

OFFICIAL RECORDS OF  
MARICOPA COUNTY RECORDER

HELEN PURCELL

20060260805 02/27/2006 12:49

ELECTRONIC RECORDING

When Recorded Return To:  
Sir Mortgage & Finance of Arizona, Inc.  
3333 E. Camelback Road, Suite 185  
Phoenix, AZ 85018  
Loan # 26-1123

# 0401  
**CAPITAL TITLE AGENCY INC.**

11060109-14-3-2--

jamesc

DEED OF TRUST, ASSIGNMENT OF RENTS,  
AND SECURITY AGREEMENT

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This DEED OF TRUST, ASSIGNMENT OF RENTS AND SECURITY AGREEMENT, made as of this 02/07/2006, between , **David Haney, a single man**, ("Trustor"), whose mailing address is **5041 E. Pershing Avenue, Scottsdale, AZ 85254**, hereinafter called "Trustor"; **GRAND CANYON TITLE AGENCY**, an Arizona corporation, whose address is 2720 E. Camelback Rd., #100, Phoenix, AZ 85016, hereinafter called "Trustee"; and **SIR MORTGAGE AND FINANCE OF ARIZONA, INC., AN ARIZONA CORPORATION** and its successors and assigns, whose address is 3333 East Camelback Road, Suite 185, Phoenix, Arizona 85018, hereinafter called "Beneficiary".

WITNESSETH:

That the Trustor hereby irrevocably grants, transfers, and assigns to Trustee, in trust, with power of sale, all that real property in the County of MARICOPA, State of Arizona, described on Exhibit "A" attached hereto and incorporated herein,

TOGETHER WITH all buildings, leaseholds and improvements now placed as well as those hereafter to be placed both thereon and therein, all rents, issues and profits thereof, all rights and privileges appurtenant as well as to become appurtenant to said real property, all appurtenances, easements, reversions, remainders, water and water rights and water right applications, pumps and pumping plants, pipes, flumes and ditches thereunto appertaining, all right to the use of water as well as all rights in ditches for the irrigation of said real property, all shares of stock evidencing such rights or any of them, and all fixtures belonging to the Trustor or at any time hereafter attached to or used in any way in connection with the use, operation, and occupancy of the above-described real property, buildings and improvements and any of them, including, without in any manner limiting the generality of the foregoing, all building materials, machinery, equipment, materials, appliances and fixtures for the generating or distributing air, water, heat, electricity, light, fuel, refrigeration, propane for ventilating, cooling or sanitary purposes, for the exclusion of vermin or insects, for the removal of dust, refuse or garbage, all wall safes, engine, machinery, boilers, furnaces, oil burners, coolers, refrigeration plants, motors, elevators, cabinets, shelving, lockers, brackets, fire boxes, fire sprinklers, alarm systems, drapery rods, brackets, screens, floor tile, linoleum, carpets, plumbing, water systems and power systems, incinerators, communication systems together with all right, title and interest which Trustor has or may hereafter acquire, in all permits, licenses and rights relating to or pertaining to the realty and all other and further installations attached to the mortgage premises, all of said items, whether now or hereafter to be installed, being hereby declared to be for all purposes of this instrument a part of the realty.

Trustor also absolutely and irrevocably assigns to Beneficiary the rents, issues and profits of said property for the purposes and upon the terms and conditions hereinafter set forth in paragraph A(8).

All property granted, transferred and assigned to Trustee hereunder is hereinafter referred to as "Trust Property" and Trustor warrants that it is well and truly seized of a good and marketable title in fee simple to the real property hereby conveyed; that the title to all property conveyed by this Deed of Trust, Assignment of Rents and Security Agreement (hereinafter referred to as the "Deed of Trust") is clear, free and unencumbered, and Trustor shall forever warrant and defend the same unto Beneficiary, its successors and assigns, against all claims whatsoever.

FOR THE PURPOSE OF SECURING in such order of priority as Beneficiary may elect:

Payment of the sum of Three Hundred Ninety Thousand & No/100—Dollars (\$390,000.00) with interest thereon, late charges and/or prepayment premiums or penalties, and attorneys' fees, according to the terms of that Loan Agreement of even date herewith (the "Loan Agreement") evidenced by a Secured Promissory Note or notes of even date herewith, made by Trustor, payable to the order of Beneficiary, any and all extensions, modifications, renewals or replacements thereof (the "Note").

