and not discriminate in favor of Highly Compensated Employees.]
- (o) **Participant contributions.** Distribution of all or any portion of a Participant's Account Balance attributable to the following Participant contributions described in Plan Section 4.01: (Choose one of (1), (2) or (3))
- (1) **All Participant contributions.**
- (2) **Employee contributions only.**
- (3) **Rollover contributions only.**

Participant loan default/offset. See Section 6.08 of the Plan.

26. **DISTRIBUTION METHOD (6.03).** A separated Participant whose Vested Account Balance exceeds \$5,000 may elect distribution under one of the following method(s) of distribution described in Plan Section 6.03: (Choose one or more of (a) through (d) as applicable)

- (a) **Lump sum.**
- (b) **Installments.**
- (c) **Installments for required minimum distributions only.**
- (d) **Annuity distribution option(s):** _____.
 [Note: Any optional method of distribution may not be subject to Employer, Plan Administrator or Trustee discretion.]

27. **JOINT AND SURVIVOR ANNUITY REQUIREMENTS (6.04).** The joint and survivor annuity distribution requirements of Plan Section 6.04: (Choose one of (a) or (b))

- (a) **Profit sharing plan exception.** Do not apply to a Participant, unless the Participant is a Participant described in Section 6.04(H) of the Plan.
- (b) **Applicable.** Apply to all Participants.

**ARTICLE IX
 PLAN ADMINISTRATOR - DUTIES WITH RESPECT TO PARTICIPANTS' ACCOUNTS**

28. **ALLOCATION OF NET INCOME, GAIN OR LOSS (9.08).** For each type of contribution provided under the Plan, the Plan allocates net income, gain or loss using the following method: (Choose one or more of (a) through (d) as applicable)

- (a) **Deferral contributions/Employee contributions.** (Choose one or more of (1) through (5) as applicable)
- (1) **Daily valuation method.** Allocate on each business day of the Plan Year during which Plan assets for which there is an established market are valued and the Trustee is conducting business.
- (2) **Balance forward method.** Allocate using the balance forward method.
- (3) **Weighted average method.** Allocate using the weighted average method, based on the following weighting period: _____. See Plan Section 14.12.
- (4) **Balance forward method with adjustment.** Allocate pursuant to the balance forward method, except treat as part of the relevant Account at the beginning of the valuation period 50 % of the contributions made during the following valuation period: Plan Year.

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- (5) **Individual account method.** Allocate using the individual account method. See Plan Section 9.08.
- (b) **Matching contributions.** (Choose one or more of (1) through (5) as applicable)
- (1) **Daily valuation method.** Allocate on each business day of the Plan Year during which Plan assets for which there is an established market are valued and the Trustee is conducting business.
- (2) **Balance forward method.** Allocate using the balance forward method.
- (3) **Weighted average method.** Allocate using the weighted average method, based on the following weighting period: _____. See Plan Section 14.12.
- (4) **Balance forward method with adjustment.** Allocate pursuant to the balance forward method, except treat as part of the relevant Account at the beginning of the valuation period ____% of the contributions made during the following valuation period: _____.
- (5) **Individual account method.** Allocate using the individual account method. See Plan Section 9.08.
- (c) **Employer nonelective contributions.** (Choose one or more of (1) through (5) as applicable)
- (1) **Daily valuation method.** Allocate on each business day of the Plan Year during which Plan assets for which there is an established market are valued and the Trustee is conducting business.
- (2) **Balance forward method.** Allocate using the balance forward method.
- (3) **Weighted average method.** Allocate using the weighted average method, based on the following weighting period: _____. See Plan Section 14.12.
- (4) **Balance forward method with adjustment.** Allocate pursuant to the balance forward method, except treat as part of the relevant Account at the beginning of the valuation period ____% of the contributions made during the following valuation period: _____.
- (5) **Individual account method.** Allocate using the individual account method. See Plan Section 9.08.
- (d) **Specified method.** Allocate pursuant to the following method: _____.
 [Note: The specified method must be a definite predetermined formula which is not based on Compensation, which satisfies the nondiscrimination requirements of Treas. Reg. §1.401(a)(4) and which is applied uniformly to all Participants.]

