



RESOLUTION NO. 2018-998

A RESOLUTION OF THE MAYOR AND COMMON COUNCIL OF THE TOWN OF CAMP VERDE, YAVAPAI COUNTY, ARIZONA, APPROVING A DEVELOPMENT AGREEMENT BETWEEN THE TOWN OF CAMP VERDE AND RED MOON DEVELOPMENT AND CONSTRUCTION, INC., AN ARIZONA CORPORATION, IN ORDER TO PROVIDE FOR DEVELOPMENT OF CERTAIN REAL PROPERTY ON APPROXIMATELY 65 ACRES GENERALLY LOCATED NORTH OF STATE ROUTE 260 AND WEST OF INTERSTATE 17 WITHIN THE CORPORATE LIMITS OF THE TOWN OF CAMP VERDE.

WHEREAS, pursuant to ARS §9-500.05A, a municipality may, by resolution or ordinance, enter into a development agreement relating to property within the municipality, provided that the development agreement is consistent with the general plan applicable to the property on the date the development agreement is executed; and

WHEREAS, the agreement may by law include the duration, permitted uses of the property, densities and maximum heights of buildings, provisions for reservation of dedication of land for public purposes, provisions to protect environmentally sensitive lands, provisions for preservation and restoration of historic structures, phasing or time of construction or development of the property, requirements for public infrastructure, conditions for special taxing districts, and other matters relating to the development of the property; and

The Mayor and Common Council of the Town of Camp Verde, Yavapai County, Arizona do hereby resolve as follows:

1. That certain Development Agreement dated June 27, 2018, by and between the Town of Camp Verde, a municipal corporation of Arizona (hereinafter the "Town") and Red Moon Development and Construction, Inc. an Arizona Corporation (hereinafter the "Developer"), said agreement being attached hereto and expressly made a part hereof and is attached as Exhibit A, be hereby entered into.
2. That the Development Agreement shall be effective thirty (30) days after passage and approval of this Resolution and in accordance with ARS §9-500.05.
3. The Waiver of Diminution of Value Claim has been signed by the developer and is attached as Exhibit B.

RESOLVED BY THE MAYOR AND COMMON COUNCIL OF THE TOWN OF CAMP VERDE, YAVAPAI COUNTY, ARIZONA ON JUNE 27, 2018.

  
Charles C. German, Mayor Date: 6/28/2018

Attest:

  
Judith Morgan, Town Clerk Date: 8/20/2018

Approved as to form:

  
Town Attorney

Dated this 14<sup>th</sup> day of August, 2018

OWNER:

William Brad Woodruff  
Print Name

[Signature]  
Signature

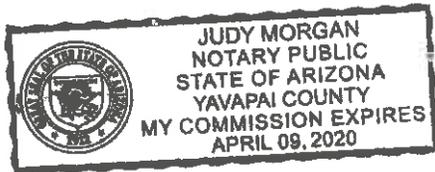
OWNER:

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Signature

STATE OF ARIZONA        )  
  ) ss.  
County of Yavapai        )

On this 14<sup>th</sup> day of August, 2018, before me, the undersigned Notary Public, personally appeared William B. Woodruff, who acknowledged that this document was executed for the purposes therein contained.



[Signature]  
Notary Public

My Commission Expires: April 9, 2020

**RESOLUTION 2018-998 EXHIBIT A**  
**DEVELOPMENT AGREEMENT**  
**Red Moon**

**THIS RED MOON DEVELOPMENT AGREEMENT (“Red Moon Agreement” or “Agreement”)** is entered into this 27th day of June, 2018, by and between the Town of Camp Verde, an Arizona municipal corporation (“Camp Verde”) and as Trustee for the Camp Verde Sanitary District., and Red Moon Development and Construction, Inc., an Arizona corporation.

**RECITALS**

- A. Red Moon Development and Construction, Inc. (“Developer”) intends to develop approximately 60 acres of land generally located north of State Route 260 and west of Interstate 17 in Camp Verde, Arizona, (the “Property”), legally described on Exhibit A.
- B. The Developer filed an application to rezone the Property to C2 with a PAD Overlay (Case no. 2018-0001) (referred to as either the “PAD” or the “PAD Overlay”) and received approval by the Town of Camp Verde Town Council to rezone this property (Ordinance No. 2018 A432) on February 28, 2018, in order to develop a Recreational Vehicle Resort (the “Development” or “Development Plan” as defined below), which will consist of approximately ±400 Recreational Vehicle spaces with amenities, and open space as shown on the Site Plan at Exhibit B.
- C. This Red Moon Agreement is entered into by and between the Parties, Red Moon Development and Construction, Inc., and the Town of Camp Verde acting in the capacity of the Town of Camp Verde and as Trustee for the Camp Verde Sanitary District for the purpose of providing for the terms and conditions of needed public improvements and public dedications on said Property and for clarifying the respective rights and obligations of the Parties hereunder
- D. Camp Verde acknowledges the development of the Property pursuant to this Red Moon Agreement is consistent with Camp Verde’s General Plan.
- E. The Parties acknowledge that entering into this Red Moon Agreement will benefit the economic viability of Camp Verde, and improve the general quality of life in Camp Verde.
- F. Developer and Camp Verde are entering into this Agreement pursuant to the provisions in A.R.S. § 9-500.05, which authorizes Camp Verde to enter into development agreements with land owners and persons having an interest in real property located in Camp Verde. The Camp Verde Town Council has authorized execution of this Agreement by Resolution No. 2018-998.
- G. Developer and Camp Verde acting in the capacity of the Town of Camp Verde and as Trustee for the Camp Verde Sanitary District the Camp Verde of Camp Verde, mutually acknowledge that the Property is owned by Verde Fencepost, LLC (“Verde Fencepost”) and that this Red Moon Agreement may be assigned by

Developer to and assumed by Verde Fencepost on written notice of assignment to Camp Verde, and that all development rights and entitlements hereunder shall transfer to Verde Fencepost upon such assignment, notice of which shall be recorded by the Town of Camp Verde in the official records of Yavapai County, and whereupon Verde Fencepost shall be the “Developer” under this Red Moon Agreement.

NOW, THEREFORE, in consideration of the foregoing premises and the mutual promises and agreements set forth herein, the Parties hereto state, confirm and agree as follows:

### **SECTION 1. DEFINITIONS**

The following terms shall have the meanings set forth below whenever used in this Agreement, except where the context clearly indicates otherwise:

- 1.1 “**Applicable Rules**” has the meaning given to it in Section 4.1 of this Agreement.
- 1.2 “**Approvals**” means all approvals by Camp Verde of any rezoning, site plans, building plans or other matters requiring such approval in connection with the development of the Property or any portion thereof, which shall be in accordance with Applicable Rules. An “Approval” related to construction of the Public Improvements shall refer to the approval of any Approving Authority (defined below), as applicable.
- 1.3 “**Approving Authority**” means Camp Verde and/or any other governmental or quasi-governmental body having the authority to approve or disapprove the permission sought.
- 1.4 “**Assignee**” means a person or entity to whom this agreement is legally transferred.
- 1.5 “**Camp Verde**” means the Town of Camp Verde, Arizona, an Arizona municipal corporation and the Town of Camp Verde acting as Trustee for the Camp Verde Sanitary District.
- 1.6 “**Camp Verde Rules**” means all ordinances, rules, regulations, permit requirements, insurance and other requirements and other official policies or requirements of Camp Verde in effect from time to time.
- 1.7 “**Developer**” means Red Moon Development and Construction, Inc, an Arizona corporation or Assignee.
- 1.8 “**Development Fees**” means any fee or assessment authorized pursuant to A.R.S. § 9-463.05, as may be amended.
- 1.9 “**Costs of Infrastructure**” means all soft costs, such as engineering, design and inspection fees, costs of any required payment and performance or other bonds, and all hard costs, including costs of labor and materials and contractor’s fees paid or incurred to construct or improve infrastructure on and adjacent to the Property.

1.10 **“Critical Infrastructure”** means the infrastructure relating to the wastewater or sewer system that is considered so vital that its incapacitation or destruction would have a debilitating effect on the system therefore compromising health and safety.

1.11 **“Effective Date”** means 30-days after approval of this Agreement per ARS 19-142, as recorded in the Yavapai County Recorder’s Office.

1.12 **“Final Development Plan”** means the Final Site Plan, to be reviewed by the Planning and Zoning Commission, and approved by the Town of Camp Verde Town Council per Town of Camp Verde Section 203 L.2. PAD (Planned Area Development), Scope, Site Plan requirements, Section 400 D.1. as a part of the PAD final approval process to be accomplished prior to obtaining building permits as defined in Section 1.13.

1.13 **“Force Majeure”** means flood, earthquake, fire, explosion, quarantine, tornado or windstorm, act of war (declared or undeclared), riot or other civil disturbance, strikes or other labor disturbances, acts of God or the public enemy (including acts of terrorism), sabotage, expropriation, unavailability of fuel, power or raw materials provided there are no reasonable alternatives, that wholly or partly prevents or delays the performance of any obligation arising under this Agreement and is beyond the control of the Party claiming relief from such obligation.

1.14 **“Party”** and **“Parties”** mean Camp Verde and Developer and their permitted successors and assigns.

1.15 **“Project”** means the development of the Property referred to as Red Moon RV Park, in accordance with the Development Plan and use of the Property as a commercial RV Park with amenities development in accordance with the Applicable Rules and the Camp Verde Rules.

1.16 **“Property”** means the real property described on Exhibit A.

1.17 **“Public Improvements”** means the construction, enlargement, extension or other construction of a facility intended for dedication to the Town, including but not limited to a street, curb and gutter, sidewalk, cross drain, catch basin, traffic control and street name sign, or other roadway appurtenance; domestic water supply system main, fire hydrant, valve or other appurtenance; or sanitary sewerage main or outfall, lift station, force main, manhole or other appurtenance and as shown on Exhibit B.

1.18 **“Term of this Agreement”** means a period beginning on the Effective Date and ending ten (10) years thereafter; provided however, that the Town’s obligation to provide municipal services to the Property, once commenced, shall survive termination of this Red Moon Agreement, subject to modification as permitted by law and subject to the Developer satisfying the requirements for the provision of municipal services.

1.19 **“Yavapai County”** means the County of Yavapai, Arizona, an Arizona political subdivision.

## **SECTION 2. PERFORMANCES**

That the performances under this Agreement are as follows:

2.1 The Developer agrees to convey to the Town of Camp Verde an underground main line sewer easement as shown on the Final Development Site Plan, Exhibit B, to dedicate to the Town of Camp Verde a parcel of land of approximately 4.7 acres across the Verde River and adjacent to the Town of Camp Verde Parson's Riverfront Preserve described in Exhibit "C" and to dedicate to the Town of Camp Verde a parcel of land for a sewer lift station and critical facilities per Development Plan attached hereto and expressly as described and made a part hereof as Exhibit "D" within the real property described in Exhibit "A", no later than August 31, 2018.

2.2 The Developer agrees to allow the Town of Camp Verde and its agents non-exclusive adequate access to enter, remain upon, and cross over the Property as described in Exhibit "A" to the extent reasonably necessary to design, construct and maintain infrastructure improvements, provided that the Town of Camp Verde's use of such right does not materially impede or materially adversely affect the Developer's use and enjoyment of the subject Property and provided also that the Town of Camp Verde shall manage the described non-exclusive easements so as to control odor so that such use does not constitute a public nuisance. Any improvements constructed by the Developer within the Town of Camp Verde non-exclusive easements and non-exclusive right-of-way shall be constructed in compliance with all applicable codes, regulations and policies of the Town of Camp Verde and, upon completion, such improvements shall be inspected by the Town of Camp Verde Engineer, and once accepted, maintained by the Town of Camp Verde upon dedication to and acceptance of the improvements.

2.3 The Developer agrees to cooperate with the Town of Camp Verde to preserve the surface water rights appurtenant to the property. The Developer will file a change in beneficial use application for the amount of water reasonably necessary to meet the water demand of the proposed development. The change in use may recognize the Developer, Town of Camp Verde, or other water provider as the entity diverting and delivering the water to the Property. If the water right amount appurtenant to the property exceeds the proposed development's water demand, then the Developer agrees to cooperate with the Town of Camp Verde to sever and transfer such water rights as designated by the Town of Camp Verde. The sever and transfer application will recognize that the Town of Camp Verde is the successor-in-interest to the water rights and understands the water will be used for the benefit of the local community as determined by the Town of Camp Verde. The Town of Camp Verde agrees to share the costs to transfer the subject water rights.

2.4 The Town of Camp Verde recognizes the public financial benefits that the property dedications as described in Section 2.1 provide the Town of Camp Verde and has expressed an interest in having a sewer lift station to serve future development to the west of the subject development. The Developer agrees to dedicate the land as described and made a part hereof as Exhibit "D" to the Town of Camp Verde (see Section 2.1) and the Town of Camp Verde agrees to construct the sewer lift station, Critical Infrastructure Facilities and Town of Camp Verde sewer main lines. The Town of Camp Verde agrees this infrastructure is critical not only to provide service to this development but for other development west of Interstate 17. The Developer agrees that if the Town of Camp Verde did not construct the sewer main line, it would have been responsible for constructing an 8" sewer main line to service its development. To prepare for future

development, the Town of Camp Verde will construct this sewer main line but upsize it to an 18" line to provide for future development. In consideration for this sewer main line construction by the Town of Camp Verde, the Developer will pay \$40,000. (the cost of an 8" line determined by multiplying \$40. per linear foot for approximately 1000 feet of line) within ten (10) days after receipt of invoice from the Town of Camp Verde. The Town of Camp Verde therefore will complete their infrastructure obligations no later than December 31, 2018. The Town of Camp Verde agrees there is value in these dedications and agrees to credit the Developer \$70,000. towards the amount due for wastewater fees. These credits were determined by a land value of approximately \$60,000 for the land adjacent to Parson's Reserve and \$10,000 for the land for the lift station. The Town of Camp Verde also agrees that the Developer may use the Critical Infrastructure Facility to house his own critical facilities.

2.5 The Town of Camp Verde recognizes the intrinsic environmental, aesthetic, economic and recreational benefits of parks to the Town of Camp Verde and its visitors. To help further the goals as specified in the Town of Camp Verde General Plan Chapter 8, Circulation, Trails & Transportation and Chapter 9, Open Space and Recreation, the Town of Camp Verde will grant up to two (2) easements to the Developer to allow for access across the Verde River from Red Moon Development to the Town of Camp Verde of Camp Verde Parson's Riverfront Preserve in locations to be determined.

### **SECTION 3. PAD PLAN**

3.1 The Development shall be constructed in accordance with the PAD Final Development Plan, to be reviewed by the Planning and Zoning Commission, and approved by the Town of Camp Verde Town Council per Town of Camp Verde Section 203 L.2. PAD (Planned Area Development), Scope, Site Plan requirements, Section 400 D.1. Camp Verde agrees to use best efforts with existing resources to expedite its regulatory process with respect to all aspects of development of the Property, including but not limited to, zoning, use permits, variances, platting, building permits and inspection processes; provided that any processes must comply with the Camp Verde Rules.

3.2 The Town of Camp Verde agrees that issuance of the construction permits, water and sewer permits, occupancy permits, and other permits and approvals required from the Town of Camp Verde to develop the Property pursuant to this Agreement and the PAD Final Development Plan shall not be unreasonably delayed or withheld, provided the Developer complies with all applicable permit requirements and pays all required fees.

3.3 The Town of Camp Verde and Developer acknowledge and agree that amendments to the PAD Final Development Plan may be necessary from time to time to reflect changes in market conditions and development financing and/or to meet the new requirements of one of more of the potential users or builders of any part of the Property. If and when the Town of Camp Verde and Developer find that changes or adjustments are necessary or appropriate, they shall effectuate minor changes of adjustments through administrative amendments approved by the Town of Camp Verde Community Development Director, which, after execution, shall be attached to the PAD Final Development Plan as an addendum and become a part thereof, and may be further changed and amended from time to time as necessary with the approval of the Town of Camp Verde and

Developer. No such minor amendment shall require prior notice or hearing. All major changes of amendments shall be reviewed by the Planning and Zoning Commission and approved by the Town of Camp Verde Council in the exercise of the Council's discretion. The Parties shall cooperate in good faith to agree upon and use reasonable best efforts to process, any minor or major amendments to the PAD Final Development Plan. The Developer and the Town of Camp Verde agree that such amendments shall be incorporated by this reference into this Agreement with the same force and effect as if set forth herein and shall not require corresponding amendment to this Agreement.

3.4 For purposes of this Agreement, a major amendment to the PAD Final Development Plan shall involve (a) an increase in the approved number of dwelling units of leasable area within the PAD; (b) a change in the zoning boundaries for the PAD; (c) any change in the PAD that could have significant impact on area adjoining the PAD; and (d) any change in the PAD that could have a significant traffic impact on roadways adjacent or external to the PAD. All other proposed changes shall be deemed minor amendments per Section 203 L 3&4, PAD Major and Minor Amendments, of the Town of Camp Verde of Camp Verde Planning and Zoning Ordinance and Subdivision Regulations, as may be amended from time to time.

#### **SECTION 4. APPLICABLE RULES**

4.1 The development of the Property shall be subject to all federal, Yavapai County and State of Arizona requirements, Camp Verde Rules in existence as of the Effective Date and applicable to the Property and such additional rules as are allowed by this paragraph (all of which are collectively referred to as the "**Applicable Rules**"). Camp Verde shall not apply to the Property any modifications of Applicable Rules or adopt any future Camp Verde Rules that would (i) substantially adversely impact the Project, the use or development of the Property (including, without limitation, decreasing the intensity or increasing the cost of development); and/or, (ii) amend or modify its obligations under this Agreement, with the following exceptions, which shall be included in the Applicable Rules:

4.1.1 Future Camp Verde Rules specifically agreed to in writing by Developer, except as otherwise set forth in Sections 4.1.2, 4.1.3 and 4.1.4;

4.1.2 Amended or new Camp Verde Rules that are necessary to comply with state, county and federal laws or regulations in effect at that time, provided the same are not retroactively applied to the Development unless retroactive application is mandated by state, county or federal laws or regulations;

4.1.3 Changes to taxes, utility service fees, Development Fees, filing fees, review fees, inspection fees that are imposed on or charged by Camp Verde to all similarly situated persons and entities, provided the same are not retroactively applied to the Development. For the purpose of this Section 4.1.3 the prohibition on the retroactive application of this section shall only apply to services, utilities and fees provided, assessed or delivered prior to the date of the change in the Applicable Rule and shall not apply to services, utilities and assessments provided or assessed after the date of the change in the Applicable Rule; and

4.1.4 Future updates of, and amendments to, existing building, construction, plumbing, mechanical, electrical, drainage, and similar construction and safety-related codes, such as the

International Building Code, which updates and amendments are generated by a nationally recognized construction safety organization or by the county, state, or federal government, or by the Yavapai Association of Governments, provided that such building or safety code updates and amendments are not applied retroactively or discriminatorily against any portion of the Property, unless retroactive application is mandated by the State of Arizona, the county, Federal law, the Yavapai Association of Governments or by health and safety concerns as determined by the Town of Camp Verde's building official.

Nothing herein shall be interpreted as relieving Developer from any obligations which it may have with respect to applicable regulations enacted by the Federal government, the county, or the State of Arizona. Nothing in this Agreement shall alter or diminish the authority of the Town of Camp Verde to exercise its eminent domain powers. The Town of Camp Verde shall not initiate any changes or modifications to the zoning of any portion of the Property, except at the written request of Developer.

#### **SECTION 5. ANTI-MORATORIUM**

Except in compliance with A.R.S. §9-463.06, no moratorium or other rule imposing a limitation on the development, conditioning, rate, timing or sequencing of the development of property within Camp Verde shall apply to or govern the development of the Property or any portion thereof during the Term of this Red Moon Agreement, whether affecting final plats, building permits, occupancy permits or other entitlements to use issued or granted by the Town of Camp Verde or the provision of municipal services to the Property or any portion thereof.

#### **SECTION 6. COOPERATION DURING DEVELOPMENT**

Developer and Camp Verde shall work together cooperatively using reasonable efforts throughout the development stages to resolve any Developer or Camp Verde comments or concerns regarding development of the Property expeditiously, reasonably and in good faith.

#### **SECTION 7. VESTING**

Camp Verde agrees that Developer shall have a right to undertake and complete the development and use of the Property in accordance with this Agreement without being subject to amendment of the Camp Verde Rules except as provided in Sections 4.1.1 through 4.1.4, which shall be deemed fully vested as of the Effective Date without further performance or proof of reliance by Developer.

#### **SECTION 8. DEFAULT AND MEDIATION**

8.1 In the event that there is a dispute hereunder which the Parties cannot resolve between themselves, the Parties agree that there shall be a forty-five (45) day moratorium on litigation during which time the Parties agree to attempt to settle the dispute by nonbonding mediation before commencement of litigation. The mediation shall be held under the commercial mediation rules of the American Arbitration Association. The matter in dispute shall be submitted to a mediator mutually selected by Developer and the City. In the event that the Parties cannot agree upon the selection of a mediator within seven (7) days, then within three (3) days thereafter, the Town of Camp Verde and the Developer shall request the presiding judge of the Superior Court

in and for the County of Yavapai State of Arizona, to appoint an independent mediator. The mediator selected shall have at least five (5) years' experience in mediating or arbitrating disputes relating to real estate development. The cost of any such mediation shall be divided equally between the Town of Camp Verde (or Camp Verde, as the case may be) and Developer. The results of the mediation shall be nonbinding on the Parties, and any Party shall be free to initiate litigation subsequent to the moratorium. Notwithstanding anything contained in this Section 8.1 or in this Agreement to the contrary, Camp Verde agrees that Developer's rights under A.R.S. § 12-821.01 shall not hereunder be prejudiced.