Payment will interest thereon, in accordance with the terms of the obligation or obligations evidencing same, of any and all additional loans or advances made by Beneficiary to Trustor and/or the then owner or owners of the Trust Property, or any part thereof, and any and all extensions, modifications, renewals or replacements thereof.

Payment with interest thereon, all moneys expended or advanced by Beneficiary or on its behalf to preserve any right of Beneficiary hereunder, or to preserve any rights of Beneficiary under any other document or instrument securing the Note, or to protect or preserve the Trust Property, or any part thereof.

Performance, payment and observance by Trustor of each agreement, term, provision and condition contained therein or in any other document or instrument related to the indebtedness hereby secured, including without limitation the "Security Documents" as defined in the Loan Agreement.

All of the above I-IV may be referred to herein collectively as the "Obligation" or as "the sums secured".

#### TRUSTOR'S COVENANTS:

To protect the security of this Deed of Trust:

A(1). Trustor shall neither commit nor suffer to occur any waste upon the Trust Property, but will at all times make or cause to be made such repairs, maintenance, renewals and replacements, or otherwise, as may be necessary to maintain the Trust Property and all improvements, fixtures, appurtenances, machinery, equipment and appliances thereon and therein in good repair. Trustor shall keep all buildings or improvements now or hereafter on the Trust Property free of termites, dry rot, fungus, beetles and all other harmful or destructive insects, and shall keep all plants, trees and shrubs on the Trust Property neatly pruned and in good condition. Trustor shall keep the Trust Property free of rubbish and other unsightly or unhealthful conditions.

A(2). Trustor shall promptly, and in good and workmanlike manner, and in conformity with plans and specifications approved by Beneficiary, complete any improvements that may be commenced, and Trustor may repair and restore any portions of the Trust Property that may be damaged or destroyed. Trustor shall pay when due all claims for work performed or materials furnished, or both, on or in connection with the Trust Property or any part thereof, and shall pay, discharge, or cause to be removed, all mechanic's, artisan's, laborer's or materialman's charges, liens, claims of liens or encumbrances upon the Trust Property. Trustor shall comply with all laws, ordinances and regulations now or hereafter enacted affecting the Trust Property or requiring any alterations or improvements to be made. Trustor shall not remove, substantially alter, or demolish any building or improvements on or in the Trust Property located on the Property at any time without Beneficiary's consent, except as required by law.

A(3). Trustor shall provide and maintain policies of liability insurance on the Trust Property in an amount not less than \$ 1,000,000.00 combined single limit and fire and extended coverage for casualty in an amount not less than the replacement value for all of the improvements on the Trust Property or the Obligation. All such policies shall be with companies or associations of companies from time to time approved by Beneficiary and shall have standard trust deed beneficiary clauses endorsed thereon making losses payable to Beneficiary, or naming Beneficiary as an additional insured, and shall otherwise be in the form and substance satisfactory to Beneficiary. Trustor will also, when requested by Beneficiary, provide insurance against flood damage in such amounts and such policies as may be required under any regulation or law applicable to loans made by Beneficiary, and against any other risk commonly insured against by