**ARTICLE X
TRUSTEE AND CUSTODIAN, POWERS AND DUTIES**

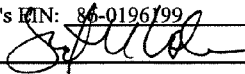
29. **INVESTMENT POWERS (10.03).** The following additional investment options or limitations apply under Plan Section 10.03: N/A . [Note: Enter "N/A" if not applicable.]
30. **VALUATION OF TRUST (10.15).** In addition to the last day of the Plan Year, the Trustee must value the Trust Fund on the following valuation date(s): (Choose one of (a) through (d))
- (a) **Daily valuation dates.** Each business day of the Plan Year on which Plan assets for which there is an established market are valued and the Trustee is conducting business.
- (b) **Last day of a specified period.** The last day of each _____ of the Plan Year.
- (c) **Specified dates:** _____.
- (d) **No additional valuation dates.**

Execution Page

The Trustee (and Custodian, if applicable), by executing this Adoption Agreement, accepts its position and agrees to all of the obligations, responsibilities and duties imposed upon the Trustee (or Custodian) under the Plan and Trust. The Employer hereby agrees to the provisions of this Plan and Trust, and in witness of its agreement, the Employer by its duly authorized officers, has executed this Adoption Agreement, and the Trustee (and Custodian, if applicable) has signified its acceptance, on: March 15, 2002.

Name of Employer: Mortgages Ltd.

Employer's EIN: 86-0196799

Signed: 

Scott M. Coles
[Name/Title]

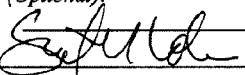
Name(s) of Trustee:

Scott M. Coles

James J. Cordello

Richard A. Zeigler

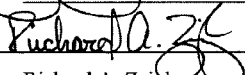
Trust EIN (Optional):

Signed: 

Scott M. Coles
[Name/Title]

Signed: 

James J. Cordello
[Name/Title]

Signed: 

Richard A. Zeigler
[Name/Title]

Name of Custodian (Optional):

N/A

Signed: _____

[Name/Title]

31. **Plan Number.** The 3-digit plan number the Employer assigns to this Plan for ERISA reporting purposes (Form 5500 Series) is: 002.

Use of Adoption Agreement. Failure to complete properly the elections in this Adoption Agreement may result in disqualification of the Employer's Plan. The Employer only may use this Adoption Agreement in conjunction with the basic plan document referenced by its document number on Adoption Agreement page one.

Execution for Page Substitution Amendment Only. If this paragraph is completed, this Execution Page documents an amendment to Adoption Agreement Section(s) _____ effective _____, by substitute Adoption Agreement page number(s) _____.

Reliance on Sponsor Advisory Letter. The volume submitter practitioner has obtained from the IRS an advisory letter specifying the form of this Adoption Agreement and the basic plan document satisfy, as of the date of the advisory letter, Code §401. An adopting Employer may rely on the volume submitter practitioner's IRS advisory letter *only* to the extent provided in Announcement 2001-77, 2001-30 I.R.B. The Employer may not rely on the advisory letter in certain other circumstances or with respect to certain qualification requirements, which are specified in the advisory letter and in Announcement 2001-77. In order to have reliance in such circumstances or with respect to such qualification requirements, the Employer must apply for a determination letter to Employee Plans Determinations of the Internal Revenue Service.

PARTICIPATION AGREEMENT

[X] Check here if not applicable and do not complete this page.

The undersigned Employer, by executing this Participation Agreement, elects to become a Participating Employer in the Plan identified in Section 1.21 of the accompanying Adoption Agreement, as if the Participating Employer were a signatory to that Adoption Agreement. The Participating Employer accepts, and agrees to be bound by, all of the elections granted under the provisions of the Plan as made by the Signatory Employer to the Execution Page of the Adoption Agreement, except as otherwise provided in this Participation Agreement.

32. EFFECTIVE DATE (1.10) The Effective Date of the Plan for the Participating Employer is: _____

33. NEW PLAN/RESTATEMENT. The Participating Employer's adoption of this Plan constitutes: (Choose one of (a) or (b))

- (a) The adoption of a new plan by the Participating Employer.
(b) The adoption of an amendment and restatement of a plan currently maintained by the Participating Employer, identified as: _____ and having an original effective date of: _____

34. PREDECESSOR EMPLOYER SERVICE (1.30). In addition to the predecessor service credited by reason of Section 1.30 of the Plan, the Plan credits as Service under this Plan, service with this Participating Employer. (Choose one or more of (a) through (d) as applicable): [Note: The Plan Administrator may not credit more than five years of service immediately preceding the Plan Year in which the service credit first becomes effective. If the Plan does not credit any additional predecessor service under Section 1.30 for this Participating Employer, do not complete this election.]