8.2 **Default.** Failure or unreasonable delay by either Party to perform or otherwise act in accordance with any term or provision of this Agreement after written notice thereof from the other Party shall constitute a default under this Agreement. Said notice shall specify the nature of the alleged default and the manner in which said default may be satisfactorily cured, if possible. In the event such default is not cured within thirty (30) days of delivery of written notice to the defaulting Party, the non-defaulting Party shall have all rights and remedies available at law or in equity, provided the Parties have first attempted mediation pursuant to Section 12.1, including without limitation the right to specifically enforce any term or provision hereof and/or the right to institute an action for damages (except as otherwise expressly limited herein); provided, however, if such default is non-monetary and cannot reasonably be cured within such thirty (30) days period, then the breaching Party shall have such additional time to cure the default as is reasonably required so long as the breaching Party is diligently acting to cure such default. Should the breaching Party fail to diligently act to cure, the non-defaulting Party shall have the right to terminate this Agreement by written notice to the defaulting Party, which termination shall be effective thirty (30) calendar days following the mailing of the notice by certified mail (provided the defaulting Party has not cured such default). All monies due and payable but not paid after thirty (30) days of delivery of the written notice shall bear interest at the rate of 7% per annum until paid.

8.3 **Appointment of Representatives.** The Parties shall cooperate in the implementation of this Agreement. To facilitate such cooperation, each of Owner and Camp Verde shall designate a representative to act as a liaison with the other Party. The Parties may change their representatives at any time, but each Party agrees to have a current active representative at all times. The initial representatives shall be as follows:

Camp Verde: Russ Martin, Camp Verde Town Manager  
473 S. Main Street, #102  
Camp Verde, AZ 86322

Developer: Brad Woodruff  
Red Moon Development and Construction, Inc.  
10025 E Dynamite Rd. Suite B140  
Scottsdale, AZ 85262

The representatives shall be available at all reasonable times at the request of either Party to discuss and review the performance of this Agreement and the development of the Property pursuant to this Agreement and the Applicable Rules.

8.4 **Time of the Essence; Force Majeure.** Time is of the essence in implementing the terms of this Agreement. Notwithstanding the foregoing or any other term, condition or provision hereof to the contrary, in the event any Party hereto is precluded from satisfying or fulfilling any duty or obligation imposed upon such Party by the terms hereof due to Force Majeure or delay caused by any Approving Authority's inability or failure to grant approval(s), the time period provided herein for the performance by such Party of such duty shall be extended for a period equal to the delay occasioned by such events.

## **SECTION 9 NOTICES AND FILINGS**

All notices, filings, consents, approvals and other communications provided for herein or given in connection herewith shall be validly given, filed, made, delivered or served if in writing and delivered personally or sent by certified United States Mail, postage prepaid, return receipt requested, if to:

Camp Verde: Russ Martin, Camp Verde Manager  
473 S. Main Street, #102  
Camp Verde, AZ 86322

Developer: Brad Woodruff  
Red Moon Development and Construction, Inc.  
10025 E Dynamite Rd. Suite B140  
Scottsdale, AZ 85262

or to such other addresses as either Party hereto may from time to time designate in writing and delivery in a like manner.

## **SECTION 10 GENERAL**

10.1 **Waiver.** No delay in exercising any right or remedy shall constitute a waiver thereof, and no waiver by Camp Verde or Owners of the breach of any covenant of this Agreement shall be construed as a waiver of any preceding or succeeding breach of the same or any other covenant or condition of this Agreement.

10.2 **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together constitute one and the same instrument. The signature pages from one or more counterparts may be removed from such counterparts and such signature pages all attached to a single instrument so that the signatures of all Parties may be physically attached to a single document.

10.3 **Construction and Interpretation.** The descriptive headings of the paragraphs of this Agreement are inserted for convenience only and shall not control or affect the meaning or

construction of any of the provisions hereof. The Parties hereby acknowledge and agree that each Party and its counsel have reviewed, negotiated, and revised this Agreement to each Party's satisfaction and that the rule of construction that ambiguities are to be resolved against the drafting Party shall not be applicable to this Agreement or any amendments or exhibits hereto. Unless otherwise expressly provided herein: the term "**including**" shall not be construed as limiting, and the rule of *exclusio alterius* shall not apply; the specific shall not overrule the general; the term "**from**" shall mean from and including; the terms "**to**" and "**until**" shall mean "to but excluding"; the term "**and/or**" shall mean any, all, or any combination of the conjoined items; and masculine, feminine, and neuter terms shall be deemed to include all genders. Except as otherwise specifically provided herein, all terms of an accounting or financial nature shall be construed in accordance with GAAP. "**Written**" or "**in writing**" includes communication by e-mail, facsimile transmission, telegraph, or cable. "**Reasonable discretion**" shall mean commercially reasonable and "**sole discretion**" shall mean sole and absolute. Any consent, approval, satisfaction, determination, decision or similar action pursuant to this Agreement must be given or acknowledged in writing and must be given or withheld in the reasonable discretion of the applicable Party, unless a different standard of discretion is expressly provided.

10.4 **Exhibits**. Any exhibit attached hereto shall be deemed to have been incorporated herein by this reference with the same force and effect as if fully set forth in the body hereof.

10.5 **Further Acts**. Each of the Parties hereto shall promptly execute and deliver all such documents and perform all such acts as reasonably necessary, from time to time, to carry out the matters contemplated by this Agreement.

10.6 **Successors and Assigns**. All of the provisions hereof shall inure to the benefit of and be binding upon the successors and assigns of the Parties hereto pursuant to A.R.S. § 9-500.05(D), except as provided below. The rights of the Developer under this Agreement may be transferred or assigned, in whole or in part, by written instrument to any subsequent owner of all or any portion of the Property as described in Exhibit "A", upon the prior written consent of the Town of Camp Verde, which consent shall not be unreasonably withheld, conditioned or delayed, provided, however, that the Town of Camp Verde hereby expressly consents upon written notice from Developer, Developer's assignment of this Red Moon Agreement to Verde Fencepost, LLC, a Minnesota limited liability company. Notwithstanding the foregoing, without the consent of the Town of Camp Verde, the Developer may freely assign its rights under this Agreement to an entity that directly or indirectly controls, is controlled by, or is under common control of the Developer. Notice of any transfer or assignment in accordance with this Section shall be provided to the Town of Camp Verde at least fifteen (15) days before such transfer or assignment. The burdens of this Agreement bind, and the benefits of this Agreement inure to, the Parties hereto and their permitted successors in interest and assigns. The Developer's rights and obligations hereunder may only be assigned as permitted by this Section 10.6 to a person or entity that has an interest in the Property described in Exhibit "A" or a portion thereof and only by a written instrument, recorded in the official records of Yavapai County, Arizona, expressly assigning such rights and obligations.

10.7 **Entire Agreement**. This Agreement and its exhibits constitute the entire agreement between the Parties hereto pertaining to the subject matter hereof, all prior and contemporaneous agreements, representations and understandings of the Parties, oral or written, are hereby superseded and merged herein.

10.8 **Amendment.** This Agreement may not be amended nor may any provision hereof be waived except by a written amendment executed by both Camp Verde and Developer. Within ten (10) days after any approved amendment to this Agreement, such approved amendment shall be recorded in the Official Records of Yavapai County, Arizona.

10.9 **Good Standing; Authority.** Developer is a corporation duly formed and validly existing under the laws of the State of Arizona and is qualified to transact business in the State of Arizona, and the individual executing this Agreement on behalf of Developer is authorized and empowered to do so. The Town of Camp Verde is a municipal corporation duly formed and validly existing under the laws of the State of Arizona, and the individual executing this Agreement on behalf of Camp Verde is authorized and empowered to do so.

10.10 **Order of Priority.** In the event of any conflict or inconsistency between the Applicable Rules and the provisions of this Agreement, the Applicable Rules shall have priority.

10.11 **Limited Severability.** The Parties each believe that the execution, delivery and performance of this Agreement are in compliance with all Applicable Rules. However, in the unlikely event that any provision of this Agreement is declared void or unenforceable (or is construed as requiring Camp Verde to do any act in violation of any Applicable Rules or other applicable legal requirement, such provision shall be deemed severed from this Agreement, and the remainder of this Agreement shall otherwise remain in full force and effect; provided that this Agreement shall retroactively be deemed reformed to the extent reasonably possible in such a manner so that the reformed agreement (and any related agreements effective as of the same date) provide essentially the same rights and benefits (economic and otherwise) to the Parties as was intended by the original provisions hereof, and the Parties further agree, in such circumstances, to do all acts and to execute all amendments, instruments and consents necessary to accomplish and to give effect to the purposes of this Agreement, as reformed.

10.12 **Governing Law.** This Agreement is entered into in Arizona and shall be construed and interpreted under the laws of Arizona. In particular, this Agreement is subject to the provisions of A.R.S. § 38-511. The Parties agree that they are not currently engaged in, and agree that for the duration of the Agreement they will not engage in, a boycott of Israel, as that term is defined in A.R.S. §35-393.

10.13 **Recordation.** This Agreement shall be recorded in its entirety in the Official Records of Yavapai County, Arizona not later than ten (10) days after this Agreement takes effect in recordable form by each of the Town of Camp Verde and Developer.

10.14 **Status Statements.** Any Party to this Agreement (the "**Requesting Party**") may, at any time, and from time to time, deliver written notice to any other Party (a "**Status Request**") requesting such other Party (the "**Providing Party**") to certify in writing (a "**Status Statement**"): (a) that this Agreement is in full force and effect and a binding obligation of the Providing Party; (b) that this Agreement has not been amended or modified either orally or in writing or, if so amended, identifying the amendment(s); (c) that to the knowledge of the Providing Party, the Requesting Party is not in default in the performance of its obligations under this Agreement or, if in default, describing the nature and amount of any such defaults; and (d) that the Providing Party has substantially developed its portion of the Public Improvements in accordance with the requirements of this Agreement or, if not, specifying any portion thereof remaining to be

completed. A Providing Party shall execute and return such Status Statement within ten (10) days following receipt of a Status Request. The Town of Camp Verde Manager or any Assistant Town of Camp Verde Manager shall have the right to execute any Status Statement requested by Developer hereunder. The Town of Camp Verde acknowledges that a Status Statement hereunder may be relied upon by Developer, and/or any Lender or other party providing construction or permanent financing for any Public Improvements; provided that the Camp Verde shall have no liability for monetary damages to Developers, and transferee, Lender or other mortgagee, or any other person in connection with, resulting from or based upon the issuance of any Status Statement hereunder.

10.15 **Attorneys' Fees.** Should litigation, or other form of formal conflict resolution, such as, but without limitation, mediation and arbitration, be necessary to enforce any term or provision of this Agreement, or to collect any damages claimed or portion of the amount payable under this Agreement, then all litigation and collection expenses, witness fees, court costs, and reasonable attorneys' fees shall be paid to the prevailing Party. Nothing herein shall preclude nonbinding arbitration if the Parties so elect in the event of a dispute hereunder.

10.16 **Covenants Running With Land; Inurement.** The covenants, conditions, terms and provisions of this Agreement relating to use of the Property shall run with the Property and shall be binding upon, and shall inure to the benefit of the Parties and their respective permitted successors and assigns with respect to such Property.

10.17 **Good Faith of Parties.** Except where any matter is expressly stated to be in the unfettered or sole discretion of a Party, the Parties must act in good faith in all matters relating to the performance of this Agreement or in considering any requested extension of time or other matters, will not act unreasonably, arbitrarily or capriciously and will not unreasonably withhold, delay or condition any requested approval, acknowledgment or consent.

10.18 **Rights of Lenders.** The Town of Camp Verde is aware that Developer may obtain financing or refinancing for acquisition, development and/or construction of the real property and/or improvements to be constructed on the Property, in whole or in part, from time to time, by one or more lenders (individually a "Lender", and collectively the "Lenders"). In the event of a default by Developer, Camp Verde shall provide written notice of such default, at the same time written notice is provided to Developer, to any Lenders previously designated by Developer to receive such notice (the "Designated Lenders") whose names and addresses were provided by written notice to the Town of Camp Verde in accordance with Section 9 of this Agreement. The Town of Camp Verde shall give Developer copies of any such notice provided to such Designated Lenders and, unless Developer notifies the Town of Camp Verde that the Designated Lenders' names or addresses are incorrect (and provides the Town of Camp Verde with the correct information) within three (3) business days after Developer receives its copies of such notice from the Town of Camp Verde, the Town of Camp Verde will be deemed to have given such notice to the Designated Lenders even if their names or addresses are incorrect. Developer may provide copies of any notices to other Lenders, even if the Town of Camp Verde has not received prior notice of such Lenders. The Town of Camp Verde agrees that any Lender shall have until the later of (i) thirty (30) days after the expiration of the applicable cure period or (ii) thirty (30) days after receipt of the written notice of default by such Lender in which to cure any default of Developer provided, however, if such default cannot reasonably be cured by the Lender within such thirty

(30) days period, then the Town of Camp Verde shall give the Lender such additional time to cure the default as is reasonably required so long as the Lender is diligently acting to cure such default, including, without limitation, taking any necessary actions to foreclose its lien and take title to the applicable portion of the Property; and the Town of Camp Verde further agrees to recognize the Lender as a successor under this Agreement and to permit the Lender to assume all of the rights and obligations of Developer under this Agreement; provided that such Lender attorns to the terms and conditions of this Agreement the Town of Camp Verde shall, at any time upon reasonable request by Developer, or any Lender, provide to any Lender a Status Statement. Upon request by a Lender, the Town of Camp Verde will enter into a separate non-disturbance and attornment agreement with such Lender consistent with the provisions of this Agreement.

*[remainder of page intentionally blank – Signature Page follows]*

*[Signature Page for Red Moon Development Agreement]*

IN WITNESS WHEREOF, the Parties have executed this Agreement to be effective 30 days after the date and time a resolution approving and adopting this Agreement is approved by the Camp Verde Town Council per ARS §9-500.05 (G).

**CAMP VERDE:**

TOWN OF CAMP VERDE, ARIZONA,  
an Arizona municipal corporation

By:   
Its: Mayor

**DEVELOPER:**

RED MOON DEVELOPMENT AND CONSTRUCTION, INC.  
an Arizona corporation

By:   
Its: President

EXHIBIT A  
LEGAL DESCRIPTION OF THE PROPERTY



SOUTHWESTERN ENVIRONMENTAL CONSULTANTS, INC.

www.sec-landmgt.com info@sec-landmgt.com

Red Moon 17-1003CE Page 1 of 11

LEGAL DESCRIPTION OVERALL PARCEL

A parcel of land located in the Southwest Quarter of Section 24 and a portion of the Northwest Quarter of Section 25, Township 14 North, Range 4 East of the Gila and Salt River Meridian, Yavapai County, Arizona, being comprised of Assessor Parcels 403-21-014M, 403-21-021E, 403-21-014F, 403-21-250C, 403-21-014L, 403-21-014K, and 403-22-021, as shown on Revised ALTA / NSPS Land Title Survey, recorded in Instrument 2018-0020575, and also being comprised of Assessor Parcel 403-22-018C, as shown on ALTA / NSPS Land Title Survey, recorded in Instrument 2018-00300073, described as follows:

Beginning at the Southwest corner of said Section 24, monumented by a found 3 inch BLM brass cap stamped "T14N R4E S23 S24 S26 S25 1964", from which the West Quarter corner of said Section 24, monumented by a found 3 inch BLM brass cap stamped "T14N R4E 1/4 S23 S24 1964", lies North 01°44'37" East, per G.P.S., and used as the Basis of Bearings for this description, a measured distance of 2641.35 feet, recorded as North 01°45' East, a distance of 2641.98 feet, per Instrument 2014-0046518, Yavapai County, Arizona, henceforth referred to as (R2);

Thence, from said Southwest corner of Section 24, South 89°52'25" East a measured distance of 1004.56 feet, bearing shown as South 89°53'10" East per ADOT Results of Survey, Project No. 260 YV 209 H8699, Drawing No. D-13-T-501, Survey date August 2014, henceforth referred to as (R8), to a found 3 inch A.D.O.T. aluminum cap stamped "4963 510+02.38 D-326-715 2013 RLS 31591";



EXPIRES ON 06/30/2019



Growth is inevitable...it's planning that makes the difference.

**Thence**, North 09°44'11" West a measured distance of 66.16 feet, recorded as North 09°42'48" West a distance of 66.20 feet per (R2), to a found 3 inch A.D.O.T. aluminum cap stamped "4953 S-326-714 2013 RLS 25396";

**Thence**, South 80°13'48" West a measured distance of 31.03 feet, recorded as South 80°21'14" West a distance of 31.08 feet per (R2), to a found 3 inch A.D.O.T. aluminum cap stamped "4952 S-326-714 2013 RLS 25396";

**Thence**, North 09°29'37" West a measured distance of 264.80 feet, recorded as North 09°29'13" West a distance of 264.73 feet per (R2), to a found 3 inch A.D.O.T. aluminum cap stamped "4951 S-326-714 2013 RLS 25396";

**Thence**, South 77°01'19" West a measured distance of 70.68 feet, shown as South 76°58'32" West a distance of 70.54 feet per (R8), to a found 3 inch A.D.O.T. aluminum cap stamped "1336 149+45.69 260YV H8699 2016 PLS 19817";

**Thence**, North 05°10'27" West a measured distance of 261.44 feet, shown as North 05°12'55" West a distance of 261.58 feet per (R8), to a found 3 inch A.D.O.T. aluminum cap stamped "1335 152+05.23 260YV209 H8699 2016 PLS 19817", at a point of non-tangent curvature to the left;

**Thence**, along said curve to the left, having a radius of 623.00 feet, a delta of 28°50'14", an arc length of 313.56 feet, a chord bearing of North 19°37'07" West, and a chord distance of 310.26 feet, shown as having a radius of 623.00 feet, a delta of 28°51'08", an arc length of 313.72 feet, a chord bearing of North 19°38'29" West, and a chord distance of 310.42 feet per (R8), to a found 3 inch A.D.O.T. aluminum cap stamped "1333 155+13.12 260YV209 H8699 2016 PLS 19817";

**Thence**, North 34°07'01" West a measured distance of 175.06 feet, shown as North 34°03'55" West a distance of 175.00 feet per (R8), to a found 3 inch A.D.O.T. aluminum cap stamped "1332 156+75.74 260YV209 H8699 2016 PLS 19817", at a point of non-tangent curvature to the left;



**EXPIRES ON  
08/30/2019**

**Thence**, along said curve to the left, having a radius of 623.00 feet, a delta of  $21^{\circ}17'17''$ , an arc length of 231.47 feet, a chord bearing of North  $44^{\circ}39'16''$  West, and a chord distance of 230.14 feet, shown as having a radius of 623.00 feet, a delta of  $21^{\circ}18'01''$ , an arc length of 231.61 feet, a chord bearing of North  $44^{\circ}42'56''$  West, and a chord distance of 230.28 feet per (R8), to a found 3 inch A.D.O.T. aluminum cap stamped "1331 158+70.32 260YV209 H8699 2016 PLS 19817", on the easterly right of way line of State Route 260;

**Thence**, North  $12^{\circ}23'17''$  West, along the easterly right of way line of State Route 260, a measured distance of 158.53 feet, bearing recorded as North  $12^{\circ}10'34''$  West per (R2), to a found concrete nail with illegible brass tag;

**Thence**, South  $89^{\circ}51'24''$  East a measured distance of 935.87 feet, recorded as South  $89^{\circ}50'30''$  East a distance of 935.77 feet per (R2), to a found 3/4 inch steel rod with brass tag stamped "LS 29263";

**Thence**, North  $01^{\circ}44'58''$  East a measured distance of 1321.14 feet, recorded as North  $01^{\circ}45'16''$  East a distance of 1321.28 feet per (R2), to a found 1/2 inch rebar with plastic cap stamped "LS 29263";

**Thence**, South  $89^{\circ}52'42''$  East a measured distance of 206.62 feet, recorded as South  $89^{\circ}51'52''$  East a distance of 206.49 feet per (R2), to a found 1/2 inch rebar with plastic cap stamped "LS 29263";

**Thence**, continuing, South  $89^{\circ}52'42''$  East a distance of 181.94 feet, recorded as South  $89^{\circ}52'46''$  East a distance of 181.95 feet per (R2), to a point;

**Thence**, South  $06^{\circ}45'00''$  East a distance of 261.40 feet, recorded as South  $06^{\circ}45'00''$  East a distance of 261.55 feet per (R2), to a found 1/2 inch rebar with plastic cap stamped "LS 29263";

**Thence**, South  $06^{\circ}17'09''$  East a distance of 167.56 feet, bearing recorded as South  $06^{\circ}17'09''$  East per (R2), to a point;