persons operating like properties in the locality of the Trust Property. If applicable, all policies shall include replacement coverage in accordance with municipal fire and building codes. Trustor shall assign and deliver any and all policies of insurance to Beneficiary or shall provide Beneficiary with certificates of such insurance coverage that shall be irrevocable without thirty (30) days prior notice to Beneficiary and not subject to modification without Beneficiary's prior written approval. At least thirty (30) days before expiration of such policies, Trustor shall deliver renewals thereof, or renewal certificates therefor, with all premiums paid. All insurance policies shall be carried with insurance companies which shall be approved by Beneficiary and which shall be rated not less than A, class VII or better in Best's Key Rating Guide. In the event of loss, Trustor shall give immediate notice by mail to Beneficiary, and Beneficiary may make proof of loss if not made promptly by Trustor. Each insurance company concerned is hereby authorized and directed to make payment for such loss directly to the Beneficiary instead of to the Trustor or the Trustor and Beneficiary jointly and such insurance proceeds or any part thereof may be applied by Beneficiary at its option to the payment of interest due on the indebtedness secured hereby, the reduction of the principal amount of said indebtedness, the payment of any other obligation hereby secured, or the restoration or the repair of the Trust Property. Beneficiary shall not be responsible for such insurance or for the collection of any insurance moneys, or for the insolvency of any insurer or other insurance writer. Application of insurance proceeds by Beneficiary shall not cure or waive any default hereunder or invalidate any act done hereunder because of any such default. In the event of sale of the Trust property under the power of sale herein granted to the Trustee, or foreclosure of this Deed of Trust as a mortgage, or in the event Beneficiary or a receiver appointed by the court shall take possession of Trust Property without sale, all right, title and interest of Trustor in and to all insurance policies then in force shall inure to the benefit of and pass to the Beneficiary in possession, receiver or purchaser at such sale, as the case may be, and Beneficiary is hereby appointed attorney-in-fact for the Trustor to assign and transfer said policies.

A(4). (a) At least twenty (20) days before such become delinquent, Trustor shall pay or cause to be paid all taxes and assessments of every kind, nature and description levied or assessed on the Trust Property, and will pay when due all dues and charges for water and water delivery, electric power and light, sewers, waste removal, bills for repairs, and any and all other claims, encumbrances and expenses incident to the ownership of the Trust Property, in order that no lien may be created upon the Trust Property during the term of this Deed of Trust which is or may become prior to the lien of this Deed of Trust. Trustor may deposit with the Beneficiary, at such place as Beneficiary may designate, receipts showing payment of all such taxes, assessments and other charges.

Trustor shall protect Beneficiary insofar as it may be lawful so to do, against any and all loss from any taxation on indebtedness or deeds of trust, direct or indirect, that may be or might be imposed on this Deed of Trust, or the lien of this Deed of Trust on said Trust Property, or upon the debt hereby secured, by any law, rule, regulation or levy of the Federal government or of the State of Arizona, or any political subdivision thereof, by the payment by the Trustor of any such tax or taxes. Should the Trustor fail, neglect or refuse to pay before the same becomes delinquent any such tax or taxes, Beneficiary may, at its option, pay the same, and the amount or amounts thereof shall be secured by this Deed of Trust, shall be due and payable on demand, and shall bear interest at the Default Interest Rate, as defined in the Note, from the date of payment by Beneficiary.

Except as otherwise permitted by Beneficiary, Trustor shall pay and promptly discharge at Trustor's sole cost and expense, all liens, encumbrances and charges upon the Trust Property, or any part thereof or interest therein. Trustor shall have the right to contest in good faith the validity of any such lien, encumbrance or charge, provided Trustor shall first deposit with Beneficiary a Bond or other security satisfactory to Beneficiary in such amounts as Beneficiary shall reasonably require, but not more than one hundred fifty percent (150%) of the amount of the claim and provided further that Trustor shall thereafter diligently prove to cause such lien, encumbrance or charge to be removed and discharged. If Trustor shall fail to remove and discharge any such lien, encumbrance or charge, then, in addition to any other right or remedy of Beneficiary, Beneficiary may, 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, encumbrance or charge by depositing in a court a bond for 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, immediately upon 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 of any such lien, encumbrance or charge, together with interest thereon from the date of such expenditure at the Default Interest Rate, as defined in the Note.

A(5). If Trustor shall fail to pay any taxes, assessments, expenses or charges, or to keep all of the Trust Property free from Liens and claims of liens, or to keep and maintain and repair the Trust Property, or to procure and maintain insurance thereon, or to do any other thing required of Trustor herein, all as herein provided, Beneficiary, at its option, but without any obligation so to do, may advance the necessary moneys to pay the same or to accomplish said maintenance and repairs or to procure and maintain such insurance or to do such things, and all moneys so advanced shall be added to the indebtedness secured hereby, and shall bear interest at the Default Interest Rate, as defined in the Note, from the date of such advance. All such advancements shall be due and payable by Trustor to Beneficiary upon demand and, should Trustor fail to repay Beneficiary any such advancements as herein required immediately after demand for payment of same, Beneficiary may, at its option, declare all sums secured by this Deed of Trust to be immediately due and payable and may avail itself of any and all remedies provided herein for default.