- (a) Eligibility. For eligibility under Article II. See Plan Section 1.30 for time of Plan entry.
(b) Vesting. For vesting under Article V.
(c) Contribution allocation. For contribution allocations under Article III.
(d) Exceptions. Except for the following Service: _____

Name of Plan: _____ Name of Participating Employer: _____
Signed: _____ [Name/Title]
_____ [Date]
Participating Employer's EIN: _____

Acceptance by the Signatory Employer to the Execution Page of the Adoption Agreement and by the Trustee.

Name of Signatory Employer: _____ Name(s) of Trustee: _____
_____ [Name/Title] _____ [Name/Title]
Signed: _____ Signed: _____
_____ [Date] _____ [Date]

[Note: Each Participating Employer must execute a separate Participation Agreement. If the Plan does not have a Participating Employer, the Signatory Employer may delete this page from the Adoption Agreement.]

**APPENDIX A
TESTING ELECTIONS/EFFECTIVE DATE ADDENDUM**

35. The following testing elections and special effective dates apply: [Note: Except as otherwise provided in the Plan or Adoption Agreement, the general effective date for GUST provisions is the first Plan Year beginning after December 31, 1996, except for certain GATT provisions effective for Plan Years beginning after December 31, 1994.] (Choose one or more of (a) through (n) as applicable)

- (a) **Highly Compensated Employee (1.14).** For Plan Years beginning after _____, the Employer makes the following election(s) regarding the definition of Highly Compensated Employee:
- (1) **Top paid group election.**
 - (2) **Calendar year data election (fiscal year plan).**
- (b) **401(k) current year testing.** The Employer will apply the current year testing method in applying the ADP and ACP tests effective for Plan Years beginning after December 31, 2002. [Note: For Plan Years beginning on or after the Employer's execution of its "GUST" restatement, the Employer must use the same testing method within the same Plan Year for both the ADP and ACP tests.]
- (c) **Compensation.** The Compensation definition under Section 1.07 will apply for Plan Years beginning after: _____.
- (d) **Election not to participate.** The election not to participate under Section 2.06 is effective: _____.
- (e) **401(k) safe harbor.** The 401(k) safe harbor provisions under Section 3.01(d) are effective: _____.
- (f) **Negative election.** The negative election provision under Section 3.02(b) is effective: _____.
- (g) **Contribution/allocation formula.** The specified contribution(s) and allocation method(s) under Sections 3.01 and 3.04 are effective: January 1, 2002.
- (h) **Allocation conditions.** The allocation conditions of Section 3.06 are effective: _____.
- (i) **Benefit payment elections.** The distribution elections of Section(s) _____ are effective: _____.
- (j) **Election to continue pre-SBJPA required beginning date.** A Participant may not elect to defer commencement of the distribution of his/her Vested Account Balance beyond the April 1 following the calendar year in which the Participant attains age 70 1/2. See Plan Section 6.02(A).
- (k) **Elimination of age 70 1/2 in-service distributions.** The Plan eliminates a Participant's (other than a more than 5% owner) right to receive in-service distributions on April 1 of the calendar year following the year in which the Participant attains age 70 1/2 for Plan Years beginning after: _____.
- (l) **Allocation of earnings.** The earnings allocation provisions under Section 9.08 are effective: _____.
- (m) **Elimination of optional forms of benefit.** The Employer elects prospectively to eliminate the following optional forms of benefit: (Choose one or more of (1), (2) and (3) as applicable)
- (1) QJSA and QPSA benefits as described in Plan Sections 6.04, 6.05 and 6.06 effective: _____.
 - (2) Installment distributions as described in Section 6.03 effective: _____.
 - (3) Other optional forms of benefit (Any election to eliminate must be consistent with Treas. Reg. §1.411(d)-4): _____.
- (n) **Special effective date(s):** Time of Participation under section 2.01(l) is effective January 1, 2003; Time period for Matching Contributions under section 3.03(g) is effective January 1, 2003; Contribution Allocation under section 3.04(a)(2) & 3.04(f) are effective January 1, 2003.

For periods prior to the above-specified special effective date(s), the Plan terms in effect prior to its restatement under this Adoption Agreement will control for purposes of the designated provisions. A special effective date may not result in the delay of a Plan provision beyond the permissible effective date under any applicable law.

**APPENDIX B
GUST Remedial Amendment Period Elections**

36. The following GUST restatement elections apply: [Note: Except as otherwise provided in the Plan or Adoption Agreement, the general effective date for GUST provisions is the first Plan Year beginning after December 31, 1996, except for certain GATT provisions effective for Plan Years beginning after December 31, 1994.] (Choose one or more of (a) through (j) as applicable. Also complete (k) and (l).)