**EXPIRES ON  
06/30/2019**

**Thence**, South 18°30'00" East a distance of 944.30 feet, bearing recorded as South 18°30'00" East per (R2), to a point;

**Thence**, continuing, South 18°30'00" East a distance of 96.45 feet, recorded as South 18°30' East per Book 4904 of Official Records, Page 738, Yavapai County, Arizona, henceforth referred to as (R1), to a point;

**Thence**, continuing, South 18°30'00" East a distance of 44.18 feet, bearing recorded as South 18°30'00" East per (R2), to a point;

**Thence**, South 52°43'15" East a distance of 76.90 feet, bearing recorded as South 52°43'15" East per Book 4164 of Official Records, Page 965 and Book 85 of Land Surveys, Pages 73-74, Yavapai County, Arizona, henceforth collectively referred to as (R7), to a point;

**Thence**, South 58°39'41" East a distance of 84.63 feet, recorded as South 58°39'41" East a distance of 84.63 feet per (R7), to a point;

**Thence**, South 66°48'29" East a distance of 48.35 feet, recorded as South 66°48'29" East a distance of 48.35 feet per (R7), to a point;

**Thence**, South 63°40'48" East a distance of 87.78 feet, recorded as South 63°40'48" East a distance of 87.78 feet per (R7), to a point;

**Thence**, South 75°13'49" East a distance of 94.29 feet, recorded as South 75°13'49" East a distance of 94.29 feet per (R7), to a point;

**Thence**, South 23°44'30" West a distance of 345.59 feet, bearing recorded as South 23°44'50" West per ADOT Project No. I-17-2(10)87, Drawing No. D-13-T-380, page 9 of 25, completion date August 9, 1967, henceforth referred to as (R6), to a point;



**EXPIRES ON  
08/30/2019**

**Thence**, South 23°44'30" West a distance of 761.62 feet, bearing recorded as South 23°48' West per (R1), to a set 5/8 inch rebar with plastic cap stamped "SEC INC LS 40829";

**Thence**, South 23°44'30" West a measured distance of 188.09 feet, bearing recorded as South 23°48' West per (R1), to a found 1/2 inch rebar with attached brass tag stamped "SEC INC LS 40829", from which a found 3 inch aluminum ADOT cap stamped "N.B.P.O.T. 4596+98.35 1978" lies South 23°44'30" West a measured distance of 36.46 feet, recorded as South 23°48'38" West a distance of 35.95 feet per Book 176 of Land Surveys, Pages 79-80, Yavapai County, Arizona;

**Thence**, North 42°02'22" West a measured distance of 49.88 feet to the center of a telephone manhole;

**Thence**, North 54°08'18" West a measured distance of 146.09 feet, recorded as North 54°11'23" West a distance of 146.14 feet per (R2), to a found 1/2 inch rebar with plastic cap stamped "LS 29263";

**Thence**, North 20°05'30" West a measured distance of 53.33 feet, recorded as North 20°24'14" West a distance of 52.86 feet per (R2), to a found 1/2 inch rebar with plastic cap stamped "LS 29263";

**Thence**, North 06°32'09" West a measured distance of 129.36 feet, recorded as North 06°24'23" West a distance of 129.82 feet per (R2), to a found 1/2 inch rebar with plastic cap stamped "LS 29263";

**Thence**, North 06°04'31" West a measured distance of 133.82 feet, recorded as North 06°04'13" West a distance of 133.86 feet per (R2), to a found 1/2 inch rebar with plastic cap stamped "LS 29263";

**Thence**, North 12°48'39" East a measured distance of 168.61 feet, recorded as North 12°49'00" East a distance of 168.78 feet per (R2), to a found 1/2 inch rebar with plastic cap stamped "LS 29263";



**EXPIRES ON  
06/30/2018**

**Thence**, North 07°48'59" East a measured distance of 109.16 feet, recorded as North 07°49'22" East a distance of 109.13 feet per (R2), to a found 1/2 inch rebar with plastic cap stamped "LS 29263";

**Thence**, North 07°23'51" West a measured distance of 73.37 feet, recorded as North 04°42'36" West a distance of 72.87 feet per (R2), to a found 1/2 inch rebar with plastic cap stamped "LS 29263";

**Thence**, North 82°51'20" West a distance of 27.42 feet, recorded as North 83°00'49" West a distance of 30.56 feet per (R2), to a point;

**Thence**, South 00°11'00" East a distance of 184.50 feet, recorded as South 00°11' East a distance of 184.50 feet per Book 3141 of Official Records, Pages 997-1000, Yavapai County, Arizona, henceforth referred to as (R10), to a point;

**Thence**, South 14°00'00" West a distance of 170.77 feet, recorded as South 14°00' West a distance of 170.77 feet per (R10), to a point;

**Thence**, South 06°17'00" East a distance of 125.58 feet, recorded as South 06°17'00" East a distance of 125.58 feet per (R10), to a point;

**Thence**, South 19°31'08" West a distance of 38.04 feet, shown as South 24°06'56" West a distance of 40.00 feet per an ALTA / ACSM Land Title Survey by Verde Valley Surveying, LLC, sealed by Robert S. Colligan, LS 31017, on 11/10/06, henceforth referred to as (R9), to a found 1/2 inch rebar with attached brass tag stamped "SEC INC LS 40829";

**Thence**, South 23°44'33" West a measured distance of 108.41 feet, shown as South 24°06'56" West a distance of 108.47 feet per (R9), to a found 1/2 inch rebar with attached brass tag stamped "SEC INC LS 40829";



**EXPIRES ON  
06/30/2019**

**Thence**, North 89°52'25" West a measured distance of 421.01 feet, shown as North 89°27'20" West a distance of 421.27 per (R9), to a set 5/8 inch rebar with plastic cap stamped "SEC INC LS 40829";

**Thence**, North 89°52'26" West a measured distance of 320.55 feet, distance recorded as 320.55 per (R2), to the **True Point of Beginning** and containing 63.55 acres more or less and being subject to any easements or encumbrances of record.

*The description hereon was prepared by SEC Inc. on July 20, 2018, at the request of Red Moon Development for the purpose of describing a parcel of land in Yavapai County, Arizona. The authorized user is Red Moon Development.*

*Unauthorized use is strictly prohibited.*

*SEC Inc. and the registrant cited below will not be responsible for errors committed by others if this description is not reproduced in its entirety exactly as written above including this disclaimer. No liability is accepted for misuse or assumptions made by unauthorized users.*

*The description above is graphically depicted in Exhibit A attached hereto and made a part hereof without which this document is to be considered incomplete.*

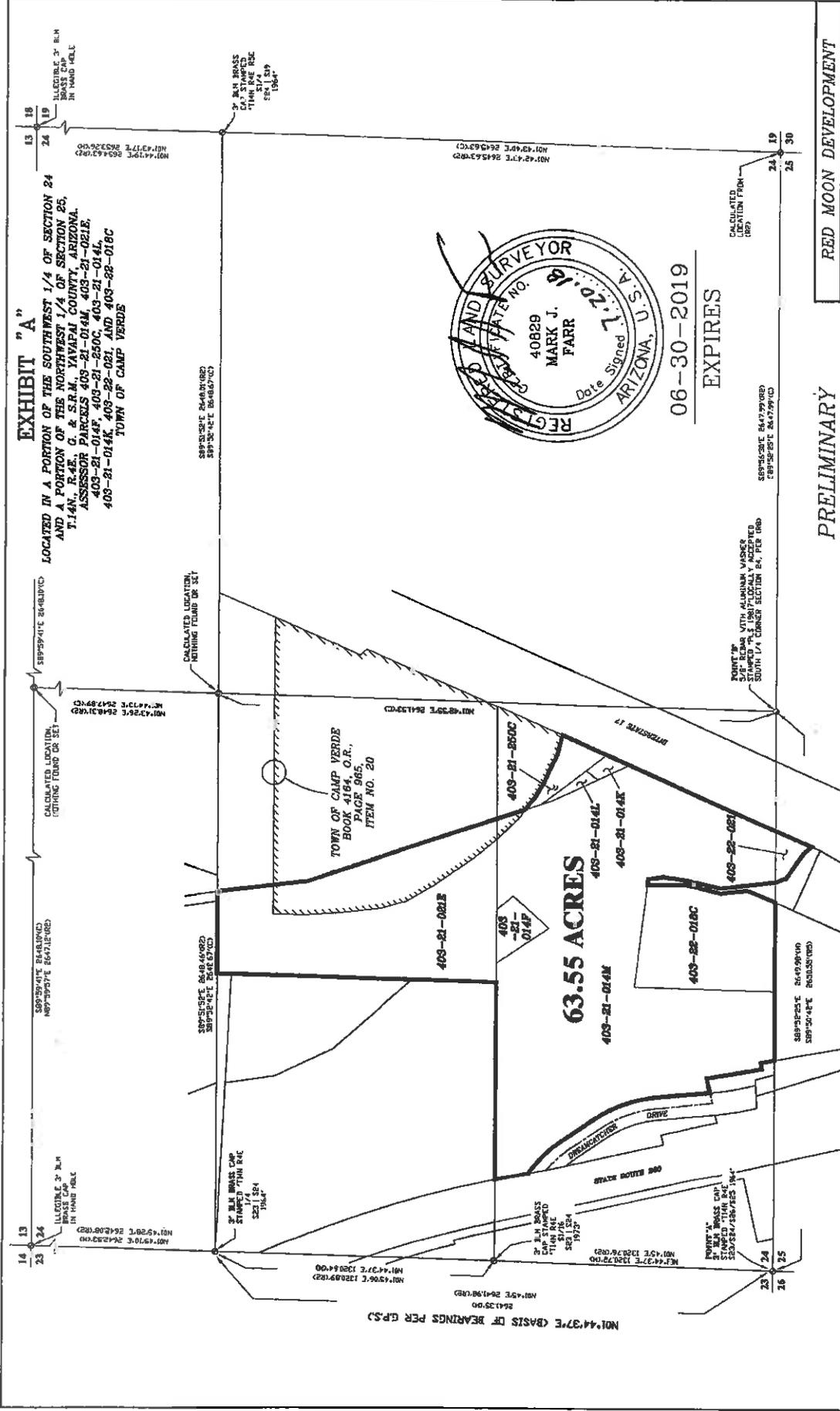
*The author of this description is Mark J. Farr RLS 40829.*



**EXPIRES ON  
06/30/2019**

**EXHIBIT "A"**

LOCATED IN A PORTION OF THE SOUTHWEST 1/4 OF SECTION 24  
AND A PORTION OF THE NORTHWEST 1/4 OF SECTION 25,  
T.14N., R.4E., S.R.M., YAVAPAI COUNTY, ARIZONA.  
ASSESSOR PARCELS 403-21-014F, 403-21-021E,  
403-21-014F, 403-21-250C, 403-21-014L,  
403-21-014K, 403-22-021, AND 403-22-018C  
TOWN OF CAMP VERDE



N01°44'37"E (BASIS OF BEARINGS PER G.P.S.)



EXPIRES  
06-30-2019

PRELIMINARY

RED MOON DEVELOPMENT



EXHIBIT SECTION 24, T.14N., R.4E.			
DATE	NAME	SCALE	PROJECT
01/12/18	A.L.S.	8" = 1"	RED MOON DEVELOPMENT
06/30/19	M.J.F.	8" = 1"	RED MOON DEVELOPMENT

THIS SURVEY WAS CONDUCTED IN ACCORDANCE WITH THE SURVEYING AND MAPPING ACT OF 1992, AS AMENDED. THE SURVEYOR HAS REVIEWED THE RECORDS OF THE COUNTY CLERK AND HAS DETERMINED THAT THE PARCELS SHOWN ON THIS MAP ARE CORRECTLY IDENTIFIED. THE SURVEYOR HAS ALSO REVIEWED THE RECORDS OF THE COUNTY CLERK AND HAS DETERMINED THAT THE PARCELS SHOWN ON THIS MAP ARE CORRECTLY IDENTIFIED. THE SURVEYOR HAS ALSO REVIEWED THE RECORDS OF THE COUNTY CLERK AND HAS DETERMINED THAT THE PARCELS SHOWN ON THIS MAP ARE CORRECTLY IDENTIFIED.

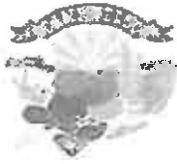






Revised 03/08/18

Application #: 20180191



# Land Use Application Form

1. Application is made for:

- |   |                     |                        |
|---|---------------------|------------------------|
| Zoning Map Change                         | Use Permit          | General Plan Amendment |
| Conceptual Plan Review                    | Preliminary Plat    | Final Plat             |
| <u>PAD Final Site Plan Review</u>         | Variance            | Appeal                 |
| Street Abandonment                        | Minor Land Division | Wireless Tower         |
| Administrative Review                     | Lot Line Adjustment | Zoning Verification    |
| Development Standards Review (Commercial) | Other: _____        |                        |

2. Project Name: Red Moon RV Resort

3. Contact Information: (a list of additional contacts may be attached)

Owner Name: <u>Verde Fertility LLC</u>	Applicant Name: <u>Red Moon Development and Construction, Inc</u>
Address: <u>2800 Niagara Lane N</u>	Address: <u>10025 E Dynamite Blvd., Suite B140</u>
City: <u>Plymouth</u> State: <u>AZ</u> Zip: <u>85447</u>	City: <u>Scottsdale</u> State: <u>AZ</u> Zip: <u>85262</u>
Phone: <u>415-902-2820</u>	Phone: <u>480-947-9253</u>
E-mail: <u>rddev@providentrev.com</u>	E-Mail: <u>info@redmoonhomes.com</u>

403-21-014K, 403-21-014L, 403-21-250C, 403-21-014F, 403-21-014M, 403-21-021E, 403-22-021, 403-22-018C

4. Property Description: Parcel Number \_\_\_\_\_ Acres: 66.7

Address or Location: East end of Wilshire Blvd, 2400' +/- north of the intersection of Interstate 17 and State Route 260.

Existing Zoning: C2-PAD Existing Use: Undeveloped

Proposed Zoning: Not Apply Proposed Use: RV Resort

5. Purpose: (describe intent of this application in 1-2 sentences)

Development standards review for proposed RV resort

6. Certification:

I certify that I am the lawful owner of the parcel(s) of land affected by this application and hereby consent to this action.

Owner: [Signature] Date: 5/7/2018 AND

I certify that the information and attachments I have submitted are true and correct to the best of my knowledge. In filing this application, I am acting with the knowledge and consent of the property owner(s). I understand that all materials and fees required by the Town of Camp Verde must be submitted prior to having this application processed.

Applicant: [Signature] Date: 5/7/18

When Recorded Return To:  
Town of Camp Verde  
473 S. Main St  
Camp Verde, Arizona 86322

**AGREEMENT  
TO WAIVE CLAIM FOR DIMINUTION IN VALUE  
REGARDING ACTION  
PROPOSED BY TOWN OR REQUESTED BY PROPERTY OWNER  
RESOLUTION 2018-998 EXHIBIT B**

This Agreement to Waive Claim for Diminution in Value Regarding Action Proposed by Town or Requested by Property Owner ("Agreement") made as of this 14 day of August, 2018, by and between the Town of Camp Verde, a municipal corporation of Arizona ("Town") and:

RED MOON DEVELOPMENT, ("Owner(s)");  
& CONSTRUCTION, INC

WITNESSETH:

WHEREAS, on December 4, 2006, the Governor of Arizona signed into law the Private Property Rights Protection Act (Proposition 207) approved by the voters on November 7, 2006; and

WHEREAS, Proposition 207 added a new Article 2.1 to Chapter 8, Title 12 of the Arizona Revised Statutes (comprising §§12-1131 through 12-1138) dealing with eminent domain and regulatory takings; and

WHEREAS, ARS §12-1134 permits an owner of private real property to seek just compensation from the state or a political subdivision thereof that enacts or applies a land use law which (subject to certain exceptions) reduces existing rights to use, divide, sell or possess said property and thereby reduces the fair market value of the property; and

WHEREAS, "land use law" includes any statute, rule, ordinance, resolution, or law enacted by the state or political subdivision that regulates the use or division of land or any interest in land; and

WHEREAS, ARS §12-1134(I) recognizes that the state or political subdivisions may reach agreements with private property owners to waive claims for diminution in value resulting from land use law actions proposed by the state or political subdivision or requested by the property owners; and

WHEREAS, the Town (through its Common Council) has, on the date first-above written, duly considered and approved this Agreement with the Owner(s) to waive any claims said Owner(s) may have for diminution in value that may result, now or in the future, from the land use law action(s) proposed by the Town or requested by the Owner(s) as more fully set forth herein;

NOW, THEREFORE, for and in consideration of the mutual covenants and promises contained herein (and for other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged), the parties hereto agree as follows:

SECTION ONE. This Agreement applies to that private real property described in **Exhibit "A"** attached hereto and expressly made a part hereof ("Property") and the recitals set forth above are true and correct and are incorporated herein by reference. Owner has independently determined and believes that the application of the Town's land use laws to the Property will not reduce the fair market value of the Property.

SECTION TWO. The land use law action(s) proposed by the Town or requested by the Owner(s) to which this Agreement applies have been designated as follows by the Town's Community Development Department:

2018-0191  
**Town Application Number**

and, are based on certain application(s), copies of which ("Applications") are shown as **Exhibit "B"** attached hereto and expressly made a part hereof ("Action(s)").

SECTION THREE. By signing this Agreement, the Owner(s) expressly agree(s) and acknowledge(s) that the Owner(s) hereby waive(s) any right to claim diminution in value or claim just compensation for diminution in value of the Property under ARS §12-1134, now or in the future, in relation to the Action(s). This includes (but is expressly not limited to) agreement and consent by the Owner(s) to all conditions that may ultimately be imposed as part of the Action(s).

SECTION FOUR. It is expressly understood by the parties that this Agreement does not add to, detract from, or otherwise modify any discretion, right, power, authority, obligation, or duty of the Town under applicable law with respect to any legislative, administrative, or quasi-judicial action(s).

SECTION FIVE. This Agreement (including any exhibits attached hereto and any addendum) constitutes the entire understanding and agreement of the Owner(s) and the Town and shall supersede all prior agreements or understandings between the Owner(s) and Town regarding the Property. This Agreement may not be modified or amended except by written agreement of the Owner(s) and the Town.

SECTION SIX. This Agreement is made and entered into in Yavapai County, Arizona, and will be construed and interpreted under the laws of the State of Arizona.

SECTION SEVEN. The parties agree that this Agreement may be filed in the Official Records of the County Recorder's Office, Yavapai County, Arizona.

SECTION EIGHT. This Agreement runs with the land and is binding upon all present and future owners of the Property.

SECTION NINE. This Agreement is subject to the cancellation provisions of ARS §38-511.

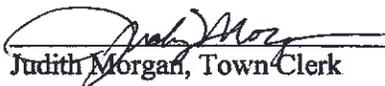
SECTION TEN. The Owner(s) warrant(s) and represent(s) that the Owner(s) is/are the owner(s) of fee title to the Property, and that no other person(s) has/have any ownership interest(s) in the Property. The person(s) who sign(s) on behalf of the Owner(s) personally warrant(s) and guarantee(s) to the Town that he/she/they have the legal authority to bind the Owner(s) to this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by and through their authorized representatives the day and year first-above written.

TOWN OF CAMP VERDE, a municipal corporation of Arizona, (Town)

  
\_\_\_\_\_  
Charles German, Mayor

ATTEST:

  
\_\_\_\_\_  
Judith Morgan, Town Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
William Sims, Town Attorney

January 15, 2019

*Via United States Mail,  
Postage Prepaid and Marked Registered or Certified Mail,  
Return Receipt Requested*

Town of Camp Verde  
473 South Main Street, #102  
Camp Verde, Arizona 86322  
Attn: Russ Martin, Camp Verde Manager

To Whom It May Concern:

Reference is made to that certain Red Moon Development Agreement dated June 27, 2018 (the "**Agreement**"), entered into by and between the **TOWN OF CAMP VERDE**, an Arizona municipal corporation and as trustee for the Camp Verde Sanitary District ("**Town**"), and **RED MOON DEVELOPMENT AND CONSTRUCTION, INC.**, an Arizona corporation, as developer ("**Original Developer**"). Original Developer assigned the Agreement and all of its rights thereunder to **VERDE FENCEPOST LLC**, a Minnesota limited liability company ("**Developer**"), pursuant to that certain Assignment of Development Agreement dated January 11, 2019, by and between Original Developer, as assignor, and Developer, as assignee, written notice of which was previously delivered to Town.

Developer has executed that certain Construction Deed of Trust and Fixture Filing (With Assignment of Rents and Security Agreement), recorded on January 11, 2019, as Instrument No. 2019-0001582, in the official records of Yavapai County, Arizona (as amended, restated or modified from time to time, the "**Deed of Trust**") for the benefit of **WESTERN ALLIANCE BANK**, an Arizona ("**Lender**"). The Deed of Trust encumbers certain property subject to the Agreement. A copy of the Deed of Trust is enclosed with this letter.

Developer hereby notifies you that it has obtained financing from Lender for construction of improvements on the property subject to the Agreement, as contemplated in Section 10.18 of the Agreement. Developer hereby designates Lender as a "**Designated Lender**" under the Agreement and requests that all notices to and rights of a Designated Lender under the Agreement be given to Lender, including, but not limited to, all copies of notices of defaults that may be given to Developer under the Agreement and all other notices and rights under Section 10.18 of the Agreement.