A(6) If required under the Secured Promissory Note or Loan Agreement in order to insure the payment of taxes and assessments that are now, or hereafter may be, a lien upon the Trust Property, and to pay the premiums upon policies of insurance as herein required, Trustor shall pay to Beneficiary in addition to any other payments required hereunder an installment of the taxes and special assessments levied or to be levied against the Trust Property and an installment of the annual insurance premiums on the Trust Property, and Trustor shall deliver promptly to Beneficiary all bills and notices for such taxes and premiums. Such installments are to be equal to one-twelfth ( $1/12^{\text{th}}$ ) of the estimated taxes and assessments and premiums (as reasonably estimated by Beneficiary giving due consideration to the previous year's tax). If amounts paid to Beneficiary under provisions of this paragraph are insufficient to discharge the obligation of Trustor for such taxes and assessments and premiums, as the same become due, Trustor shall pay to Beneficiary upon demand such additional sums as may be required to fully pay and discharge these items. All moneys paid to Beneficiary under the terms of this assessments and premiums before the same become delinquent; or (b) be credited directly to interest and/or principal due upon the indebtedness secured hereby and upon payment by Beneficiary of such taxes and assessments, the amount so paid shall be added to the principal of the indebtedness secured hereby. Nothing in this paragraph shall release Trustor of its obligation to pay said taxes and assessments and premiums, as the same become due and payable under the provisions of this Deed of Trust.

A(7). All compensation in each and every award of damages in connection with any condemnation for public or private use of, or injury to, the Trust Property or any part thereof, to the extent of the indebtedness then remaining unpaid and secured by this lien of this Deed of Trust, is hereby assigned and shall be paid to Beneficiary, to be applied at the option of the Beneficiary to the payment of interest on or principal of said indebtedness, the payment or performance of any other obligation secured hereby, or the restoration or repair of the Trust Property, regarding of whether the damages or injuries occurred before or after the execution of the Deed of Trust

A(8). (a) Trustor hereby grants, transfers and assigns to Beneficiary all the right, title and interest of Trustor in and to all existing and future lease agreements, occupancy agreements, short term rental agreements, contracts for sale, improvement-related contracts and use agreements ("said leases"), whether written or oral and whether for a definite term or month to month, or day to day, relating to the Trust Property, or any part thereof, and all rents, issues and profits, all rents generated by or from or related to the Trust Property and all sales proceeds generated by or from sales relating to any part or all of the Trust Property. This assignment shall extend to and cover any and all extensions and renewals of existing and future leases and to any and all present and future rights against guarantors of any such obligations and to any and all such rents, issues and profits collected under said leases or other rental agreements. This assignment is given to facilitate payment and performance of the aforementioned Note, this Deed of Trust, the Security Documents and any other security agreements at any time securing said Note. In pursuance of this assignment, and not in lieu hereof, Trustor may give Beneficiary separate specific Assignment of Rents and Leases covering some or all of said leases, the terms and provisions of such assignments being incorporated herein by reference.

Trustor hereby authorizes and directs the lessees and tenants of the Trust Property that upon written notice from Beneficiary, all payments required under said leases, or in any way respecting same, shall be made directly to the Beneficiary as they become due. Trustor hereby relieves said lessees and tenants from any liability to Trustor by reason of said payments being made to Beneficiary. Nevertheless, until Beneficiary notifies in writing said lessees and tenants to make such payments to Beneficiary, Trustor shall be entitled to collect all such rents and/or payments. Beneficiary is hereby authorized to give such notification in the event of any breach or default by Trustor under paragraph (B)1 hereof, and upon the expiration of any applicable grace period following notice of default, and such notification may be given thereafter at any time during which said default remains uncured.