(a) **Highly Compensated Employee elections.** The Employer makes the following remedial amendment period elections with respect to the Highly Compensated Employee definition:

- | | | | | |
|-----------|-------------------------------------|------------------------------|--------------------------|------------------------------|
| (1) 1997: | <input type="checkbox"/> | Top paid group election. | <input type="checkbox"/> | Calendar year election. |
| | <input type="checkbox"/> | Calendar year data election. | | |
| (2) 1998: | <input type="checkbox"/> | Top paid group election. | <input type="checkbox"/> | Calendar year data election. |
| (3) 1999: | <input type="checkbox"/> | Top paid group election. | <input type="checkbox"/> | Calendar year data election. |
| (4) 2000: | <input type="checkbox"/> | Top paid group election. | <input type="checkbox"/> | Calendar year data election. |
| (5) 2001: | <input type="checkbox"/> | Top paid group election. | <input type="checkbox"/> | Calendar year data election. |
| (6) 2002: | <input checked="" type="checkbox"/> | Top paid group election. | <input type="checkbox"/> | Calendar year data election. |

(b) **401(k) testing methods.** The Employer makes the following remedial amendment period elections with respect to the ADP test and the ACP test: [Note: The Employer may use a different testing method for the ADP and ACP tests through the end of the Plan Year in which the Employer executes its GUST restated Plan.]

- | ADP test | | | | ACP test | | | | | |
|-----------|--------------------------|------------|-------------------------------------|--------------|-------|--------------------------|------------|-------------------------------------|--------------|
| (1) 1997: | <input type="checkbox"/> | prior year | <input type="checkbox"/> | current year | 1997: | <input type="checkbox"/> | prior year | <input type="checkbox"/> | current year |
| (2) 1998: | <input type="checkbox"/> | prior year | <input type="checkbox"/> | current year | 1998: | <input type="checkbox"/> | prior year | <input type="checkbox"/> | current year |
| (3) 1999: | <input type="checkbox"/> | prior year | <input type="checkbox"/> | current year | 1999: | <input type="checkbox"/> | prior year | <input type="checkbox"/> | current year |
| (4) 2000: | <input type="checkbox"/> | prior year | <input type="checkbox"/> | current year | 2000: | <input type="checkbox"/> | prior year | <input type="checkbox"/> | current year |
| (5) 2001: | <input type="checkbox"/> | prior year | <input checked="" type="checkbox"/> | current year | 2001: | <input type="checkbox"/> | prior year | <input checked="" type="checkbox"/> | current year |
| (6) 2002: | <input type="checkbox"/> | prior year | <input checked="" type="checkbox"/> | current year | 2002: | <input type="checkbox"/> | prior year | <input checked="" type="checkbox"/> | current year |

(c) **Delayed application of SBJPA required beginning date.** The Employer elects to delay the effective date for the required beginning date provision of Plan Section 6.02 until Plan Years beginning after: _____.

(d) **Model Amendment for required minimum distributions.** The Employer adopts the IRS Model Amendment in Plan Section 6.02(E) effective January 1, 2001. [Note: The date must not be earlier than January 1, 2001.]

Defined Benefit Limitation

(e) **Code §415(e) repeal.** The repeal of the Code §415(e) limitation is effective for Limitation Years beginning after December 31, 1999. [Note: If the Employer does not make an election under (e), the repeal is effective for Limitation Years beginning after December 31, 1999.]

Code §415(e) limitation. To the extent necessary to satisfy the limitation under Plan Section 3.17 for Limitation Years beginning prior to the repeal of Code §415(e), the Employer will reduce: (Choose one of (f) or (g))

(f) The Participant's projected annual benefit under the defined benefit plan.

(g) The Employer's contribution or allocation on behalf of the Participant to the defined contribution plan and then, if necessary, the Participant's projected annual benefit under the defined benefit plan.

Coordination with top-heavy minimum allocation. The Plan Administrator will apply the top-heavy minimum allocation provisions of Article XII with the following modifications: (Choose (h) or choose (i) or (j) or both as applicable)

(h) No modifications.

(i) For Non-Key Employees participating only in this Plan, the top-heavy minimum allocation is the minimum allocation determined by substituting _____% (not less than 4%) for "3%," except: (Choose one of (1) or (2))

- (1) No exceptions.
- (2) Plan Years in which the top-heavy ratio exceeds 90%.