In connection with the foregoing, and pursuant to Section 9 of the Agreement, Developer hereby provides you the following information:

Name and Address of Lender:           Western Alliance Bank  
One East Washington Street, 14<sup>th</sup> Floor  
Phoenix, Arizona 85004  
Attn: Ericka LeMaster

If you have any questions regarding the above request, please contact BRAD WOODRUFF at 480-947-9253.

Sincerely,

**VERDE FENCEPOST LLC**, a Minnesota limited liability company

By: \_\_\_\_\_  
Irvin R. Kessler  
Manager

*Enclosure (Recorded Deed of Trust)*

**FIDELITY NATIONAL TITLE**

2019-0001582 DOT  
eRecorded in Yavapai County, AZ Page 1 of 40  
Leslie M. Hoffman Recorder 01/11/2019 03:09:35 PM  
FIDELITY NATIONAL TITLE NCS PHOENIX - 1 E  
WASHINGTON ST STE 450 AZ 85004-2557 Fees: \$25.00

When Recorded Return To:

SNELL & WILMER LLP.  
One South Church Avenue  
Suite 1500  
Tucson, Arizona 85701-1630  
Attention: Stephen Young, Esq.

*71827399*

*Recorder's Use*

*1/1*

**CONSTRUCTION DEED OF TRUST AND FIXTURE FILING  
(With Assignment of Rents and Security Agreement)  
(VARIABLE RATE)**

THIS DEED OF TRUST SECURES A PROMISSORY NOTE WITH AN INTEREST RATE WHICH VARIES ACCORDING TO CHANGES IN THE LIBOR RATE IN ACCORDANCE WITH THE SECURED PROMISSORY NOTE BY TRUSTOR IN FAVOR OF BENEFICIARY.

THIS DOCUMENT SERVES AS A FIXTURE FILING UNDER THE UNIFORM COMMERCIAL CODE OF ARIZONA

THIS CONSTRUCTION DEED OF TRUST AND FIXTURE FILING (With Assignment of Rents and Security Agreement) (as it may be amended and modified from time to time, this "**Deed of Trust**") is made as of January 11, 2019, by and among VERDE FENCEPOST LLC, a Minnesota limited liability company ("**Trustor**"), whose mailing address is c/o Provident Real Estate Ventures, 2800 Niagara Lane North, Plymouth, Minnesota 55447, WESTERN ALLIANCE BANK, an Arizona corporation ("**Trustee**"), whose mailing address is One East Washington Street, 14<sup>th</sup> Floor, Phoenix, Arizona 85004, and WESTERN ALLIANCE BANK, an Arizona corporation ("**Beneficiary**"), whose mailing address is One East Washington Street, 14<sup>th</sup> Floor, Phoenix, Arizona 85004.

FOR GOOD AND VALUABLE CONSIDERATION, including the indebtedness herein recited and the trust herein created, the receipt of which is hereby acknowledged, Trustor hereby irrevocably grants, transfers, conveys and assigns to Trustee, IN TRUST, WITH POWER OF SALE AND RIGHT OF ENTRY AND POSSESSION, for the benefit and security of Beneficiary, under and subject to the terms and conditions hereinafter set forth, all right, title and interest of Trustor in and to that certain real property located in the County of Yavapai, State of Arizona, more particularly described in **Exhibit A** attached hereto and incorporated herein by this reference (the "**Premises**");

TOGETHER WITH all right, title and interest of Trustor in and to any and all buildings, structures and other improvements and all additions or alterations thereto or replacements thereof, now or hereafter erected on the Premises including, without limitation, fixtures, attachments, appliances, equipment, machinery, and other personal property attached to such buildings and other improvements (the "Improvements"), all of which shall be deemed and construed to be a part of the real property;

TOGETHER WITH all right, title, and interest of Trustor in and to all rents, issues, profits, damages, royalties, income and other benefits now or hereafter derived from the Premises and the Improvements (collectively the "Rents"), subject to the terms and provisions of Article 2 of this Decd of Trust with respect to all leases and subleases of the Premises or Improvements now or hereafter existing or entered into, or portions thereof, granted by Trustor, and further subject to the right, power and authority hereinafter given to Trustor to collect and apply such Rents;

TOGETHER WITH all right, title and interest of Trustor under and with respect to any covenants, conditions and restrictions affecting the property (including, without limitation, all of Trustor's rights as "declarant" under any such covenants, conditions and restrictions, all of Trustor's rights to become "declarant" under any such covenants, conditions and restrictions, and all of Trustor's voting, approval and other rights under any such covenants, conditions and restrictions);

TOGETHER WITH all interests, estates or other claims, both in law and in equity, which Trustor now has or may hereafter acquire in the Premises or the Improvements;

TOGETHER WITH all easements, rights-of-way and other rights now owned or hereafter acquired by Trustor used in connection with the Premises or the Improvements or as a means of access thereto (including, without limitation, all rights to the use of common drive entries, and all tenements, hereditaments and appurtenances thereof and thereto) and all water and water rights and shares of stock evidencing the same;

TOGETHER WITH all leasehold estate, right, title and interest of Trustor in and to all leases or subleases covering the Premises or the Improvements or any portion thereof now or hereafter existing or entered into, and all right, title and interest of Trustor thereunder including, without limitation, all rights of Trustor against guarantors thereof, all cash or security deposits, advance rentals, and deposits or payments of similar nature (collectively, the "Leases");

TOGETHER WITH all right, title and interest now owned or hereafter acquired by Trustor in and to any greater estate in the Premises or the Improvements;

TOGETHER WITH all right, title, and interest of Trustor in (i) the property and interests in property described on Exhibit B attached hereto and incorporated herein by reference, (ii) all other personal property now or hereafter owned by Trustor that is now or hereafter located on or used in connection with the Premises or the Improvements, (iii) all other rights and interests of Trustor now or hereafter held in personal property that is now or hereafter located on or used in connection with the Premises or the Improvements, (iv) all personal property and rights and interests in personal property of similar type or kind hereafter acquired by Trustor, and (v) all

proceeds thereof (such personal property and proceeds are referred to herein collectively as the "Personal Property");

TOGETHER WITH all right, title and interest of Trustor, now owned or hereafter acquired, in and to any land lying within the right-of-way of any street, open or proposed, adjoining the Premises, and any and all sidewalks, alleys and strips and gores of land adjacent to or used in connection with the Premises;

TOGETHER WITH all the estate, interest, right, title, other claim or demand, both in law and in equity (including, without limitation, claims or demands with respect to the proceeds of insurance in effect with respect thereto) that Trustor now has or may hereafter acquire in the Premises, the Improvements, the Personal Property, or any other part of the Trust Estate (as defined below), and any and all awards made for the taking by eminent domain, or by any proceeding of purchase in lieu thereof, of the whole or any part of the Trust Estate (including, without limitation, any awards resulting from a change of grade of streets and awards for severance damages); and

TOGETHER WITH all right, title, and interest of Trustor in and to proceeds of the foregoing.

The Premises, the Improvements, the Rents, the Leases, the Personal Property, and the entire estate, property, right, title and interest hereby conveyed to Trustee may hereafter be collectively referred to as the "Trust Estate".

FOR THE PURPOSE OF SECURING (in such order of priority as Beneficiary may elect) the following (the "Obligations");

(a) payment of indebtedness in the total principal amount of up to \$11,266,000.00 ("Loan"), with interest thereon, evidenced by that certain Secured Promissory Note of even date herewith (as it may be amended, modified, extended, renewed, replaced, and restated from time to time, the "Note") executed by Trustor pursuant to that certain Construction Loan Agreement between Trustor and Beneficiary of even date herewith (as it may be amended, modified, extended, restated and renewed from time to time, the "Loan Agreement"). In the event of any inconsistency between the terms and provisions of the Loan Agreement and the terms and provisions of this Deed of Trust, the terms and provisions of the Loan Agreement shall prevail. The Note contains a provision providing for a variable rate of interest thereunder;

(b) payment of all sums advanced by Beneficiary to protect the Trust Estate, with interest thereon equal to the Interest Rate (as defined in the Note) plus five percent (5%) per annum (which rate of interest is hereinafter referred to as the "Agreed Rate");

(c) payment of all other sums, with interest thereon, that may hereafter be loaned to Trustor, or its successors or assigns, by Beneficiary, or its successors or assigns when evidenced by a promissory note or notes reciting that they are secured by this Deed of Trust;

(d) performance of every obligation of Trustor contained in the Loan Documents (as defined below);

(e) performance of every obligation of Trustor contained in any agreement, document, or instrument now or hereafter executed by Trustor reciting that the obligations thereunder are secured by this Deed of Trust, including, without limitation, all other obligations, agreements or indebtedness between Trustor and any affiliate of Beneficiary;

(f) for the benefit of Beneficiary, 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 Estate is bound or may be affected; and

(g) all modifications, extensions and renewals of any of the obligations secured hereby, however evidenced, including, without limitation: (i) modifications of the required principal payment dates or interest payment dates or both, as the case may be, deferring or accelerating payment dates wholly or partly; or (ii) modifications extensions or renewals at a different rate of interest whether or not, in the case of a note, the modification, extension or renewal is evidenced by a new or additional promissory note.

This Deed of Trust, the Note, the Loan Agreement, and any other deeds of trust, mortgages, agreements, guaranties or other instruments given to evidence or further secure the payment and performance of any or all of the Obligations, as the foregoing may be amended, modified, extended, or renewed from time to time may hereinafter be collectively referred to as the "Loan Documents". Capitalized terms as used in this Deed of Trust and not otherwise defined are used with the meanings set forth in the Loan Agreement and other Loan Documents. Any term used or defined in the Uniform Commercial Code of Arizona, as in effect in the State of Arizona (Arizona Revised Statutes ("A.R.S.") Sections 47-1101 through 47-10102), as amended from time to time ("Uniform Commercial Code of Arizona"), and not defined in this Deed of Trust, has the meaning given to the term in the Uniform Commercial Code of Arizona, when used in this Deed of Trust.

**FUTURE ADVANCES.** This Deed of Trust secures future advances made by Beneficiary in accordance with the terms of the Loan Agreement.

NOTWITHSTANDING ANYTHING TO THE CONTRARY, THIS DEED OF TRUST DOES NOT, AND SHALL NOT IN ANY EVENT BE DEEMED TO, SECURE THE OBLIGATIONS OWING TO BENEFICIARY UNDER: (A) ANY ENVIRONMENTAL INDEMNITY AGREEMENT EXECUTED IN CONNECTION WITH THE LOAN (OR ANY OBLIGATIONS THAT ARE THE SUBSTANTIAL EQUIVALENT THEREOF); OR (B) ANY GUARANTY OF THE LOAN.

**TRUSTOR HEREBY COVENANTS AND AGREES AS FOLLOWS:**

1. COVENANTS AND AGREEMENTS OF TRUSTOR

Section 1.1 Payment and Performance of Secured Obligations. Trustor shall pay when due and/or perform each of the Obligations.

**Section 1.2 Maintenance, Repair, Alterations.** Trustor shall keep the Trust Estate in good condition and repair. Trustor shall not remove, demolish, or substantially alter any of the Improvements, except with the prior written consent of Beneficiary. Subject to the terms and provisions of the Loan Agreement, Trustor shall complete promptly and in a good and workmanlike manner any Improvement that may be now or hereafter constructed on the Premises and promptly restore in like manner any Improvements that may be damaged or destroyed from any cause whatsoever and pay when due all claims for labor performed and materials furnished therefor. Trustor shall comply with all Requirements (as defined below) and shall not suffer to occur or exist any violation of any Requirement. Trustor shall not commit or permit any waste or deterioration of the Trust Estate, and, to the extent allowed by law, shall keep and maintain abutting grounds, sidewalks, roads, parking and landscape areas in good and neat order and repair. Trustor shall perform its obligations under each Lease. "**Requirement**" and "**Requirements**" mean, respectively, each and all obligations and requirements now or hereafter in effect by which Trustor or the Trust Estate are bound or which are otherwise applicable to the Trust Estate, construction of any Improvements on the Trust Estate, or operation, occupancy or use of the Trust Estate (including, without limitation (i) such obligations and requirements imposed by common law or any law, statute, ordinance, regulation, or rule (federal, state, or local), and (ii) such obligations and requirements of, in, or in respect of (A) any consent, authorization, license, permit, or approval relating to the Trust Estate, (B) any condition, covenant, restriction, easement, or right-of-way reservation applicable to the Trust Estate, (C) any Lien or Encumbrance, (D) any other agreement, document, or instrument to which Trustor is a party or by which Trustor or the Trust Estate is bound or affected, and (E) any order, writ, judgment, injunction, decree, determination, or award of any arbitrator, other private adjudicator, court, government, or governmental authority (federal, state, or local) to which Trustor is a party or by which Trustor or the Trust Estate is bound or affected).

**Section 1.3 Required Insurance.** Trustor shall at all times provide, maintain and keep in force or cause to be provided, maintained and kept in force with respect to the Trust Estate, at no expense to Trustee or Beneficiary, policies of insurance in forms and amounts and issued by companies reasonably satisfactory to Beneficiary covering such casualties, risks, perils, liabilities and other hazards as is required under the Loan Agreement. All such policies of insurance required by the terms of this Deed of Trust or the Loan Agreement shall contain an endorsement or agreement by the insurer that any loss shall be payable in accordance with the terms of such policy notwithstanding any act or negligence of Trustor or any party holding under Trustor that might otherwise result in forfeiture of said insurance and the further agreement of the insurer waiving all rights of setoff, counterclaim or deductions against Trustor.

**Section 1.4 Delivery of Policies, Payment of Premiums.**

(a) At Beneficiary's option all policies of insurance shall either have attached thereto a lender's loss payable endorsement for the benefit of Beneficiary in form satisfactory to Beneficiary or shall name Beneficiary as an additional insured. Trustor shall furnish Beneficiary with certificates of insurance for each required policy setting forth the coverage, the limits of liability, the name of the carrier, the policy number and the period of coverage. If Beneficiary consents, Trustor may provide any of the required insurance through blanket policies carried by Trustor and covering more than one location, or by policies procured by a tenant or other party

holding under Trustor; provided, however, all such policies shall meet the requirements referred to in Section 1.3. At least thirty (30) days prior to the expiration of each required policy, Trustor shall endeavor to deliver to Beneficiary evidence reasonably satisfactory to Beneficiary of the payment of premium and the renewal or replacement of such policy continuing insurance in form as required by this Deed of Trust. If obtainable using commercially reasonable efforts, all such policies shall contain a provision that, notwithstanding any contrary agreement between Trustor and insurance company, such policies will not be cancelled, allowed to lapse without renewal, surrendered or materially amended, which term shall include any reduction in the scope or limits of coverage, without at least thirty (30) days' prior written notice to Beneficiary.

(b) In the event Trustor fails to obtain, maintain, or deliver to Beneficiary the policies of insurance with respect to the Trust Estate required by this Deed of Trust, Beneficiary may, at Beneficiary's election, but without any obligation so to do, procure such insurance or single-interest insurance for such risks covering Beneficiary's interest, and Trustor will pay all premiums thereon promptly upon demand by Beneficiary, and until such payment is made by Trustor, the amount of all such premiums shall bear interest at the Agreed Rate. Upon the occurrence and during the continuation of an Event of Default and request by Beneficiary, Trustor shall deposit with Beneficiary in monthly installments, an amount equal to one-twelfth (1/12) of the estimated aggregate annual insurance premiums on all policies of insurance required by this Deed of Trust (funds deposited for this purpose are referred to as "Insurance Impounds"). In such event Trustor further agrees to cause all bills, statements, or other documents relating to the foregoing insurance premiums to be sent or mailed directly to Beneficiary. Upon receipt of such bills, statements, or other documents evidencing that a premium for a required policy is then payable, and provided there are sufficient Insurance Impounds, Beneficiary shall timely pay such amounts as may be due thereunder out of the Insurance Impounds. If at any time and for any reason the Insurance Impounds are or will be insufficient to pay such amounts as may be then or subsequently due, Beneficiary shall notify Trustor and Trustor shall immediately deposit an amount equal to such deficiency with Beneficiary. Notwithstanding the foregoing, nothing contained herein shall cause Beneficiary to be deemed a trustee of Insurance Impounds or to be obligated to pay any amounts in excess of the amount of the Insurance Impounds, nor shall anything contained herein modify the obligation of Trustor set forth in Section 1.3 to obtain and maintain insurance. Beneficiary may commingle Insurance Impounds with its own funds, and Trustor shall not be entitled to interest thereon. Beneficiary may reserve for future payments of premiums such portion of Insurance Impounds as Beneficiary in its absolute and sole discretion deems proper. If Trustor fails to deposit with Beneficiary sums sufficient to pay fully such premiums at least thirty (30) days before delinquency thereof, Beneficiary may, at Beneficiary's election, but without any obligation so to do, advance any amounts required to make up the deficiency, which advances, if any, shall be secured hereby and shall be repayable to Beneficiary upon demand with interest from the date advanced at the Agreed Rate, or at the option of Beneficiary the latter may, without making any advance whatever, apply any Insurance Impounds to payment of the Obligations in such order as Beneficiary may determine, notwithstanding that such Obligations may not yet be due. Upon the occurrence of an Event of Default, Beneficiary may, at any time, at Beneficiary's option, apply any Insurance Impounds or Impositions Impounds under this Section 1.4 or Section 1.8, any funds paid as Rents, and any other funds of Trustor held by Beneficiary to payment of any of the

Obligations, in such manner and order as Beneficiary may elect, notwithstanding that such Obligations may not yet be due.

**Section 1.5 Casualties; Insurance Proceeds.**

(a) Trustor shall give prompt written notice thereof to Beneficiary after the happening of any casualty to or in connection with the Trust Estate or any part thereof, whether or not covered by insurance. All proceeds of insurance shall be payable to Beneficiary, and Trustor hereby authorizes and directs any affected insurance company to make payment of such proceeds directly to Beneficiary. If Trustor receives any proceeds of insurance resulting from such casualty, Trustor shall promptly pay over such proceeds to Beneficiary. All proceeds of insurance will be applied by Beneficiary to payment of the Obligations in such order as Beneficiary shall determine. Notwithstanding the foregoing, in the event the proceeds of insurance paid by an insurance company as a result of the happening of any casualty to or in connection with the Trust Estate are \$100,000.00 or less, such proceeds may be paid directly to and retained by Trustor and Trustor shall not need consent of Beneficiary to settle such casualty claim, provided (i) no Event of Default or event that with the giving of notice or the passage of time, or both, has occurred and is continuing, and (ii) such proceeds are used exclusively by Trustor to restore and repair the Trust Estate as provided in and required by **Section 1.02** hereof.

(b) (i) For purposes of this **Section 1.5(b)**, "**Substantial Damage**" shall mean damage to or destruction of an aggregate of twenty-five percent (25%) or more of the net rentable area of the Improvements.

(ii) In the event of Substantial Damage to the Improvements, Beneficiary shall have the absolute right, at its option, without prior demand or notice, to declare all sums secured hereby immediately due and payable on the date thirty (30) days following Beneficiary's election, and Beneficiary shall be entitled to apply all insurance proceeds to the payment required under this **Section 1.5(b)(ii)**. Any proceeds remaining after such application shall be delivered to Trustor or the person or persons then legally entitled thereto.

(c) In the event of damage or destruction to the Improvements which is not Substantial Damage, Beneficiary shall have the right to apply all insurance proceeds to the indebtedness evidenced by the Note unless the following conditions are met:

(i) Beneficiary, in Beneficiary's sole and absolute discretion, shall have determined that restoration of the Improvements can be completed at least 180 days prior to the Maturity Date of the Loan, and prior to the date required by any applicable Tenant Leases;

(ii) Trustor shall have delivered notice to Beneficiary of its intention to commence repairs and restoration within ten (10) Business Days (as defined in the Note) following the settlement of any claim or claims under any insurance policies where the proceeds thereof are to be applied to the restoration or repair of the damaged Improvements;

(iii) No Event of Default hereunder or under any of the Loan Documents shall have occurred and be continuing and no event shall have occurred and be continuing which, with the giving of notice or the passage of time, or both, would give rise to an Event of Default hereunder or thereunder;

(iv) All insurance proceeds shall have been deposited with Beneficiary;

(v) Within ten (10) Business Days after the deposit of such insurance proceeds with Beneficiary, Trustor shall have remitted to Beneficiary an amount necessary (as Beneficiary shall determine in its reasonable discretion), if any, to pay the difference between (A) the sum of (1) the cost of restoration and repair of and completion of the Improvements plus (2) all operating expenses of the Trust Estate until such time as the Trust Estate can generate sufficient income to pay such expenses, as determined by Beneficiary in its sole discretion, minus (B) the amount of insurance proceeds deposited with Beneficiary in respect of such damage and destruction;

(vi) Trustor shall have delivered to Beneficiary (A) a budget of all costs of reconstruction of the Improvements and (B) a construction contract for such reconstruction work in form and content and with a contractor reasonably acceptable to Beneficiary; and

(vii) Beneficiary and all applicable governmental authorities shall have approved the final plans and specifications for reconstruction of the Improvements.