All rents collected by Trustor shall be applied in the following:

FIRST, to the payment of all taxes and lien assessments levied against the Trust Property, where provision for paying such is not otherwise made;

SECOND, to the payment of ground rents (if any) payable with respect to the trust property;

THIRD, to the payment of any amounts due or owing to Beneficiary under the terms of any obligation secured hereby;

FOURTH, to the payment of current operating costs and expenses (including repairs, maintenance and necessary acquisitions of property and expenditures for capital improvements) arising in connection with the Trust Property; and

FIFTH, to Trustor or its designee.

Receipt by Beneficiary of such rents, issues and profits shall not constitute a waiver of any right that Beneficiary may enjoy under this Deed of Trust or under the laws of Arizona, nor shall the receipt and application hereof cure any default hereunder no affect any foreclosure proceeding or any sale authorized by this Deed of Trust and the laws of Arizona.

A(9).It is understood that the payment of the obligations secured by this Deed of Trust is also secured by security interests in Trustor's rights and interest in all personal property used on, in or about any improvements at any time situated on the Trust Property or used by the Trustor in connection with said improvements or any business conducted by the Trustor on Trust Property. Trustor covenants and agrees that it will cause Beneficiary to acquire valid and effectual security interest in all such personal property, or all of Trustor's right title and interest therein. In the event Trustor owns or acquires only a lessee's interest in any such personal property, then in addition to the foregoing requirements, before any of said personal property with a fair market value in excess of Five Thousand (\$5,000.00) is placed in, on, or about the Trust Property or improvements at any time situated thereon;

the written approval of Beneficiary to the leasing agreements under which Trustor owns or acquires such lessee's interest shall have first been obtained; and

all consents of the lessor of any such leasing agreements to such security interests, and all agreements of the lessor in favor of Beneficiary, deemed necessary by Beneficiary, shall first have been obtained to the satisfaction of Beneficiary.

Trustor agrees that all property of every nature and description, whether real or personal, covered by this Deed of Trust, together with all personal property covered by such security interests, are encumbered as one unit, and that upon default by Trustor under the Note secured hereby or under this Deed of Trust, the Security Documents or any security agreement given pursuant to this paragraph, this Deed of Trust and such security interests, at Beneficiary's option, be sold at public or private sale as such in one unit as a going business, subject to the provisions of Arizona Revised Statutes §33-801(A). The filing of any financing statement relative to any personal property or rights or interests generally or specifically



described herein shall not be construed to diminish or alter any of Beneficiary's rights or priorities hereunder.

A(10). Trustor represents and warrants that, to the best of Trustor's actual knowledge, as of the date hereof, the Trust Property is not in violation of any federal, state or local law, ordinance or regulation relating to industrial hygiene or to the environmental conditions on, under or about the Trust property including, but not limited to soil and groundwater condition. Trustor further represents and warrants that during the time Trustor has owned the Trust Property, neither Trustor, nor to the best of Trustor's knowledge and belief, any third party has used, generated, manufactured, stored or disposed of on, under or about the Trust Property any flammable explosives, radioactive materials, hazardous wastes, toxic substances or related materials ("Hazardous Materials"). Trustor further represents and warrants that so long as any indebtedness and obligations of Trustor under the Loan Documents shall remain outstanding, unpaid and unsatisfied, Trustor shall not use, generate, manufacture, store or dispose of on, under or about the Trust Property, any Hazardous materials. For the purpose of this paragraph A(10) and the following paragraph A(11), "Hazardous Materials" shall include but not be limited to substances defined as "hazardous substances," "hazardous materials," or "toxic substances: in the Comprehensive Environmental Response, Compensation and Liability Act, 49 U.S.C., §901, et seq.; the Resource Conservation and Recovery Act, 42 U.S.C., §6901 et seq.; and those substances defined as "hazardous wastes" in the Arizona Revised Statutes §36-3501(16).

A(11). Trustor hereby agrees to indemnify and hold harmless Beneficiary, its directors, officers, employees, and agents, and any successors of assigns of Beneficiary's interest in the chain of title to the Trust property in the event Beneficiary or its successors or assigns should take fee title to the Trust Property, as provided herein, their directors, officers, employees and assigns and agents, from and against any and all liability (i) including all foreseeable and all unforeseeable consequential damages, directly or indirectly arising out of the use, generation, storage, or disposal of Hazardous Materials by Trustor or any prior owner or operator of the Trust Property, and (ii) including, without limitation, the cost of any required or necessary clean-up, repair, or detoxification and the preparation of any closure or other required plans, whether such action is required or necessary prior to or following transfer of title to the Trust Property to the full extent that such action is attributable, directly or indirectly, to the presence or use, generation, storage, release, threatened release, or disposal of Hazardous Materials by any person on the Trust Property prior to transfer of title thereto to Beneficiary.