(j) For Non-Key Employees also participating in the defined benefit plan, the top-heavy minimum is: (Choose one of (1) or (2))

- (1) 5% of Compensation, reduced by the Equivalent Allocation Rate, as defined in IRC Section 401(a)(4)-8(c)(2), of the increase in the Participant's accrued benefit during the Plan Year under the defined benefit plan, where the increase in the Participant's accrued benefit under the defined benefit plan shall be the Participant's accrued benefit,

determined as of the last day of the Plan Year, in excess of the Participant's accrued benefit, determined as of the last day of the preceding Plan Year: (Choose one of a. or b.)

- a. No exceptions.
 b. Substituting "7 1/2%" for "5%" if the top-heavy ratio does not exceed 90%.
 (2) 0%. [Note: The defined benefit plan must satisfy the top-heavy minimum benefit requirement for these Non-Key Employees.]

Actuarial assumptions for top-heavy calculation. To determine the top-heavy ratio, the Plan Administrator will use the following interest rate and mortality assumptions to value accrued benefits under a defined benefit plan: Pre-Retirement Table: None; Post-Retirement Table: 1983 GAB; Pre-Retirement Interest: 8.5%; Post-Retirement Interest: 5.0%.

Cash-out/Lookback.

- (k) **Cash-out.** For Plan Years beginning before August 6, 1997, the Plan references to "\$5,000" in the Plan are \$3,500 in lieu of \$5,000. The Plan Administrator will apply the \$5,000 amount effective January 1, 1998. [Note: The Employer should specify the date that the Plan Administrator first operationally applied the \$5,000 amount which may not be earlier than Plan Years beginning after August 5, 1997.]
- (l) **Lookback.** The determination of the Vested Account balance under Plan Section 6.01(A)(6) is effective for distributions made after October 16, 2000. [Note: The Employer should specify the date that the Plan Administrator discontinued application of the "lookback rule." The earliest date that the Employer may specify is October 16, 2000.]

**APPENDIX C
TABLE I: ACTUARIAL FACTORS**

UP-1984
Without Setback

Number of years from attained age at the end of Plan Year until <u>Normal Retirement Age</u>	<u>7.50%</u>	<u>8.00%</u>	<u>8.50%</u>
0	8.458	8.196	7.949
1	7.868	7.589	7.326
2	7.319	7.027	6.752
3	6.808	6.506	6.223
4	6.333	6.024	5.736
5	5.891	5.578	5.286
6	5.480	5.165	4.872
7	5.098	4.782	4.491
8	4.742	4.428	4.139
9	4.412	4.100	3.815
10	4.104	3.796	3.516
11	3.817	3.515	3.240
12	3.551	3.255	2.986
13	3.303	3.014	2.752
14	3.073	2.790	2.537
15	2.859	2.584	2.338
16	2.659	2.392	2.155
17	2.474	2.215	1.986
18	2.301	2.051	1.831
19	2.140	1.899	1.687
20	1.991	1.758	1.555
21	1.852	1.628	1.433
22	1.723	1.508	1.321
23	1.603	1.396	1.217
24	1.491	1.293	1.122
25	1.387	1.197	1.034
26	1.290	1.108	0.953
27	1.200	1.026	0.878
28	1.116	0.950	0.810
29	1.039	0.880	0.746
30	0.966	0.814	0.688
31	0.899	0.754	0.634
32	0.836	0.698	0.584
33	0.778	0.647	0.538
34	0.723	0.599	0.496
35	0.673	0.554	0.457
36	0.626	0.513	0.422
37	0.582	0.475	0.389
38	0.542	0.440	0.358
39	0.504	0.407	0.330
40	0.469	0.377	0.304
41	0.436	0.349	0.280
42	0.406	0.323	0.258
43	0.377	0.299	0.238
44	0.351	0.277	0.219
45	0.327	0.257	0.202

Note: A Participant's Actuarial Factor under Table I is the factor corresponding to the number of years until the Participant reaches his/her Normal Retirement Age under the Plan. A Participant's age as of the end of the current Plan Year is his/her age on his/her last birthday. For any Plan Year beginning on or after the Participant's attainment of Normal Retirement Age, the factor for "zero" years applies.