In the event all of the foregoing conditions have been fulfilled, all proceeds so applied to the reconstruction of the Improvements shall be disbursed only as repairs or replacements are effected and as continuing expenses become due and payable. Should Beneficiary elect to restore and repair the Improvements although Trustor has failed to comply with the conditions set forth above, and the insurance proceeds are insufficient to restore and repair such damage to or destruction of the Improvements, Trustor shall pay to Beneficiary, within thirty (30) days of a demand by Beneficiary, an amount equal to the difference between (A) the sum of (1) the cost of restoration and repair of the Improvements, plus (2) all operating expenses of the Trust Estate until such time as the Trust Estate can generate sufficient income to pay such expenses, as determined by Beneficiary in its sole discretion, minus (B) the sum of the amount of the insurance proceeds available to Beneficiary for repair and restoration. All funds deposited with Beneficiary which are to be used for the restoration and repair of the Improvements shall be disbursed only as repairs or replacements are effected and as continuing expenses become due and payable. In the event Beneficiary elects to apply the insurance proceeds to the obligations arising under the Loan Documents because Trustor has failed to comply with the conditions set forth above, Beneficiary shall not be obligated to make any further disbursements pursuant to the other Loan Documents and Beneficiary shall apply all insurance proceeds to the repayment of the outstanding balance of the Note, together with accrued interest, notwithstanding that the outstanding balance may not be due and payable. If such proceeds are not sufficient to repay the Note in full, Trustor shall immediately pay to Beneficiary an amount equal to such insufficiency. If there are insurance proceeds

remaining after payment of the Note in full, such remaining proceeds shall be paid over the persons legally entitled thereto.

(d) (i) Unless instructed by Beneficiary in accordance with **Section 1.5(b)** or **Section 1.5(c)** hereof that the insurance proceeds payable on account of any damage or destruction to the Improvements are to be applied toward the payment of the indebtedness evidenced by the Note, Trustor shall promptly, regardless of whether such insurance proceeds shall be sufficient for the purpose, commence and diligently proceed to perform and complete, in a first-class workmanlike manner, the restoration, replacement and rebuilding of the Improvements in accordance with the plans and specifications approved by Beneficiary.

(ii) After completion of restoration in accordance with the plans and specifications approved by Beneficiary and payment in full of all of the costs of restoration, as evidenced by a certificate to such effect signed by Trustor and verified by Trustor's architect, and after payment to Beneficiary of all reasonable costs and expenses incurred in connection with the collection of such proceeds (including reasonable adjusters' and attorneys' fees and disbursements and costs incurred by Beneficiary or its agents in inspecting any restoration and the plans and specification therefor), any remaining insurance proceeds shall be paid over to the persons legally entitled thereto.

(e) Except as expressly provided in this **Section 1.5**, Trustor shall not be excused from repairing or maintaining the Trust Estate as provided in **Section 1.2** hereof or restoring all damage or destruction to the Trust Estate, regardless of whether or not there are insurance proceeds available to Trustor or whether any such proceeds are sufficient in amount, and the application or release by Beneficiary of any insurance proceeds shall not cure or waive any default or notice of default under this Deed of Trust or invalidate any act done pursuant to such default or notice of default.

**Section 1.6 Assignment of Policies Upon Foreclosure.** In the event of foreclosure of this Deed of Trust, whether by judicial proceedings or a sale under the power of sale, or any other transfer of title or assignment of the Trust Estate in extinguishment, in whole or in part, of the Obligations, all right, title and interest of Trustor in and to all policies of insurance required by **Section 1.3** shall inure to the benefit of and pass to the successor in interest to Trustor or the purchaser or grantee of the Trust Estate, to the extent such policies are assignable pursuant to the terms thereof.

**Section 1.7 Indemnification; Subrogation; Waiver of Offset.**

(a) If Beneficiary is made a party to any litigation concerning the Note, this Deed of Trust, any of the Loan Documents, the Trust Estate or any part thereof or interest therein, or the use or occupancy of the Trust Estate, then Trustor shall, except to the extent of Beneficiary's gross negligence or willful misconduct, indemnify, defend and hold Beneficiary harmless for, from and against all liability by reason of said litigation, including reasonable attorneys' fees and expenses incurred by Beneficiary as a result of any such litigation, whether or not any such litigation is prosecuted to judgment. Beneficiary may employ an attorney or attorneys to protect its rights hereunder, and in the event of such employment following any breach by Trustor,

Trustor shall pay Beneficiary reasonable attorneys' fees and expenses incurred by Beneficiary, whether or not an action is actually commenced against Trustor by reason of its breach.

(b) Trustor waives any and all right to claim or recover against Beneficiary, its successors and assigns, their directors, officers, employees, agents and representatives, for loss of or damage to Trustor, the Trust Estate, Trustor's property or the property of others under Trustor's control from any cause insured against or required to be insured against by this Deed of Trust.

(c) All sums payable by Trustor pursuant to this Deed of Trust shall be paid without notice (except for such notice as may be expressly required hereunder or under the other Loan Documents), demand, counterclaim, setoff, deduction or defense and without abatement, suspension, deferment, diminution or reduction, and the obligations and liabilities of Trustor hereunder shall in no way be released, discharged or otherwise affected (except as expressly provided herein) by reason of: (i) any damage to or destruction of or any condemnation or similar taking of the Trust Estate or any part thereof; (ii) any restriction or prevention of or interference by any Person (as defined below) with any use of the Trust Estate or any part thereof; (iii) any unpermitted title defect or encumbrance or any eviction from the Premises or the Improvements or any part thereof by title paramount or otherwise; (iv) any bankruptcy, insolvency, reorganization, composition, adjustment, dissolution, liquidation or other like proceeding relating to Beneficiary, or any action taken with respect to this Deed of Trust by any trustee or receiver of Beneficiary, or by any court, in any such proceeding; (v) any claim that Trustor has or might have against Beneficiary; (vi) any default or failure on the part of Beneficiary to perform or comply with any of the terms of the Loan Documents or of any other agreement with Trustor after the expiration of applicable notice and cure periods; or (vii) any other occurrence whatsoever, whether similar or dissimilar to the foregoing; whether or not Trustor shall have notice or knowledge of any of the foregoing. Except as expressly provided herein, Trustor waives all rights now or hereafter conferred by statute or otherwise to any abatement, suspension, deferment, diminution or reduction of any sum secured hereby and payable by Trustor. "Person" means any natural person, any unincorporated association, any corporation, any partnership, any limited liability company, any joint venture, any trust, any other legal entity, or any governmental authority (federal, state, local or foreign).

### Section 1.8 Impositions.

(a) Trustor shall pay, or cause to be paid, prior to delinquency, all real property taxes and assessments, general and special, and all other taxes and assessments of any kind or nature whatsoever, (including, without limitation, nongovernmental levies or assessments such as maintenance charges, levies, or charges resulting from covenants, conditions and restrictions affecting the Trust Estate) that are assessed or imposed upon the Trust Estate or become due and payable and that create, may create, or appear to create a lien upon the Trust Estate (the above are sometimes referred to herein individually as an "Imposition" and collectively as "Impositions"), provided, however, that if by law any Imposition is payable, or may at the option of the taxpayer be paid, in installments, Trustor may pay the same or cause it to be paid, together with any accrued interest on the unpaid balance of such Imposition, in installments as the same becomes due and before any fine, penalty, interest, or cost may be added thereto for the nonpayment of any such installment and interest.

(b) If at any time after the date hereof there shall be assessed or imposed a fee, tax, or assessment on Beneficiary and measured by or based in whole or in part upon this Deed of Trust or the outstanding amount of the Obligations, then all such taxes, assessments or fees shall be deemed to be included within the term "Impositions" as defined in Section 1.8(a) and Trustor shall pay and discharge the same as herein provided with respect to the payment of Impositions. If Trustor fails to pay such Impositions prior to delinquency, Beneficiary may, at its option, declare all or part of the Obligations, immediately due and payable. If Trustor is prohibited by law from paying such Impositions, Beneficiary may, at its option, declare all or part of the Obligations due and payable on a date which is not less than six (6) months from the date such prohibition is imposed on Trustor.

(c) Subject to the provisions of Section 1.8(d) and upon request by Beneficiary, Trustor shall deliver to Beneficiary within thirty (30) days after the date upon which any Imposition is due and payable by Trustor official receipts of the appropriate taxing authority, or other proof satisfactory to Beneficiary, evidencing the payment thereof.

(d) Trustor shall have the right before any delinquency occurs to contest or object to the amount or validity of any Imposition by appropriate proceedings, but this shall not be deemed or construed in any way as relieving, modifying, or extending Trustor's covenant to pay any such Imposition at the time and in the manner provided in this Section 1.8, unless Trustor has given prior written notice to Beneficiary of Trustor's intent to so contest or object to an Imposition, and unless, in Beneficiary's absolute and sole discretion, (i) Trustor shall demonstrate to Beneficiary's satisfaction that the proceedings to be initiated by Trustor shall conclusively operate to prevent the sale of the Trust Estate or any part thereof or interest therein to satisfy such Imposition prior to final determination of such proceedings, (ii) Trustor shall furnish a good and sufficient bond or surety as requested by and satisfactory to Beneficiary, or (iii) Trustor shall demonstrate to Beneficiary's satisfaction that Trustor has provided a good and sufficient undertaking as may be required or permitted by law to accomplish a stay of any such sale.

(e) Upon the occurrence and during the continuation of an Event of Default and upon request by Beneficiary, Trustor shall pay to Beneficiary an initial cash deposit in an amount adequate to pay all Impositions for the ensuing tax fiscal year and shall thereafter continue to deposit with Beneficiary, in monthly installments, an amount equal to one-twelfth (1/12) of the sum of the annual Impositions reasonably estimated by Beneficiary, for the purpose of paying the installment of Impositions next due (funds deposited for this purpose are referred to as "Impositions Impounds"). In such event, Trustor further agrees to cause all bills, statements, or other documents relating to Impositions to be sent or mailed directly to Beneficiary. Upon receipt of such bills, statements, or other documents, and providing there are sufficient Impositions Impounds, Beneficiary shall timely pay such amounts as may be due thereunder out of the Impositions Impounds. If at any time and for any reason the Impositions Impounds are or will be insufficient to pay such amounts as may then or subsequently be due, Beneficiary may notify Trustor and upon such notice Trustor shall deposit immediately an amount equal to such deficiency with Beneficiary. Notwithstanding the foregoing, nothing contained herein shall cause Beneficiary to be deemed a trustee of Impositions Impounds or to be obligated to pay any amounts in excess of the amount of funds deposited with Beneficiary pursuant to this

**Section 1.8(e)**. Beneficiary may commingle Impositions Impounds with its own funds and shall not be obligated to pay any interest on any Impositions Impounds. Beneficiary may reserve for future payment of Impositions such portion of Impositions Impounds as Beneficiary may in its absolute and sole discretion deem proper. If Trustor fails to deposit with Beneficiary sums sufficient to fully pay such Impositions at least thirty (30) days before delinquency thereof, Beneficiary may, at Beneficiary's election, but without any obligation so to do, advance any amounts required to make up the deficiency, which advances, if any, shall be secured hereby and shall be repayable to Beneficiary upon demand together with interest thereon at the Agreed Rate from the date of such advance, or at the option of Beneficiary the latter may, without making any advance whatever, apply any Impositions Impounds held by it upon any of the Obligations in such order as Beneficiary may determine, notwithstanding that such Obligations may not yet be due.

(f) In the event that the Trust Estate at the date hereof is assessed together with other property (i) Trustor shall be responsible for the payment of all such assessments pursuant to **Section 1.8(a)** and (ii) as soon as reasonably practical, but in any event not later than one hundred eighty (180) days after the date on which this Deed of Trust is recorded, Trustor shall cause the Trust Estate to be separately assessed from all other property and thereafter. Trustor shall not initiate or suffer to occur or exist the joint assessment of any real and personal property included in the Trust Estate or any other procedure whereby the lien of real property taxes and the lien of personal property taxes shall be assessed, levied, or charged to the Trust Estate as a single lien.

**Section 1.9 Utilities**. Trustor shall pay, or cause to be paid, when due all charges that are incurred by Trustor for the benefit of the Trust Estate or that may become a charge or lien against the Trust Estate for gas, electricity, water, sewer, or other services furnished to the Trust Estate.

**Section 1.10 Actions Affecting Trust Estate**. Trustor shall appear in and contest any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; and shall pay all costs and expenses (including, without limitation, costs of evidence of title, litigation, and attorneys' fees) in any such action or proceeding in which Beneficiary or Trustee may appear.

**Section 1.11 Actions By Trustee or Beneficiary**. If Trustor fails to make any payment or to do any act as and in the manner provided in any of the Loan Documents, Beneficiary and/or Trustee, each in its absolute and sole discretion, without obligation so to do, without releasing Trustor from any obligation, and with only such notice to or demand upon Trustor as may be reasonable under the then existing circumstances, but in no event exceeding thirty (30) days prior written notice, may make or do the same in such manner and to such extent as either may deem necessary or appropriate. In connection therewith (without limiting their general powers, whether conferred herein, in another Loan Document or by law), Beneficiary and Trustee shall have and are hereby given the right, but not the obligation, (a) to enter upon and take possession of the Trust Estate; (b) to make additions, alterations, repairs and improvements to the Trust Estate that they or either of them may consider necessary or appropriate to keep the Trust Estate in good condition and repair; (c) to appear and participate in any action or proceeding affecting or which may affect the security hereof or the rights or powers of Beneficiary or Trustee; (d) to

pay, purchase, contest or compromise any Lien or Encumbrance (as defined below) or alleged Lien or Encumbrance whether superior or junior to this Deed of Trust; (e) to complete construction of any and all improvements theretofore commenced on the Trust Estate, if any; (f) to remediate any environmental activity; and (g) in exercising such powers, to pay necessary expenses (including, without limitation, expenses of employment of counsel or other necessary or desirable consultants). Trustor shall, within ten (10) days following written demand therefor by Beneficiary and Trustee or either of them, pay to Beneficiary and Trustee an amount equal to all respective costs and expenses incurred by them in connection with the exercise by either Beneficiary or Trustee or both of the foregoing rights (including, without limitation, costs of evidence of title, court costs, appraisals, surveys and receiver's, trustee's and attorneys' fees) together with interest thereon from the date of such expenditures at the Agreed Rate.

**Section 1.12 Transfer of Trust Estate by Trustor.** In order to induce Beneficiary to make the Loan, Trustor agrees that, in the event of any Transfer (as hereinafter defined), without the prior written consent of Beneficiary, Beneficiary shall have the absolute right, at its option, without prior demand or notice, to declare all sums secured hereby immediately due and payable. Consent to one such transaction shall not be deemed to be a waiver of the right to require consent to future or successive transactions. Beneficiary may grant or deny such consent in its sole discretion and, if consent should be given, any such Transfer shall be subject to this Deed of Trust, and such transferee shall assume all obligations hereunder and agree to be bound by all provisions contained herein. Such assumption shall not, however, release Trustor or any maker or guarantor (if any) of the Note from any liability thereunder without the prior written consent of Beneficiary. As used herein, "**Transfer**" shall mean:

- (i) any sale, transfer, conveyance, pledge, hypothecation, assignment, mortgage, grant of security interest in, encumbrance, lease or vesting of the Trust Estate or any part thereof or interest therein to or in any Person, whether voluntary, involuntary, by operation of law, or otherwise, except the Permitted Exceptions (as such term is defined in **Exhibit C** attached hereto and incorporated herein by reference) and except as otherwise permitted under any Loan Document;
- (ii) any sale, transfer, assignment, conveyance, hypothecation, encumbrance or vesting of any beneficial interest in Trustor or any beneficiary, partner, member, or shareholder in Trustor to or in any Person (if Trustor or any partner, member or shareholder in Trustor is a trust) whether voluntary, involuntary, by operation of law, or otherwise, except the Permitted Exceptions and except as otherwise permitted under any Loan Document;
- (iii) any sale, transfer, assignment, conveyance, hypothecation, encumbrance or vesting of any general partnership interest in Trustor or any beneficiary, partner, member, or shareholder in Trustor to or in any Person (if Trustor or any beneficiary, partner, member or shareholder in Trustor is a partnership) whether voluntary, involuntary, by operation of law, or otherwise, except the Permitted Exceptions and except as otherwise permitted under any Loan Document;
- (iv) any sale, transfer, assignment, conveyance, hypothecation, encumbrance or vesting of any member interest in Trustor or any beneficiary, partner, member, or

shareholder in Trustor to or in any Person (if Trustor or any beneficiary, partner, member, or shareholder in Trustor is a limited liability company) whether voluntary, involuntary, by operation of law, or otherwise, except the Permitted Exceptions and except as otherwise permitted under any Loan Document;

(v) any sale, transfer, assignment, conveyance, hypothecation, encumbrance or vesting of any shares of stock in Trustor or any beneficiary, partner, member or shareholder in Trustor to or in any Person or any consolidation or merger of Trustor or any beneficiary, partner, member, or shareholder in Trustor into or with any Person (if Trustor or any beneficiary, partner, member, or shareholder in Trustor is a corporation) whether voluntary, involuntary, by operation of law, or otherwise, except the Permitted Exceptions and except as otherwise permitted under any Loan Document;

(vi) any sale, transfer, assignment, conveyance, hypothecation, encumbrance or vesting of any other legal or beneficial interest in Trustor or any beneficiary, partner, member, or shareholder in Trustor whether voluntary, involuntary, by operation of law or otherwise, except the Permitted Exceptions and except as otherwise permitted under any Loan Document;

(vii) any transfer of management control over Trustor, except the Permitted Exceptions and except as otherwise permitted under any Loan Document; or

(viii) the execution of any agreements to do any of the foregoing, except the Permitted Exceptions.

**Section 1.13 Eminent Domain.**

(a) In the event that any proceeding or action be commenced for the taking of the Trust Estate, or any part thereof or interest therein, for public or quasi-public use under the power of eminent domain, condemnation (including, without limitation, inverse condemnation) or otherwise (hereinafter collectively referred to as a "**Taking**"), or if the same be taken or damaged by reason of any public improvement or Taking, or should Trustor receive any notice or other information regarding such Taking or damage, Trustor shall give prompt written notice thereof to Beneficiary. All compensation, awards, damages, rights of action and proceeds awarded to Trustor by reason of any such Taking or damage or received by Trustor as the result of a transfer in lieu of a Taking (the "**Condemnation Proceeds**") are hereby assigned to Beneficiary, and Trustor agrees to execute such further assignments of the Condemnation Proceeds as Beneficiary or Trustee may require. If Trustor receives any Condemnation Proceeds Trustor shall promptly pay over such proceeds to Beneficiary. All Condemnation Proceeds will be applied by Beneficiary to payment of the Obligations in such order as Beneficiary shall determine. Beneficiary is hereby authorized and empowered by Trustor, at Beneficiary's option and in Beneficiary's sole discretion, as attorney-in-fact for Trustor, to settle, adjust, or compromise any claim for loss or damage in connection with any Taking or proposed Taking and, without regard to the adequacy of its security, to commence, appear in and prosecute in its own name and/or on behalf of Trustor any such action or proceeding arising out of or relating to a Taking or proposed Taking. Notwithstanding the foregoing, in the event the Condemnation Proceeds paid as a result of a Taking are One Hundred Thousand and No/100 Dollars

(\$100,000.00) or less, such Condemnation Proceeds may be paid directly to and retained by Trustor and Trustor shall not need consent of Beneficiary to settle such Taking, provided (i) no Event of Default or event that with the giving of notice or the passage of time, or both, has occurred and is continuing, and (ii) such Condemnation Proceeds are used exclusively by Trustor to restore and repair the Trust Estate as provided in and required by Section 1.02 hereof.

(b) (i) For purposes of this Section 1.13(b), "Substantial Taking" shall mean a Taking of either (i) five percent (5%) or more of the net rentable area of the Improvements or (ii) ten percent (10%) or more of the area of the Premises.

(ii) In the event of a Substantial Taking, Beneficiary shall have the absolute right, at its option, without prior demand or notice, to declare all sums secured hereby immediately due and payable on the date thirty (30) days following Beneficiary's election, and Beneficiary shall be entitled to apply all Condemnation Proceeds to the payment required under this Section 1.13(b)(ii). Any Condemnation Proceeds remaining after such application shall be delivered to Trustor or the person or persons then legally entitled thereto.