A(12). In order to induce Beneficiary to make the loan and the obligations secured hereby, Trustor agrees that, in the event of any sale, option, transfer, conveyance, sub-division, parcel or lot split, hypothecation, encumbrance, or vesting of the Trust Property or any part thereof or interest therein to any person, firm or corporation, whether voluntary, involuntary, or by operation of law, or otherwise including, but not limited to, transfer or encumbrance of the member interests of Trustor or any change in the management or control of Trustor, then Beneficiary shall have the absolute right, at its option, without prior demand or notice, to declare all sums secured thereby 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. If consent should be given, any such transfer shall be subject this Deed of Trust, and such transferee shall assume all obligations hereunder and agree to be bound by all provisions contained herein. Such assumption, however, shall not release Trustor or any guarantor of the Note and obligations secured hereby from any liability thereunder without the prior written consent of Beneficiary.

A(13). If applicable, at any time when Trustor is not in default under the Obligation, Beneficiary will execute or direct the Trustee to execute and deliver a Partial Deed of Release and Reconveyance as follows:

All costs and expenses of collection agent and Title company relating to the full releases or partial release shall be paid by Borrower, including but not limited to Collection Agent release fees, title fees, recording fees collection costs.

## DEFAULT PROVISIONS

B(1). The occurrence of any of the following events or conditions shall constitute an "Event of Default" under this Deed of Trust, Assignment of Rents and Security Agreement.

Any failure to pay any principal or interest under the Note as and when the same shall become due and payable and such failure continues for five (5) days thereafter, or the failure to pay any other sum due under the Note, this Deed of Trust, the Loan Agreement or any Security Document as and when the same shall become due and payable;

Any failure or neglect to perform or observe any of the terms, provisions, or covenants of this Deed of Trust, the Loan Agreement, the Note, any Security Document or any other document or instrument executed or delivered in connection with the Note other than those covered in the immediately preceding paragraph, to which notice shall be given, it cannot be remedied and continues unremedied for a period of ten (10) days. If it can be remedied, and prompt action is being taken by Debtor for its resolve, a reasonable timeframe will be allowed for its correction according to the nature of the default.

Any warranty, representation or statement contained in this Deed of Trust, the Loan Agreement, in the Note or in any Security Document or any other document or instrument executed or delivered in connection with the Note, or made or furnished to Lender by or on behalf of Trustor, that shall be or shall prove to have been materially false when made or furnished;

The filing by Trustor, any endorser of the Note, or any guarantor of the Note (or against Trustor or such endorser or guarantor to which Trustor or such endorser or guarantor acquiesces or which is not dismissed within forty-five (45) days after the filing hereof) of any proceeding under the federal bankruptcy laws now or hereafter existing or any other similar statute now or hereafter in effect; the entry of an order for relief under such laws with respect to Trustor or such endorser or guarantor; or the appointment of a receiver, trustee, custodian or conservator of all or any part of the assets of Trustor or such endorser or guarantor;

The insolvency of Trustor, any endorser of the Note or of any guarantor of the Loan; or the execution by Trustor or such guarantor or endorser of an assignment for the benefit of creditors; or the convening by Trustor or any guarantor or endorser of a meeting of its creditors, or any class thereof, for purposes of effecting a moratorium upon or extension or composition of its debts; or the failure of Trustor or of any such guarantor or endorser to pay its debts as they mature; or if Trustor or such guarantor or endorser is generally not paying its debts as they mature;

The admission in writing by Trustor, any endorser of the Note or any guarantor that it is unable to pay its debts as they mature or that it is generally not paying its debts as they mature;

The liquidation, termination or dissolution of Trustor or any such endorser or guarantor of the note, if a corporation, partnership or joint venture if Beneficiary is not reasonably reassured of timely performance and payment hereunder and under the Note and all documents relating thereto;

Any attachment, garnishment, levy or execution upon, or judicial seizure of, any portion of any collateral or security for the Note which may impair the first lien position of Lender;

The occurrence of any event of default under the Note, the Loan Agreement, and of the Security Documents or any other document or instrument executed or delivered in connection with the Note;

The occurrence of any Event of any Default under any document or instrument given by Trustor in connection with any other indebtedness of Trustor to Beneficiary.