APPENDIX C
TABLE II: ADJUSTMENT TO ACTUARIAL FACTORS FOR NORMAL RETIREMENT AGE
OTHER THAN 65

UP-1984
Without Setback

Normal Retirement Age	<u>7.50%</u>	<u>8.00%</u>	<u>8.50%</u>
55	1.2242	1.2147	1.2058
56	1.2043	1.1959	1.1879
57	1.1838	1.1764	1.1694
58	1.1627	1.1563	1.1503
59	1.1411	1.1357	1.1305
60	1.1188	1.1144	1.1101
61	1.0960	1.0925	1.0891
62	1.0726	1.0700	1.0676
63	1.0488	1.0471	1.0455
64	1.0246	1.0237	1.0229
65	1.0000	1.0000	1.0000
66	0.9752	0.9760	0.9767
67	0.9502	0.9518	0.9533
68	0.9251	0.9274	0.9296
69	0.8998	0.9027	0.9055
70	0.8740	0.8776	0.8810
71	0.8478	0.8520	0.8561
72	0.8214	0.8261	0.8307
73	0.7946	0.7999	0.8049
74	0.7678	0.7735	0.7790
75	0.7409	0.7470	0.7529
76	0.7140	0.7205	0.7268
77	0.6874	0.6942	0.7008
78	0.6611	0.6682	0.6751
79	0.6349	0.6423	0.6494
80	0.6090	0.6165	0.6238

Note: Use Table II only if the Normal Retirement Age for any Participant is not 65. If a Participant's Normal Retirement Age is not 65, adjust Table I by multiplying *all* factors applicable to that Participant in Table I by the appropriate Table II factor.

**CHECKLIST OF EMPLOYER INFORMATION
AND EMPLOYER ADMINISTRATIVE ELECTIONS**

Commencing with the 2003 Plan Year

The Plan permits the Employer to make certain administrative elections not reflected in the Adoption Agreement. This form lists those administrative elections and provides a means of recording the Employer's elections. *This checklist is not part of the Plan document.*

37. Employer Information.

Mortgages Ltd.
[Employer Name]
55 East Thomas Road
[Address]
Phoenix, Arizona 85012-3101 (602) 277-5626
[City, State and Zip Code] [Telephone Number]

38. Form of Business.

- | | | | |
|------------------------------|---------------------------|---|---------------------|
| (a) <input type="checkbox"/> | Corporation | (b) <input checked="" type="checkbox"/> | S Corporation |
| (c) <input type="checkbox"/> | Limited Liability Company | (d) <input type="checkbox"/> | Sole Proprietorship |
| (e) <input type="checkbox"/> | Partnership | (f) <input type="checkbox"/> | _____ |

39. Section 1.07(F) - Nondiscriminatory definition of Compensation. When testing nondiscrimination under the Plan, the Plan permits the Employer to make elections regarding the definition of Compensation. [*Note: This election solely is for purposes of nondiscrimination testing. The election does not affect the Employer's elections under Section 1.07 which apply for purposes of allocating Employer contributions and Participant forfeitures.*]

- (a) The Plan will "gross up" Compensation for Elective Contributions.
(b) The Plan will exclude Elective Contributions.

40. Section 4.04 - Rollover contributions.

- (a) The Plan accepts rollover contributions.
(b) The Plan does **not** accept rollover contributions.

41. Section 8.06 - Participant direction of investment/404(c). The Plan authorizes Participant direction of investment with Trustee consent. If the Trustee permits Participant direction of investment, the Employer and the Trustee should adopt a policy which establishes the applicable conditions and limitations, including whether they intend the Plan to comply with ERISA §404(c).

- (a) The Plan permits Participant direction of investment and is a 404(c) plan.
(b) The Plan does **not** permit Participant direction of investment or is a non-404(c) plan.

42. Section 9.04[A] - Participant loans. The Plan authorizes the Plan Administrator to adopt a written loan policy to permit Participant loans.

- (a) The Plan permits Participant loans subject to the following conditions:
(1) Minimum loan amount: \$ 1,000.
(2) Maximum number of outstanding loans: 2.
(3) Reasons for which a Participant may request a loan:
a. Any purpose.
b. Hardship events.
c. Other: _____.
(4) Suspension of loan repayments:
a. Not permitted.
b. Permitted for non-military leave of absence.
c. Permitted for military service leave of absence.
(5) The Participant must be a party in interest.
(b) The Plan does **not** permit Participant loans.

43. Section 11.01 - Life insurance. The Plan with Employer approval authorizes the Trustee to acquire life insurance.

- (a) The Plan will invest in life insurance contracts.
(b) The Plan will **not** invest in life insurance contracts.

44. Surety bond company: _____. Surety bond amount: \$ _____