(c) In the event of a Taking which is not a Substantial Taking, Beneficiary shall have the right to apply all Condemnation Proceeds to the indebtedness evidenced by the Note unless the following conditions are met:

(i) Beneficiary, in Beneficiary's sole and absolute discretion, shall have determined that restoration of the Improvements can be completed prior to the Maturity Date of the Loan and prior to the date required by any applicable Tenant Leases;

(ii) Trustor shall have delivered notice to Beneficiary of its intention to commence repairs and restoration within ten (10) Business Days (as defined in the Note) following the settlement of any claim or claims in connection with any Taking where the Condemnation Proceeds thereof are to be applied to the restoration or repair of the damaged Improvements;

(iii) No Event of Default hereunder or under any of the Loan Documents shall have occurred and be continuing and no event shall have occurred and be continuing which, with the giving of notice or the passage of time, or both, would give rise to an Event of Default hereunder or thereunder;

(iv) All Condemnation Proceeds shall have been deposited with Beneficiary;

(v) Within ten (10) Business Days after the deposit of such Condemnation Proceeds with Beneficiary, Trustor shall have remitted to Beneficiary an amount necessary (as Beneficiary shall determine in its reasonable discretion), if any, to pay the difference between (A) the sum of (1) the cost of restoration and repair of and completion of the Improvements plus (2) all operating expenses of the Trust Estate until such time as the Trust Estate can generate sufficient income to pay such expenses, as determined by Beneficiary in its sole discretion, minus (B) the amount of Condemnation proceeds deposited with Beneficiary in respect of such damage and destruction;

(vi) Trustor shall have delivered to Beneficiary (A) a budget of all costs of reconstruction of the Improvements and (B) a construction contract for such reconstruction work in form and content and with a contractor, reasonably acceptable to Beneficiary; and

(vii) Beneficiary and all applicable governmental authorities shall have approved the final plans and specifications for reconstruction of the Improvements.

In the event all of the foregoing conditions have been fulfilled, all Condemnation Proceeds so applied to the restoration and repair of the Improvements shall be disbursed only as repairs or replacements are effected and as continuing expenses become due and payable. Should Beneficiary elect to restore and repair the Improvements although Trustor has failed to comply with the conditions set forth above, and the Condemnation Proceeds are insufficient to restore and repair such damage to or destruction of the Improvements, Trustor shall pay to Beneficiary, within thirty (30) days of a demand by Beneficiary, an amount equal to the difference between (A) the sum of (1) the cost of restoration and repair of the Improvements, plus (2) all operating expenses of the Trust Estate until such time as the Trust Estate can generate sufficient income to pay such expenses, as determined by Beneficiary in its sole discretion, minus (B) the amount of the Condemnation Proceeds available to Beneficiary for repair and restoration. All funds deposited with Beneficiary which are to be used for the restoration and repair of the Improvements shall be disbursed for such purposes only as repairs or replacements are effected and as continuing expenses become due and payable. In the event Beneficiary elects to apply the Condemnation Proceeds to the obligations arising under the Loan Documents because Trustor has failed to comply with the conditions set forth above, Beneficiary shall not be obligated to make any further disbursements pursuant to the other Loan Documents and Beneficiary shall apply all Condemnation Proceeds to the repayment of the outstanding balance of the Note, together with accrued interest, notwithstanding that the outstanding balance may not be due and payable. If such proceeds are not sufficient to repay the Note in full, Trustor shall immediately pay to Beneficiary an amount equal to such insufficiency. If there are Condemnation Proceeds remaining after repayment of the Note in full, such remaining Condemnation Proceeds shall be paid over to the persons legally entitled thereto.

(d) (i) Unless instructed by Beneficiary in accordance with Section 1.13(b) or Section 1.13(c) hereof that the Condemnation Proceeds payable on account of any Taking are to be applied toward the payment of the indebtedness evidenced by the Note, Trustor shall promptly, regardless of whether such Condemnation Proceeds shall be sufficient for the purpose, commence and diligently proceed to perform and complete, in a first-class workmanlike manner, the restoration, replacement and rebuilding of the Improvements in accordance with the plans and specifications approved by Beneficiary.

(ii) After completion of restoration in accordance with the plans and specifications approved by Beneficiary and payment in full of all of the costs of restoration, as evidenced by a certificate to such effect signed by Trustor and verified by Trustor's architect, and after payment to Beneficiary of all reasonable costs and expenses incurred in connection with the collection of the Condemnation Proceeds (including reasonable adjusters' and attorneys' fees and disbursements and costs incurred by

Beneficiary or its agents in inspecting any restoration and the plans and specification therefor), any remaining Condemnation Proceeds shall be paid over to Trustor.

(e) Except as expressly provided in this **Section 1.13**, Trustor shall not be excused from repairing or maintaining the Trust Estate as provided in **Section 1.2** or restoring all damage or destruction to the Trust Estate, regardless of whether or not there are Condemnation Proceeds available to Trustor or whether any such Condemnation Proceeds are sufficient in amount. The application or release of the Condemnation Proceeds shall not cure or waive any default or notice of default hereunder or under any other Loan Document or invalidate any act done pursuant to such default or notice of default.

**Section 1.14 Additional Security.** No other security now existing, or hereafter taken, to secure the obligations secured hereby shall be impaired or affected by the execution of this Deed of Trust. All security for the Obligations from time to time shall be taken, considered and held as cumulative. Any taking of additional security, execution of partial releases of the security, or any extension of the time of payment of, or modification of other terms of any of the Obligations shall not diminish the force, effect or lien of this Deed of Trust and shall not affect or impair the liability of any maker, guarantor, surety or endorser for the payment or performance of any of the Obligations. In the event Beneficiary at any time holds additional security for any of the Obligations, it may enforce the sale thereof or otherwise realize upon the same, at its option, either before, concurrently with, or after a sale or realization is made hereunder.

**Section 1.15 Appointment of Successor Trustee.** Beneficiary may, from time to time, by a written instrument executed and acknowledged by Beneficiary, mailed to Trustor and recorded in the county in which the Trust Estate is located and by otherwise complying with the provisions of applicable law, substitute a successor or successors to any Trustee named herein or acting hereunder, and such successor(s) shall, without conveyance from the Trustee predecessor, succeed to all title, estate, rights, powers and duties of such predecessor.

**Section 1.16 Inspections.** Subject to the rights of any parties in possession and subject to adherence with applicable laws, Beneficiary, and its agents, representatives officers, and employees, are authorized to enter at any reasonable time upon or in any part of the Trust Estate for the purpose of inspecting the same and for the purpose of performing any of the acts Beneficiary is authorized to perform hereunder or under the terms of any of the Loan Documents.

**Section 1.17 Ownership and Liens and Encumbrances.** Trustor is, and as to any portion of the Trust Estate acquired hereafter will upon such acquisitions be, and shall remain the owner of the Trust Estate free and clear of any Liens and Encumbrances, except to the extent permitted by and in accordance with this **Section 1.17** or the other Loan Documents. Trustor shall not grant, shall not suffer to exist, and shall pay and promptly discharge, at Trustor's cost and expense, all Liens and Encumbrances and any claims thereof upon the Trust Estate, or any part thereof or interest therein. Trustor shall notify Beneficiary immediately in writing of any Lien or Encumbrance or claim thereof. Trustor shall have the right to contest in good faith the validity of any involuntary Lien or Encumbrance, provided Trustor shall first deposit with Beneficiary a bond or other security satisfactory to Beneficiary in such amount as Beneficiary

shall reasonably require, but not more than one hundred fifty percent (150%) of the amount of the claim, and provided further that if Trustor loses such contest, Trustor shall thereafter diligently proceed to cause such Lien or Encumbrance to be removed and discharged. If Trustor shall fail to remove and discharge any Lien or Encumbrance or claim thereof, then, in addition to any other right or remedy of Beneficiary, Beneficiary may, after only such notice to Trustor as may be reasonable under the then existing circumstances, but shall not be obligated to, discharge the same, either by paying the amount claimed to be due, or by procuring the discharge of such Lien or Encumbrance by depositing in a court a bond or the amount claimed or otherwise giving security for such claim, or by procuring such discharge in such manner as is or may be prescribed by law. Trustor shall, within ten (10) days following written demand therefor by Beneficiary, pay to Beneficiary an amount equal to all costs and expenses incurred by Beneficiary in connection with the exercise by Beneficiary of the foregoing right to discharge any Lien or Encumbrance or claim thereof, together with interest thereon from the date of each such expenditure at the Agreed Rate. Such costs and expenses shall be secured by this Deed of Trust. "Lien or Encumbrance" and "Liens and Encumbrances" mean, respectively, each and all of the following in respect of the Trust Estate: leases, other rights to occupy or use, mortgages, deeds of trust, pledges, security agreements, assignments, assignments as security, conditional sales, title retention arrangements or agreements, conditions, covenants, and restrictions, and other charges, liens, encumbrances, or adverse interests, whether voluntarily or involuntarily created and regardless of whether prior or subordinate to any estate, right, title, or interest granted to Trustee or Beneficiary in this Deed of Trust, excluding from the foregoing the Permitted Exceptions.

**Section 1.18 Trustee's Powers.** At any time, or from time to time, without liability therefor and without notice, upon written request of Beneficiary and presentation of this Deed of Trust and without affecting the personal liability of any person for payment of the Obligations or the effect of this Deed of Trust upon the remainder of said Trust Estate, Trustee may (a) reconvey any part of said Trust Estate, (b) with the consent of Trustor, consent in writing to the making of any map or plat thereof, (c) with the consent of Trustor, join in granting any easement thereon, or (d) join in any extension agreement or any agreement subordinating the lien or charge hereof.

**Section 1.19 Beneficiary's Powers.** Without affecting the liability of any Person liable for the payment of the Obligations herein mentioned, and without affecting the lien or charge of this Deed of Trust upon any portion of the Trust Estate not then or theretofore released as security for the Obligations, Beneficiary may, from time to time and without notice (a) release any person so liable, (b) extend the Obligations, (c) grant other indulgences, (d) release or reconvey, or cause to be released or reconveyed, at any time at Beneficiary's option any parcel, portion or all of the Trust Estate, (e) take or release any other or additional security or any guaranty for any Obligation herein mentioned, or (f) make compositions or other arrangements with debtors in relation thereto.

**Section 1.20 Financial Statements.** Trustor shall deliver to Beneficiary such financial statements, balance sheets, profit and loss statements, operating statements, income and expense statements and other financial information in such detail and at the times required by the Loan Agreement. All such statements shall be prepared in accordance with the requirements of the

Loan Agreement. Beneficiary shall have the right to audit, inspect and copy all of Trustor's books and records, relating thereto.

**Section 1.21 Trade Names.** At the request of Beneficiary from time to time, Trustor shall execute a certificate in form satisfactory to Beneficiary listing the trade names or fictitious business names under which Trustor intends to operate the Trust Estate or any business located thereon and representing and warranting that Trustor does business under no other trade names or fictitious business names with respect to the Trust Estate. Trustor shall immediately notify Beneficiary in writing of any change in said trade names or fictitious business names, and will, upon request of Beneficiary, authorize any additional financing statements and execute any other certificates necessary to reflect the change in trade names or fictitious business names.

**Section 1.22 Leasehold.** If a leasehold estate constitutes a portion of the Trust Estate, Trustor agrees not to amend, modify, extend, renew or terminate such leasehold estate, any interest therein, or the lease granting such leasehold estate, except as permitted in the Loan Agreement, without the prior written consent of Beneficiary. Consent to one amendment, modification, extension or renewal shall not be deemed to be a waiver of the right to require consent to other, future or successive amendments, modifications, extensions or renewals. Trustor agrees to perform all obligations and agreements under said leasehold and shall not take any action or omit to take any action which would effect or permit the termination of said leasehold. Trustor agrees to promptly notify Beneficiary in writing with respect to any default or alleged default by any party thereto and to deliver to Beneficiary copies of all notices, demands, complaints or other communications received or given by Trustor with respect to any such default or alleged default. Beneficiary shall have the option to cure any such default and to perform any or all of Trustor's obligations thereunder. All sums expended by Beneficiary in curing any such default shall be secured hereby and shall be immediately due and payable without demand or notice and shall bear interest from date of expenditure at the Agreed Rate.

## **2. ASSIGNMENT OF RENTS**

**Section 2.1 Assignment of Rents.** Trustor hereby absolutely and irrevocably assigns and transfers to Beneficiary all the Rents of the Trust Estate, and hereby gives to and confers upon Beneficiary the right, power and authority to collect the Rents. Trustor irrevocably appoints Beneficiary its true and lawful attorney-in-fact, at the option of Beneficiary at any time and from time to time, to demand, receive and enforce payment, to give receipts, releases and satisfactions, and to sue, in the name of Trustor or Beneficiary, for all Rents and apply the same to the payment of the Obligations in such order as Beneficiary shall determine. Trustor hereby authorizes and directs the lessees, tenants and occupants to make all payments under the Leases directly to Beneficiary upon written demand by Beneficiary, without further consent of Trustor; provided, however, that Trustor shall have the right to collect such Rents (but not more than one (1) month in advance unless the written approval of Beneficiary is first obtained), and to retain and enjoy same, so long as an Event of Default shall not have occurred and shall not be continuing hereunder or under the other Loan Documents. The assignment of the Rents of the Trust Estate in this **Article 2** is intended to be an absolute and unconditional present assignment from Trustor to Beneficiary and not merely the passing of a security interest. Beneficiary's rights to the Rents are not contingent upon and may be exercised without possession of the Trust Estate.

**Section 2.2 Collection Upon an Event of Default.** Upon the occurrence and continuance of an Event of Default, Beneficiary may, at any time without notice, either in person, by agent or by a receiver appointed by a court, and without regard to the adequacy of any security for the Obligations, enter upon and take possession of the Trust Estate, or any part thereof, and, with or without such entry or taking possession, in its own name sue for or otherwise collect the Rents (including, without limitation, those past due and unpaid) and apply the same, less costs and expenses of operation and collection (including, without limitation, attorneys' fees) upon payment of the Obligations in such order as Beneficiary may determine. The collection of such Rents, or the entering upon and taking possession of the Trust Estate, or the application of the Rents as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done in response to such default or pursuant to such notice of default. Trustor also hereby authorizes Beneficiary upon such entry, at its option, to take over and assume the management, operation and maintenance of the Trust Estate and to perform all acts Beneficiary in its sole discretion deems necessary and proper and to expend such sums out of Rents as may be needed in connection therewith, in the same manner and to the same extent as Trustor theretofore could do (including, without limitation, the right to enter into new Leases, to cancel, surrender, alter or amend the terms of, and/or renew existing Leases and/or to make concessions to tenants). Trustor hereby releases all claims of any kind or nature against Beneficiary arising out of such management, operation and maintenance, excepting the liability of Beneficiary to account as hereinafter set forth.

**Section 2.3 Application of Rents.** Upon such entry, Beneficiary shall, after payment of all property charges and expenses (including, without limitation, reasonable compensation to such managing agent as it may select and employ) and after the accumulation of a reserve to meet requisite amounts, credit the net amount of the Rents received by it to the Obligations, but the manner of the application of such net income and which items shall be credited shall be determined in the sole discretion of Beneficiary. Beneficiary shall not be accountable for more monies than it actually receives from the Trust Estate; nor shall it be liable for failure to collect Rents. Beneficiary shall make reasonable efforts to collect Rents, reserving, however, within its own absolute and sole discretion, the right to determine the method of collection and the extent to which enforcement of collection of Rents shall be prosecuted and Beneficiary's judgment shall be deemed conclusive and reasonable.

**Section 2.4 Mortgage in Possession.** It is not the intention of the parties hereto that an entry by Beneficiary upon the Premises under the terms of this instrument shall make Beneficiary a party in possession in contemplation of the law, except at the option of Beneficiary.

**Section 2.5 Indemnity.** Trustor hereby agrees to indemnify and hold harmless Beneficiary for, from and against any and all losses, liabilities, obligations, claims, demands, damages, penalties, judgments, costs, and expenses, including legal fees and expenses, howsoever and by whomsoever asserted, arising out of or in any way connected with this assignment except to the extent of Beneficiary's gross negligence or willful misconduct; and all such losses, liabilities, obligations, claims, demands, damages, penalties, judgments, costs and expenses shall be deemed added to the indebtedness secured hereby and shall be secured by any and all other instruments securing said indebtedness.

**Section 2.6 No Obligation to Perform.** Nothing contained herein shall operate or be construed to obligate Beneficiary to perform any obligations of Trustor under any Lease (including, without limitation, any obligation arising out of any covenant of quiet enjoyment therein contained in the event the lessee under any such Lease shall have been joined as a party defendant in any action to foreclose and the estate of such lessee shall have been thereby terminated). Prior to actual entry into and taking possession of the Premises by Beneficiary, this assignment shall not operate to place upon Beneficiary any responsibility for the operation, control, care, management or repair of the Trust Estate or any portion thereof, and the execution of this assignment by Trustor shall constitute conclusive evidence that all responsibility for the operation, control, care, management and repair of the Trust Estate is and shall be that of Trustor, prior to such actual entry and taking of possession.

### **3. SECURITY AGREEMENT**

**Section 3.1 Creation of Security Interest.** Trustor hereby grants to Beneficiary, a security interest in and to all the Personal Property to secure the payment and performance of the Obligations:

**Section 3.2 Representations, Warranties and Covenants of Trustor.** Trustor hereby represents, warrants and covenants (which representations, warranties and covenants shall survive creation of any indebtedness of Trustor to Beneficiary and any extension of credit thereunder) as follows:

- (a) The Personal Property is not used or bought for personal, family or household purposes.
- (b) The tangible portion of the Personal Property will be kept on or at the Premises or Improvements and Trustor will not, without the prior written consent of Beneficiary, remove the Personal Property or any portion thereof therefrom except such portions or items of Personal Property which are consumed or worn out in ordinary usage, all of which shall be promptly replaced by Trustor with similar items of equal or greater value.
- (c) Trustor hereby authorizes Beneficiary to file one or more financing statements, financing statement amendments, continuation statements and fixture filings, and at the request of Beneficiary, Trustor will authorize and/or execute such other documents as Beneficiary may from time to time require to perfect or continue the perfection of Beneficiary's interest in any Personal Property or Rents, pursuant to the Uniform Commercial Code of Arizona, in form satisfactory to Beneficiary and will pay the cost of recording and filing the same in all public offices wherever recording or filing is deemed by Beneficiary to be necessary or desirable.
- (d) Trustor's exact legal name is that indicated in the introductory paragraph hereof.
- (e) Trustor is an organization of the type, and is organized in the jurisdiction set forth in the introductory paragraph hereof.
- (f) Trustor's principal place of business is in the State of Minnesota at c/o Provident Real Estate Ventures, 2800 Niagara Lane North, Plymouth, Minnesota 55447. Trustor does not

do business under any trade name except as previously disclosed in writing to Beneficiary. Trustor will promptly notify Beneficiary in writing of any change in its place of business or the adoption or change of any organizational name, trade name or fictitious business name, and will upon request of Beneficiary, authorize any additional financing statements or execute any other certificates necessary to reflect the adoption or change in trade name or fictitious business name. Trustor will also promptly notify Beneficiary (i) of any change of Trustor's organizational identification number or (ii) if Trustor does not now have an organizational identification number and later obtains one, of such organizational identification number.

(g) Trustor will not change its name or the type of legal entity that it is without Beneficiary's prior written consent.

(h) Trustor will not change its state of incorporation or organization, without, in each instance, giving Beneficiary at least forty-five (45) days' prior written notice thereof and taking all actions deemed necessary or appropriate by Beneficiary to continuously protect and perfect Beneficiary's liens and security interests in the Trust Estate.

(i) Trustor shall promptly notify Beneficiary of any claim against the Personal Property adverse to the interest of Beneficiary therein.

**Section 3.3 Use of Personal Property by Trustor.** Until the occurrence and continuance of an Event of Default hereunder or under any other Loan Document, Trustor may have possession of the Personal Property and use it in any lawful manner not inconsistent with this Deed of Trust and not inconsistent with any policy of insurance thereon.

**Section 3.4 Remedies Upon an Event of Default.**

(a) In addition to the remedies provided in **Article 4** hereof, upon the occurrence and continuance of an Event of Default hereunder, Beneficiary may, at its option, do any one or more of the following:

(i) Either personally, or by means of a court appointed receiver, take possession of all or any of the Personal Property and exclude therefrom Trustor and all others claiming under Trustor, and thereafter hold, store, use, operate, manage, maintain and control, make repairs, replacements, alterations, additions and improvements to and exercise all rights and powers of Trustor with respect to the Personal Property or any part thereof. In the event Beneficiary demands, or attempts to take possession of the Personal Property in the exercise of any rights under this Deed of Trust, Trustor agrees to promptly turn over and deliver possession thereof to Beneficiary;

(ii) Without notice to or demand upon Trustor, make such payments and do such acts as Beneficiary may deem necessary to protect its security interest in the Personal Property (including, without limitation, paying, purchasing, contesting or compromising any Lien or Encumbrance, whether superior or inferior to such security interest) and in exercising any such powers or authority to pay all expenses (including, without limitation, litigation costs and reasonable attorney's fees) incurred in connection therewith;

(iii) Require Trustor from time to time to assemble the Personal Property, or any portion thereof, at a place designated by Beneficiary and reasonably convenient to both parties, and deliver promptly such Personal Property to Beneficiary, or an agent or representative designated by Beneficiary. Beneficiary, and its agents and representatives, shall have the right to enter upon any or all of Trustor's premises and property to exercise Beneficiary's rights hereunder;

(iv) Realize upon the Personal Property or any part thereof as herein provided or in any manner permitted by law and exercise any and all of the other rights and remedies conferred upon Beneficiary by this Deed of Trust, any other Loan Document, or by law, either concurrently or in such order as Beneficiary may determine;

(v) Sell or cause to be sold in such order as Beneficiary may determine, as a whole or in such parcels as Beneficiary may determine, the Personal Property and the remainder of the Trust Estate;

(vi) Sell, lease, or otherwise dispose of the Personal Property at public sale, upon terms and in such manner as Beneficiary may determine. Beneficiary may be a purchaser at any sale; and

(vii) Exercise any remedies of a secured party under the Uniform Commercial Code of Arizona or any other applicable law.

(b) Unless the Personal Property is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market, Beneficiary shall give Trustor at least ten (10) days' prior written notice of the time and place of any public sale of the Personal Property or other intended disposition thereof to be made. Such notice may be mailed to Trustor at the address set forth in Section 5.5. If Beneficiary fails to comply with this Section 3.4 in any respect, its liability for such failure shall be limited to the liability (if any) imposed on it as a matter of law under the Uniform Commercial Code of Arizona (or under the Uniform Commercial Code, enforced from time to time, in any other state to the extent the same is the applicable law).

(c) The proceeds of any sale under Section 3.4(a)(iv) shall be applied as follows:

(i) To the repayment of the reasonable costs and expenses of taking, holding, and preparing for the sale and the selling of the Personal Property (including, without limitation, costs of litigation and attorneys' fees) and the discharge of all Impositions, Liens and Encumbrances, and claims thereof, if any, on the Personal Property prior to the security interest granted herein (except any Impositions or Liens and Encumbrances subject to which such sale shall have been made);

(ii) To the payment of the Obligations in such order as Beneficiary shall determine; and

(iii) The surplus, if any, shall be paid to the Trustor or to whomsoever may be lawfully entitled to receive the same, or as a court of competent jurisdiction may direct.

(d) Beneficiary shall have the right to enforce one or more remedies hereunder, successively or concurrently, and such action shall not operate to estop or prevent Beneficiary from pursuing any further remedy that it may have. Any repossession or retaking or sale of the Personal Property pursuant to the terms hereof shall not operate to release Trustor until full payment of any deficiency has been made in cash.

(e) Beneficiary shall comply with any applicable state or federal law or regulatory requirements in connection with a disposition of the Personal Property and such compliance will not be considered to affect adversely the commercial reasonableness of any sale of the Personal Property.

(f) Beneficiary may sell the Personal Property without giving any warranties as to such property, and may specifically disclaim any warranties of title, merchantability, fitness for a particular purpose or the like, and this procedure would not be considered to adversely affect the commercial reasonableness of any sale of the Personal Property. Trustor acknowledges that a private sale of the Personal Property may result in less proceeds than a public sale.

(g) Trustor acknowledges that the Personal Property may be sold at a loss to Trustor and that, in such event, Beneficiary shall have no liability or responsibility to Trustor for such loss.

**Section 3.5 Security Agreement.** This Deed of Trust constitutes and shall be deemed to be a "security agreement" for all purposes of the Uniform Commercial Code of Arizona and Beneficiary shall be entitled to all the rights and remedies of a "secured party" under such Uniform Commercial Code of Arizona.

**Section 3.6 Fixture Filing.** Upon its recording in the real property records, this Deed of Trust shall be effective as a financing statement filed as a fixture filing. This Deed of Trust shall also be effective as a financing statement covering as-extracted collateral (including oil and gas), accounts and general intangibles under the Uniform Commercial Code of Arizona and the Uniform Commercial Code as in effect from time to time in any other state where the Property is situated. In addition, a carbon, photographic or other reproduced copy of this Deed of Trust and/or any financing statement relating hereto shall be sufficient for filing and/or recording as a financing statement. The filing of any other financing statement relating to any personal property, rights or interests described herein shall not be construed to diminish any right or priority hereunder.

**Section 3.7 Authorization to File Financing Statements; Power of Attorney.** Trustor hereby authorizes Beneficiary at any time and from time to time to file any initial financing statements, amendments thereto, and continuation statements with or without signature of Trustor as authorized by applicable law, as applicable to the Trust Estate. For purposes of such filing, Trustor agrees to furnish any information requested by Beneficiary promptly upon request by Beneficiary. Trustor also ratifies its authorization for Beneficiary to have filed any like initial financing statements, amendments thereto, or continuation statements if filed prior to the date of this Deed of Trust. Trustor hereby irrevocably constitutes and appoints Beneficiary and any officer or agent of Beneficiary, with full power of substitution, as its true and lawful attorneys-in-fact with full irrevocable power and authority in the place and stead of Trustor or in

Trustor's own name to execute in Trustor's name any such documents and to otherwise carry out the purposes of this Section 3.7, to the extent that Trustor's authorization above is not sufficient. To the extent permitted by law, Trustor hereby ratifies and affirms all acts said attorneys-in-fact shall lawfully do, have done in the past, or caused to be done in the future by virtue hereof. This power of attorney is a power coupled with an interest and shall be irrevocable.

#### 4. REMEDIES UPON DEFAULT

Section 4.1 Events of Default. The occurrence of any Event of Default as defined and set forth in the Loan Agreement shall constitute an "Event of Default" under this Deed of Trust.

Section 4.2 Acceleration Upon Default; Additional Remedies. Upon the occurrence and continuance of an Event of Default, Beneficiary may, at its option, declare all or any part of the Obligations immediately due and payable without any presentment, demand, protest or notice of any kind. Beneficiary may, in addition to the exercise of any or all of the remedies specified in Section 3.4:

(a) Either in person or by agent, with or without bringing any action or proceeding, or by a receiver appointed by a court and without regard to the adequacy of its security, enter upon and take possession of the Trust Estate, or any part thereof, in its own name or in the name of Trustee, and do any acts that it deems necessary or desirable to preserve the value, marketability or rentability of the Trust Estate, or any part thereof or interest therein, increase the income therefrom or protect the security hereof and, with or without taking possession of the Trust Estate, sue for or otherwise collect the Rents, or any part thereof, including, without limitation, those past due and unpaid, and apply the same, less costs and expenses of operation and collection (including, without limitation, attorneys' fees) upon the Obligations, all in such order as Beneficiary may determine. The entering upon and taking possession of the Trust Estate, the collection of such Rents and the application thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done in response to such default or pursuant to such notice of default and, notwithstanding the continuance in possession of all or any portion of the Trust Estate or the collection, receipt and application of Rents, Trustee or Beneficiary shall be entitled to exercise every right provided for in any of the Loan Documents or by law upon the occurrence and continuance of any Event of Default, including, without limitation, the right to exercise the power of sale;

(b) Commence an action to foreclose the lien of this Deed of Trust as a mortgage, appoint a receiver, or specifically enforce any of the covenants hereof;

(c) Exercise of the power of sale herein contained and deliver to Trustee a written statement of breach, notice of default and election to cause Trustor's interest in the Trust Estate to be sold; or

(d) Exercise all other rights and remedies provided herein, in any Loan Document or other document or agreement now or hereafter securing or guarantying all or any portion of the Obligations, or by law, including, without limitation, the rights and remedies provided in A.R.S. Section 33-702.B.

**Section 4.3 Exercise of Power of Sale.** If Beneficiary elects to exercise the power of sale herein contained, Beneficiary shall notify Trustee and shall deposit with Trustee this Deed of Trust and the Note and such receipts and evidence of expenditures made and secured hereby as Trustee may require.

(a) Upon receipt of such statement and notice from Beneficiary, Trustee shall cause to be recorded, published and delivered to Trustor such Notice of Sale as then required by law. Trustee shall, without demand on Trustor, after lapse of such time as may then be required by law and after recordation of such Notice of Sale and Notice of Sale having been given as required by law, sell the Trust Estate at the time and place of sale fixed by it in said Notice of Sale, either as a whole, or in separate lots or parcels or items as Trustee shall deem expedient, and in such order as it may determine, at public auction to the highest bidder for cash in lawful money of the United States payable at the time of sale. Trustee shall deliver to such purchaser or purchasers thereof its good and sufficient deed or deeds conveying the property so sold, but without any covenant or warranty, express or implied. The recitals in such deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including, without limitation, Trustor, Trustee or Beneficiary, may purchase at such sale and Trustor hereby covenants to warrant and defend the title of such purchaser or purchasers.

(b) After deducting all costs, fees and expenses of Trustee and of this Trust, including, without limitation, Trustee's fees and reasonable attorneys' fees, and costs of evidence of title in connection with sale, Trustee shall apply the proceeds of sale in the following priority, to payment of: (i) first, all sums expended under the terms of the Loan Documents, not then repaid, with accrued interest at the Agreed Rate; (ii) second, all sums due under the Note; (iii) all other sums, then secured hereby; and (iv) the remainder, if any, to the person or persons legally entitled thereto or as provided in A.R.S. Section 33-812 or any similar or successor statute.

(c) Subject to A.R.S. Section 33-810.B, Trustee may postpone sale of all or any portion of the Trust Estate by public announcement at such time and place of sale, and from time to time thereafter may postpone such sale by public announcement or subsequently noticed sale, and without further notice make such sale at the time fixed by the last postponement, or may, in its discretion, give a new notice of sale.

**Section 4.4 Personal Property.** It is the express understanding and intent of the parties that as to any personal property interests subject to Chapter 9 of the Uniform Commercial Code of Arizona, Beneficiary, upon an Event of Default, may proceed under such Uniform Commercial Code of Arizona or may proceed as to both real and personal property interests in accordance with the provisions of this Deed of Trust and its rights and remedies in respect to real property, as specifically permitted under A.R.S. Section 47-9604, and treat both real and personal property interests as one parcel or package of security.

**Section 4.5 Appointment of Receiver.** Upon the occurrence of an Event of Default, Beneficiary, as a matter of right and, to the extent permitted by applicable law, without notice to Trustor or any one claiming under Trustor, and without regard to the then value of the Trust Estate or the interest of Trustor therein, shall have the right to apply to any court having jurisdiction to appoint a receiver or receivers of the Trust Estate, and, to the extent permitted by applicable law, Trustor hereby irrevocably consents to such appointment and waives notice of

any application therefor. Any such receiver or receivers shall have all the usual powers and duties of receivers in like or similar cases and all the powers and duties of Beneficiary in case of entry as provided herein and shall continue as such and exercise all such powers until the later of the date of confirmation of sale of the Trust Estate or the date of expiration of any redemption period unless such receivership is sooner terminated.

**Section 4.6 Remedies Not Exclusive.** Trustee and Beneficiary, and each of them, shall be entitled to enforce payment and performance of any and all of the Obligations and to exercise all rights and powers under the Loan Documents and under the law now or hereafter in effect, notwithstanding some or all of the Obligations may now or hereafter be otherwise secured or guaranteed. Neither the acceptance of this Deed of Trust nor its enforcement, whether by court action or pursuant to the power of sale or other rights herein contained, shall prejudice or in any manner affect Trustee's or Beneficiary's right to realize upon or enforce any other security or guaranty now or hereafter held by Trustee or Beneficiary, it being agreed that Trustee and Beneficiary, and each of them shall be entitled to enforce this Deed of Trust and any other security or any guaranty now or hereafter held by Beneficiary or Trustee in such order and manner as they or either of them may in their absolute discretion determine. No remedy herein conferred upon or reserved to Trustee or Beneficiary 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 under the law. Every power or remedy given by any of the Loan Documents or by law to Trustee or Beneficiary or to which either of them may be otherwise entitled, may be exercised, concurrently or independently, from time to time and as often as may be deemed expedient by Trustee or Beneficiary and, to the extent permitted by law, either of them may pursue inconsistent remedies.

**Section 4.7 Request for Notice.** Trustor hereby requests a copy of any notice of default and that any notice of sale hereunder be mailed to it at the address set forth in **Section 5.5.**

## **5. MISCELLANEOUS**

**Section 5.1 Change, Discharge, Termination, or Waiver.** No provision of this Deed of Trust may be changed, discharged, terminated, or waived except in a writing signed by the party against whom enforcement of the change, discharge, termination, or waiver is sought. No failure on the part of Beneficiary to exercise and no delay by Beneficiary in exercising any right or remedy under the Loan Documents or under the law shall operate as a waiver thereof.

**Section 5.2 Trustor Waiver of Rights.** Trustor waives, to the extent permitted by law, (a) the benefit of all laws now existing or that may hereafter be enacted providing for any appraisalment before sale of any portion of the Trust Estate, and (b) all rights of redemption, valuation, appraisalment, stay of execution, notice of election to mature or declare due the Obligations and marshaling in the event of foreclosure of the liens hereby created, and (c) all rights and remedies that Trustor may have or be able to assert by reason of the laws of the State of Arizona pertaining to the rights and remedies of sureties including, without limitation, A.R.S. Sections 12-1641 through 12-1646, and any requirement to join the primary obligor in a suit against Trustor (including by reason of the application of Rule 17(e) of the Arizona Rules of Civil Procedure).

**Section 5.3** **Statements by Trustor.** Trustor shall, within ten (10) days after written notice thereof from Beneficiary, deliver to Beneficiary a written statement stating the unpaid principal of and interest on the Note and any other amounts secured by this Deed of Trust and stating whether any offset or defense exists against such principal and interest or such other amounts.

**Section 5.4** **Reconveyance by Trustee.** Upon written request of Beneficiary stating that all Obligations have been satisfied in full, and upon surrender of this Deed of Trust and the Note to Trustee for cancellation and retention and upon payment by Trustor of Trustee's fees, Trustee shall reconvey to Trustor, or to the person or persons legally entitled thereto, without warranty, any portion of the Trust Estate then held hereunder. The recitals in such reconveyance of any matters or facts shall be conclusive proof of the truthfulness thereof. The grantee in any reconveyance may be described as "the person or persons legally entitled thereto."

**Section 5.5** **Notices.** All notices, requests and demands to be made hereunder to the parties hereto shall be in writing and shall be delivered by hand or sent by registered or certified mail, return receipt requested, through the United States Postal Service or by a reputable overnight courier to the addresses shown below or such other address which the parties may provide to one another in accordance herewith. Such notices, requests and demands, if sent by mail, shall be deemed given three (3) days after deposit in the United States mail, if sent by overnight courier, shall be deemed given on the next Business Day after deposit with such overnight courier, and if delivered by hand, shall be deemed given when delivered.

To Beneficiary: Western Alliance Bank  
One East Washington Street, 14<sup>th</sup> Floor  
Phoenix, Arizona 85004  
Attention: Ericka LeMaster

To Trustor: Verde Fencepost LLC  
c/o Provident Real Estate Ventures  
2800 Niagara Lane North  
Plymouth, Minnesota 55447  
Attention: Phillip M. Jaffe

**Section 5.6** **Acceptance by Trustee.** Trustee accepts this Trust when this Deed of Trust, duly executed and acknowledged, is made a public record as provided by law.

**Section 5.7** **Captions and References.** The headings at the beginning of each section of this Deed of Trust are solely for convenience and are not part of this Deed of Trust. Unless otherwise indicated, each reference in this Deed of Trust to a section or an exhibit is a reference to the respective section herein or exhibit hereto.

**Section 5.8** **Invalidity of Certain Provisions.** If any provision of this Deed of Trust is unenforceable, the enforceability of the other provisions shall not be affected and they shall remain in full force and effect. If the lien of this Deed of Trust is invalid or unenforceable as to any part of the debt, or if the lien is invalid or unenforceable as to any part of the Trust Estate, the unsecured or partially secured portion of the debt shall be completely paid prior to the

payment of the remaining and secured or partially secured portion of the debt, and all payments made on the debt, whether voluntary or under foreclosure or other enforcement action or procedure, shall be considered to have been first paid on and applied to the full payment of that portion of the debt which is not secured or fully secured by the lien of this Deed of Trust.

**Section 5.9 Subrogation.** To the extent that proceeds of the Note are used to pay any outstanding lien, charge or prior encumbrance against the Trust Estate, such proceeds have been or will be advanced by Beneficiary at Trustor's request and Beneficiary shall be subrogated to any and all rights and liens held by any owner or holder of such outstanding liens, charges and prior encumbrances, irrespective of whether said liens, charges or encumbrances are released.

**Section 5.10 Attorneys' Fees.** If any or all of the Obligations are not paid when due or if an Event of Default occurs, Trustor agrees to pay all costs of enforcement and collection and preparation therefore (including, without limitation, reasonable attorney's fees) whether or not any action or proceeding is brought (including, without limitation, all such costs incurred in connection with any bankruptcy, receivership, or other court proceedings (whether at the trial or appellate level)), together with interest therein from the date of demand at the Agreed Rate.

**Section 5.11 GOVERNING LAW; JURISDICTION.**

(a) THIS DEED OF TRUST HAS BEEN DELIVERED IN ARIZONA, AND SHALL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE STATE OF ARIZONA, WITHOUT GIVING EFFECT TO CONFLICT OF LAWS PRINCIPLES.

(b) Trustor irrevocably and unconditionally agrees that it will not commence any action, litigation or proceeding of any kind or description, whether in law or equity, whether in contract or in tort or otherwise, against the Beneficiary or any affiliate of the Beneficiary in any way relating to this Deed of Trust or any other Loan Document or the transactions relating hereto or thereto, in any forum other than the courts of the State of Arizona sitting in Maricopa County, and of the United States District Court of the District of Arizona, and any appellate court from any thereof, and each of the parties hereto irrevocably and unconditionally submits to the jurisdiction of such courts and agrees that all claims in respect of any such action, litigation or proceeding may be heard and determined in such Arizona State court or, to the fullest extent permitted by applicable law, in such federal court. Each of the parties hereto agrees that a final judgment in any such action, litigation or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in this Deed of Trust or in any other Loan Document shall affect any right that the Beneficiary may otherwise have to bring any action or proceeding relating to this Deed of Trust or any other Loan Document against the Trustor or any other Loan Party or its properties in the courts of any jurisdiction.

**Section 5.12 WAIVER OF JURY TRIAL.** TRUSTOR AND BENEFICIARY (BY ITS ACCEPTANCE HEREOF) HEREBY VOLUNTARILY, KNOWINGLY, IRREVOCABLY AND UNCONDITIONALLY WAIVE ANY RIGHT TO HAVE A JURY PARTICIPATE IN RESOLVING ANY DISPUTE (WHETHER BASED UPON CONTRACT, TORT OR OTHERWISE) BETWEEN OR AMONG TRUSTOR AND BENEFICIARY ARISING OUT

OF OR IN ANY WAY RELATED TO THIS DEED OF TRUST OR ANY OTHER RELATED DOCUMENT OR LOAN DOCUMENT. THIS PROVISION IS A MATERIAL INDUCEMENT TO BENEFICIARY TO PROVIDE THE FINANCING DESCRIBED HEREIN OR IN THE OTHER LOAN DOCUMENTS.

**Section 5.13 Joint and Several Obligations.** If this Deed of Trust is signed by more than one party as Trustor, all obligations of Trustor herein shall be the joint and several obligations of each party executing this Deed of Trust as Trustor.

**Section 5.14 Number and Gender.** In this Deed of Trust the singular shall include the plural and the masculine shall include the feminine and neuter gender and vice versa, if the context so requires.

**Section 5.15 Loan Statement Fees.** Trustor shall pay the amount demanded by Beneficiary or its authorized loan servicing agent for any statement regarding the Obligations, provided, however, that such amount may not exceed the maximum amount allowed by law at the time request for the statement is made.

**Section 5.16 Counterparts.** This document may be executed and acknowledged in counterparts, all of which executed and acknowledged counterparts shall together constitute a single document. Signature and acknowledgment pages may be detached from the counterparts and attached to a single copy of this document to form physically one document, which may be recorded.

**Section 5.17 No Merger of Lease.** If both the lessor's and lessee's estate under any lease or any portion thereof which constitutes a part of the Trust Estate shall at any time become vested in one owner, this Deed of Trust and the lien created hereby shall not be destroyed or terminated by application of the doctrine of merger unless Beneficiary so elects as evidenced by recording a written declaration executed by Beneficiary so stating, and, unless and until Beneficiary so elects, Beneficiary shall continue to have and enjoy all of the rights and privileges of Beneficiary as to the separate estates. In addition, upon the foreclosure of the lien created by this Deed of Trust on the Trust Estate pursuant to the provisions hereof, any leases or subleases then existing and affecting all or any portion of the Trust Estate shall not be destroyed or terminated by application of the law of merger or as a matter of law or as a result of such foreclosure unless Beneficiary or any purchaser at such foreclosure sale shall so elect. No act by or on behalf of Beneficiary or any such purchaser shall constitute a termination of any lease or sublease unless Beneficiary or such purchaser shall give written notice thereof to such tenant or subtenant.

**Section 5.18 Representations and Warranties.** Trustor represents and warrants to Beneficiary that:

(a) it is the lawful owner of the Trust Estate free and clear of all Liens and Encumbrances and holds a fee simple estate in the Premises and Improvements, subject only to the Permitted Exceptions and that Trustor has full right, power and authority to convey and mortgage the same and to execute this Deed of Trust;

(b) Trustor's exact legal name is correctly set forth in the introductory paragraph of this Deed of Trust;

(c) if Trustor is not an individual, Trustor is an organization of the type and (if not an unregistered entity) is incorporated in or organized under the laws of the state specified in the introductory paragraph of this Deed of Trust; and

(d) if Trustor is an unregistered entity (including, without limitation, a general partnership), it is organized under the laws of the state specified in the introductory paragraph of this Deed of Trust.

**Section 5.19 Integration.** The Loan Documents contain the complete understanding and agreement of Trustor and Beneficiary and supersede all prior representations, warranties, agreements, arrangements, understandings, and negotiations.

**Section 5.20 Binding Effect.** The Loan Documents will be binding upon, and inure to the benefit of, Trustor, Trustee and Beneficiary and their respective successors and assigns. Trustor may not delegate its obligations under the Loan Documents.

**Section 5.21 Time of the Essence.** Time is of the essence with regard to the each provision of the Loan Documents as to which time is a factor.

**Section 5.22 Survival.** The representations, warranties, and covenants of the Trustor and the Loan Documents shall survive the execution and delivery of the Loan Documents and the making of the Loan.

**Section 5.23 Development of the Trust Estate.** Beneficiary shall not unreasonably withhold its consent to any development agreements, easements, covenants, or other agreements reasonably required in connection with the development of the Trust Estate.

**Section 5.24 Construction Deed of Trust.** This Deed of Trust secures an obligation incurred for the construction of improvements on land. This Deed of Trust is a "construction mortgage" and is entitled to the benefits of A.R.S. Section 47-9334.

[Signature Page Follows]

IN WITNESS WHEREOF, Trustor has executed this Deed of Trust as of the day and year first above written.

VERDE FENCEPOST LLC, a Minnesota limited liability company

By: \_\_\_\_\_  
Irvin R. Kessler  
Manager

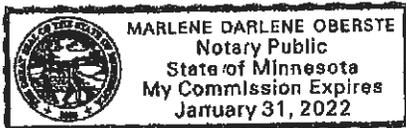
“TRUSTOR”

STATE OF Minnesota )

County of Hennepin )

On this 9<sup>th</sup> day of January, 2019, before me personally appeared Irvin R. Kessler, whose identity was proven to me on the basis of satisfactory evidence to be the person he claims to be, and acknowledged before me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity or entities upon behalf of which the person acted, executed the instrument.

(seal)



Marlene D Oberste  
Notary Public

**EXHIBIT A**

**Legal Description**

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE TOWN OF CAMP VERDE, IN THE COUNTY OF YAVAPAI, STATE OF ARIZONA, AND IS DESCRIBED AS FOLLOWS:

**Parcel 1:**

A parcel of land located in the Southwest Quarter of Section 24 and a portion of the Northwest Quarter of Section 25, Township 14 North, Range 4 East of the Gila and Salt River Meridian, Yavapai County, Arizona, being comprised of Assessor Parcels 403-21-014M, 403-21-021E, 403-21-014F, 403-21-250C, 403-21-014L, 403-21-014K, and 403-22-021, as shown on Revised ALTA/NSPS Land Title Survey, recorded in Instrument 2018-0020575, and also being comprised of Assessor Parcel 403-22-018C, as shown on ALTA/NSPS Land Title Survey, recorded in Instrument 2018-00300073, described as follows:

Beginning at the Southwest corner of said Section 24, monumented by a found 3 inch BLM brass cap stamped "T14N R4E S23 S24 S26 S25 1964", from which the West Quarter corner of said Section 24, monumented by a found 3 inch BLM brass cap stamped "T14N R4E 1/4 S23 S24 1964", lies North 01°44'37" East, per G.P.S., and used as the Basis of Bearings for this description, a measured distance of 2641.35 feet, recorded as North 01°45' East, a distance of 2641.98 feet, per Instrument 2014-0046518, Yavapai County, Arizona, henceforth referred to as (R2);

Thence, from said Southwest corner of Section 24, South 89°52'25" East a measured distance of 1004.56 feet, bearing shown as South 89°53'10" East per ADOT Results of Survey, Project No. 260 YV 209 H8699, Drawing No. D-13-T-501, Survey date August 2014, henceforth referred to as (R8), to a found 3 inch A.D.O.T. aluminum cap stamped "4963 510+02.38 D-326-715 2013 RLS 31591";

Thence, North 09°44'11" West a measured distance of 66.16 feet, recorded as North 09°42'48" West a distance of 66.20 feet per (R2), to a found 3 inch A.D.O.T. aluminum cap stamped "4953 S-326-714 2013 RLS 25396";

Thence, South 80°13'48" West a measured distance of 31.03 feet, recorded as South 80°21'14" West a distance of 31.08 feet per (R2), to a found 3 inch A.D.O.T. aluminum cap stamped "4952 S-326-714 2013 RLS 25396";

Thence, North 09°29'37" West a measured distance of 264.80 feet, recorded as North 09°29'13" West a distance of 264.73 feet per (R2), to a found 3 inch A.D.O.T. aluminum cap stamped "4951 S-326-714 2013 RLS 25396";

Thence, South 77°01'19" West a measured distance of 70.68 feet, shown as South 76°58'32" West a distance of 70.54 feet per (R8), to a found 3 inch A.D.O.T. aluminum cap stamped "1336 149+45.69 260YV H8699 2016 PLS 19817";

Thence, North 05°10'27" West a measured distance of 261.44 feet, shown as North 05°12'55" West a distance of 261.58 feet per (R8), to a found 3 inch A.D.O.T. aluminum cap stamped "1335 152+05.23 260YV209 H8699 2016 PLS 19817", at a point of non-tangent curvature to the left;

Thence, along said curve to the left, having a radius of 623.00 feet, a delta of 28°50'14", an arc length of 313.56 feet, a chord bearing of North 19°37'07" West, and a chord distance of 310.26 feet, shown as having a radius of 623.00 feet, a delta of 28°51'08", an arc length of 313.72 feet, a chord bearing of North 19°38'29" West, and a chord distance of 310.42 feet per (R8), to a found 3 inch A.D.O.T. aluminum cap stamped "1333 155+ 13.12 260YV 209 H8699 2016 PLS 19817";

Thence, North 34°07'01" West a measured distance of 175.06 feet, shown as North 34°03'55" West a distance of 175.00 feet per (R8), to a found 3 inch A.D.O.T. aluminum cap stamped "1332 156+75.74 260YV209 H8699 2016 PLS 19817", at a point of non-tangent curvature to the left;

Thence, along said curve to the left, having a radius of 623.00 feet, a delta of 21°17'17", an arc length of 231.47 feet, a chord bearing of North 44°39'16" West, and a chord distance of 230.14 feet, shown as having a radius of 623.00 feet, a delta of 21°18'01", an arc length of 231.61 feet, a chord bearing of North 44°42'56" West, and a chord distance of 230.28 feet per (R8), to a found 3 inch A.D.O.T. aluminum cap stamped "1331 158+70.32 260YV209 H8699 2016 PLS 19817", on the easterly right of way line of State Route 260;

Thence, North 12°23'17" West, along the easterly right of way line of State Route 260, a measured distance of 158.53 feet, bearing recorded as North 12°10'34" West per (R2), to a found concrete nail with illegible brass tag;

Thence, South 89°51'24" East a measured distance of 935.87 feet, recorded as South 89°50'30" East a distance of 935.77 feet per (R2), to a found 3/4 inch steel rod with brass tag stamped "LS 29263";

Thence, North 01°44'58" East a measured distance of 1321.14 feet, recorded as North 01°45'16" East a distance of 1321.28 feet per (R2), to a found 1/2 inch rebar with plastic cap stamped "LS 29263";

Thence, South 89°52'42" East a measured distance of 206.62 feet, recorded as South 89°51'52" East a distance of 206.49 feet per (R2), to a found 1/2 inch rebar with plastic cap stamped "LS 29263";

Thence, continuing, South 89°52'42" East a distance of 181.94 feet, recorded as South 89°52'46" East a distance of 181.95 feet per (R2), to a point;

Thence, South 06°45'00" East a distance of 261.40 feet, recorded as South 06°45'00" East a distance of 261.55 feet per (R2), to a found 1/2 inch rebar with plastic cap stamped "LS 29263";

Thence South 06°17'09" East a distance of 167.56 feet, bearing recorded as South 06°17'09" East per (R2), to a point;

Thence, South 18°30'00" East a distance of 944.30 feet, bearing recorded as South 18°30'00" East per (R2), to a point;

Thence, continuing, South 18°30'00" East a distance of 96.45 feet, recorded as South 18°30' East per Book 4904 of Official Records, Page 738, Yavapai County, Arizona, henceforth referred to as (R1), to a point;

Thence, continuing, South 18°30'00" East a distance of 44.18 feet, bearing recorded as South 18°30'00" East per (R2), to a point;

Thence, South 52°43'15" East a distance of 76.90 feet, bearing recorded as South 52°43'15" East per Book 4164 of Official Records, Page 965 and Book 85 of Land Surveys, Pages 73-74, Yavapai County, Arizona, henceforth collectively referred to as (R7), to a point;

Thence, South 58°39'41" East a distance of 84.63 feet, recorded as South 58°39'41" East a distance of 84.63 feet per (R7), to a point;

Thence, South 66°48'29" East a distance of 48.35 feet, recorded as South 66°48'29" East a distance of 48.35 feet per (R7), to a point;

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Thence, South 63°40'48" East a distance of 87.78 feet, recorded as South 63°40'48" East a distance of 87.78 feet per (R7), to a point;

Thence, South 75°13'49" East a distance of 94.29 feet, recorded as South 75°13'49" East a distance of 94.29 feet per (R7), to a point;

Thence, South 23°44'30" West a distance of 345.59 feet, bearing recorded as South 23°44'50" West per ADOT Project No. I-17-2(10)87, Drawing No. D-13-T-380, page 9 of 25, completion date August 9, 1967, henceforth referred to as (R6), to a point;

Thence, South 23°44'30" West a distance of 761.62 feet, bearing recorded as South 23°48' West per (R1), to a set 5/8 inch rebar with plastic cap stamped "SEC INC LS 40829";

Thence, South 23°44'30" West a measured distance of 188.09 feet, bearing recorded as South 23°48' West per (R1), to a found 1/2 inch rebar with attached brass tag stamped "SEC INC LS 40829", from which a found 3 inch aluminum ADOT cap stamped "N.B.P.O.T. 4596+98.35 | 978" lies South 23°44'30" West a measured distance of 36.46 feet, recorded as South 23°48'38" West a distance of 35.95 feet per Book 176 of Land Surveys, Pages 79-80, Yavapai County, Arizona;

Thence, North 42°02'22" West a measured distance of 49.88 feet to the center of a telephone manhole;

Thence, North 54°08'18" West a measured distance of 146.09 feet, recorded as North 54°11'23" West a distance of 146.14 feet per (R2), to a found 1/2 inch rebar with plastic cap stamped "LS 29263";

Thence, North 20°05'30" West a measured distance of 53.33 feet, recorded as North 20°24' 14" West a distance of 52.86 feet per (R2), to a found 1/2 inch rebar with plastic cap stamped "LS 29263";

Thence, North 06°32'09" West a measured distance of 129.36 feet, recorded as North 06°24'23" West a distance of 129.82 feet per (R2), to a found 1/2 inch rebar with plastic cap stamped "LS 29263";

Thence, North 06°04'31 " West a measured distance of 133.82 feet, recorded as North 06°04' 13" West a distance of 133.86 feet per (R2), to a found 1/2 inch rebar with plastic cap stamped "LS 29263";

Thence, North 12°48'39" East a measured distance of 168.61 feet, recorded as North 12 °49'00" East a distance of 168.78 feet per (R2), to a found 1/2 inch rebar with plastic cap stamped "LS 29263";

Thence, North 07°48'59" East a measured distance of 109.16 feet, recorded as North 07°49'22" East a distance of 109.13 feet per (R2), to a found 1/2 inch rebar with plastic cap stamped "LS 29263";

Thence, North 07°23'51" West a measured distance of 73.37 feet, recorded as North 04°42'36" West a distance of 72.87 feet per (R2), to a found 1/2 inch rebar with plastic cap stamped "LS 29263";

Thence, North 82°51'20" West a distance of 27.42 feet, recorded as North 83°00'49" West a distance of 30.56 feet per (R2), to a point;

Thence, South 00°11'00" East a distance of 184.50 feet, recorded as South 00°11' East a distance of 184.50 feet per Book 3141 of Official Records, Pages 997-1000, Yavapai County, Arizona, henceforth referred to as (R10), to a point;

Thence, South 14°00'00" West a distance of 170.77 feet, recorded as South 14°00' West a distance of 170.77 feet per (R10), to a point;

Thence, South 06° 17'00" East a distance of 125.58 feet, recorded as South 06°17'00" East a distance of 125.58 feet per (R10), to a point;

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Thence, South 19°31'08" West a distance of 38.04 feet, shown as South 24°06'56" West a distance of 40.00 feet per an ALTA/ACSM Land Title Survey by Verde Valley Surveying, LLC, sealed by Robert S. Colligan, LS 31017, on 11/10/06, henceforth referred to as (R9), to a found 1/2 inch rebar with attached brass tag stamped "SEC INC LS 40829;

Thence, South 23°44'33" West a measured distance of 108.41 feet, shown as South 24°06'56" West a distance of 108.47 feet per (R9), to a found 1/2 inch rebar with attached brass tag stamped "SEC INC LS 40829;

Thence, North 89°52'25" West a measured distance of 421.01 feet, shown as North 89°27'20" West a distance of 421.27 per (R9), to a set 5/8 inch rebar with plastic cap stamped "SEC INC LS 40829";

Thence, North 89°52'26" West a measured distance of 320.55 feet, distance recorded as 320.55 per (R2), to the True Point of Beginning.

**Parcel 2:**

An easement for ingress, egress and utilities, including geothermal lines, 35.00 feet in width, in Section 25, along the South boundary of the below described parcel;

That small skewed rectangular portion, 0.2 acre, more or less, and approximately 76 feet by 100 feet, of the Southwest quarter of the Southwest quarter of Section 24, Township 14 North, Range 4 East of the Gila and Salt River Base and Meridian, Yavapai County, Arizona, more particularly described as follows:

COMMENCING for reference from the Southeast corner of the Southwest quarter of the Southwest quarter of said Section 24, said 1/16th corner lies South 89 degrees 27 minutes 20 seconds East, a distance of 1324.94 feet from the Southwest corner of said Section 24, to a point on the South line of said Section 24, said point being North 89 degrees 27 minutes 20 seconds West 383.03 feet (North 89 degrees 25 minutes West, 383.2 feet, Record) to the TRUE POINT OF BEGINNING;

Thence North 15 degrees 30 minutes 31 seconds West, 99.94 feet (North 15 degrees 32 minutes West, 100 feet, Record);

Thence South 87 degrees 27 minutes West, 76.40 feet (South 87 degrees 27 minutes West, 76.40 feet, Record);

Thence South 16 degrees 31 minutes East, (South 16 degrees 31 minutes East, Record) to the South line of Section 24; Thence Easterly along the South line of said Section 24 to the TRUE POINT OF BEGINNING;

**Parcel 3:**

An easement for ingress, egress and utilities, including geothermal lines, 35.00 feet in width, along the Westerly 508.87 feet of the North boundary of the following described land:

A portion of the Northwest quarter of Section 25, Township 14 North, Range 4 East, Gila and Salt River Base and Meridian, Yavapai County, Arizona, more particularly described as follows:

BEGINNING at the Northeast corner of the Northwest quarter of the Northwest quarter of said Section 25, said point lies South 89 degrees 25 minutes 43 seconds East, a distance of 1324.94 feet from the Northwest corner of said Section 25;

Thence South 89 degrees 20 minutes 45 seconds East, along the North line of said Section 25, a distance of 421.27 feet; Thence South 24 degrees 15 minutes 46 seconds West, a distance of 490.46 feet;

Thence North 65 degrees 50 minutes 22 seconds West, (measured) (North 65 degrees 51 minutes 49 seconds West, Record) a distance of 104.13 feet (measured) (104.08 feet, Record);

Thence South 24 degrees 10 minutes 13 seconds West (measured) (South 24 degrees 08 minutes 13 seconds West, Record), a distance of 218.38 feet (measured) (218.15 feet, Record);

Thence North 65 degrees 47 minutes 22 seconds West (measured) (North 65 degrees 51 minutes 49 seconds West, Record), a distance of 395.10 feet (measured) (395.24 feet, Record);

Thence North 16 degrees 31 minutes 00 seconds West, a distance of 470.52 feet to the North line of said Section 25; Thence South 89 degrees 25 minutes 43 seconds East, a distance of 458.87 feet to the POINT OF BEGINNING.

**EXHIBIT B**

**DESCRIPTION OF PERSONAL PROPERTY**

(a) All personal property (including, without limitation, all goods, supplies, equipment, furniture, furnishings, fixtures, machinery, inventory, and construction materials and software embedded in any of the foregoing) in which Trustor now or hereafter acquires an interest or right, which is now or hereafter located on or affixed to the Premises or the Improvements or used or useful in the operation, use, or occupancy thereof or the construction of any Improvements thereon, together with any interest of Trustor in and to personal property which is leased or 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 Premises, Improvements, or such personal property;

(b) All of Trustor's right, title and interest in and to all fees, income, rents, issues, profits, earnings, receipts, royalties, and revenues which, after the date hereof and while any portion of the Obligations remains unpaid or unperformed, may accrue from such personal property or any part thereof or from the Premises, the Improvements or any other part of the Trust Estate, or which 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 rights under contracts for the sale of the Premises and Improvements or any portion thereof;

(d) All of Trustor's present and future rights to receive payments of money, services, or property, including, without limitation, rights to all deposits from tenants of the Premises or Improvements; rights to receive capital contributions or subscriptions from Trustor's members, partners or shareholders, amounts payable on account of the sale of membership or partnership interests in Trustor or the capital stock of Trustor, accounts and other accounts receivable, deposit accounts maintained with Beneficiary and its affiliates, chattel paper (whether tangible or electronic), notes, drafts, contract rights, instruments, general intangibles, all as defined in the Uniform Commercial Code of Arizona, as presently or hereafter in effect, 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;

(e) All of Trustor's right, title and interest in and to all other intangible property (and related software) and rights relating to the Premises, the Improvements, the personal property described in Section (a) above or the operation, occupancy, or use thereof, including, without limitation, all governmental and non-governmental permits, licenses, and approvals relating to construction on or operation, occupancy, or use of the Premises or Improvements, all names under or by which the Premises or 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 Premises or the Improvements, and all good will and software in any way relating to the Premises or the Improvements;

(f) All of Trustor's right, title and interest in and to all as-extracted collateral produced from or allocated to the Premises, including, without limitation, oil, gas, and other hydrocarbons and other minerals;

(g) Trustor's rights under all insurance policies covering the Premises, the Improvements, the Personal Property, and the other parts of the Trust Estate and any and all proceeds, loss payments, and premium refunds payable regarding the same;

(h) All of Trustor's right, title and interest in and to all reserves, deferred payments, deposits, refunds, cost savings, and payments of any kind relating to the construction of any Improvements on the Premises;

(i) All of Trustor's right, title and interest in and to all water stock relating to the Premises;

(j) All of Trustor's right, title and interest in and to all causes of action, claims, compensation, and recoveries for any damage to, destruction of, or condemnation or taking of the Premises, the Improvements, the Personal Property, or any other part of the Trust Estate, or for any conveyance in lieu thereof, whether direct or consequential, or for any damage or injury to the Premises, the Improvements, the Personal Property, or any other part of the Trust Estate, or for any loss or diminution in value of the Premises, the Improvements, the Personal Property, or any other part of the Trust Estate;

(k) All of Trustor's right, title and interest in and to all architectural, structural, mechanical, and engineering plans and specifications prepared for construction of Improvements or extraction of minerals or gravel from the Premises and all studies, data, and drawings related thereto, and also all contracts and agreements of the Trustor relating to the aforesaid plans and specifications or to the aforesaid studies, data, and drawings or to the construction of Improvements on or extraction of minerals or gravel from the Premises;

(l) All commercial tort claims Trustor now has or hereafter acquires relating to the properties, rights, titles, and interests referred to in this **Exhibit B** or elsewhere in the Deed of Trust;

(m) All letter of credit rights (whether or not the letter of credit is evidenced by a writing) Trustor now has or hereafter acquires relating to the properties, rights, titles and interest referred to in this Deed of Trust;

(n) All of Trustor's right, title and interest in and to all proceeds from sale or disposition of any of the aforesaid collateral and all supporting obligations ancillary thereto or arising in any way in connection therewith; and

(o) All Trustor's rights in proceeds of the loan evidenced by the Note.

As used in this **Exhibit B** the terms "Obligations", "Note", "Trust Estate", "Premises", "Improvements", and "Personal Property" shall have the meanings set forth in the Deed of Trust to which this **Exhibit B** is attached.

**EXHIBIT C**

**“Permitted Exceptions”** means the following:

1. Sale, transfer, or other disposition of any Personal Property that is consumed or worn out in ordinary usage and that is promptly replaced with similar items of equal or greater value.
2. Liens and Encumbrances being contested in accordance with **Section 1.17** of the Deed of Trust.
3. Impositions being contested in accordance with **Section 1.8(d)** of this Deed of Trust.
4. This Deed of Trust.
5. Leases permitted to be executed by Trustor in accordance with the provisions of the Loan Agreement.
6. Items approved by Beneficiary as listed on Schedule B to the ALTA lender’s policy of title insurance issued to and accepted by Beneficiary.
7. Transfers of direct or indirect ownership interests in Trustor so long (i) as Phillip M. Jaffe at all times, either directly or indirectly, owns not less than 20% of the membership interests in Trustor, and (ii) Phillip M. Jaffe at all times, either directly or indirectly, controls the management of Trustor.