Thereafter while such Event(s) of Default continue, the entire indebtedness secured hereby, principal and interest, and all other sums secured hereby may be declared by Beneficiary to be immediately due and payable and the same, with all costs and charges, shall be thereupon collectible by action at law and Beneficiary may commence proceedings for foreclosure of this Deed of Trust as a mortgage, or Beneficiary

may deliver to Trustee a written notice of default and of election to cause the Trust property to be sold, whereupon the Trustee shall cause a Notice of Trustee's Sale to be duly recorded. Beneficiary also shall deposit with Trustee this Deed of Trust, said note, and all documents evidencing expenditures secured hereby. At least ninety (90) days having elapsed after recordation of said notice of Trustee's Sale, and having given notice of sale thereof as required by law, Trustee may sell the Trust Property at the time and place of sale fixed by Trustee in its notice of sale, as a whole or in separate parcels if directed by Beneficiary or Trustor present at sale, at public auction to the highest bidder for cash in lawful money of the United States, payable at time of sale. Trustee may, from time to time, postpone or continue the sale of all or any portion of the Trust Property, by public declaration at the time and place last appointed for the sale. No other notice of the postponed sale is required. Trustee shall deliver to such purchaser its deed conveying the property so sold, but without any covenant or warranty, express or implied. The recitals in such deed of any matters of facts shall be conclusive proof of the truthfulness thereof. Any person, including Trustor, Trustee or Beneficiary may purchase at such sale.

B(2). Upon default by Trustor as hereinabove provided in paragraph B(1), or upon the occurrence of any of the events therein described, Beneficiary may, at its option, send notifications to any and all lessees and tenants of the Trust Property that future payments under or relating to said leases shall be made to Beneficiary. Thereafter, Beneficiary shall be entitled to collect said rents and payments until Trustor cures all defaults hereunder, and shall apply such rents and payments collected in the manner set forth in paragraph A(8)(c) hereof.

B(3). Upon default by Trustor as hereinabove provided in paragraph B(1), or upon the occurrence of any of the events therein described, Beneficiary may, without regard to the adequacy of any security for the indebtedness or obligation hereby secured, in person or by agent or employee, or by a receiver appointed by a court of competent jurisdiction, enter upon and take possession of all or any part of the Trust Property, and Trustor shall on demand peaceably surrender possession thereof to Beneficiary. Beneficiary, in its own name or in the name of Trustor, may complete construction of the improvements on the real property, operate and maintain all or any part of the Trust Property to such extent as Beneficiary deems advisable, and may rent and lease the same to such persons, for such periods of time, and on such terms and conditions as Beneficiary in its sole discretion may determine, and may sue for or otherwise collect any and all of the rents, issue and profits thereof, including those past due and unpaid. In dealing with the Trust Property as a beneficiary in possession, Beneficiary shall be without any liability, charge or obligation therefor to Trustor other than for willful misconduct and shall be entitled to operate any business then being conducted or which could be conducted thereon or therewith at the expense of or for the account of Trustor (and all net losses, costs and expenses hereby incurred shall be advancements governed by paragraph A(5) hereof), to the same extent as the owner thereof could do, and to apply the rents, issues and profits, first to the payment of receiver's expenses, if any, for management of the Trust Property, and then in the manner provided in paragraph A(8)(c) herein.

B(4). At any time after institution of foreclosure proceedings or the recording by Trustee of Notice of Trustee's Sale, a receiver may, upon application of the Beneficiary, be appointed by any court of competent jurisdiction to take charge of all the Trust Property, to manage, operate and carry on any business then being conducted or that could be conducted on the Trust Property, and to carry on, protect, preserve, replace and repair the Trust Property, and receive and collect all the rents and issues or profits thereof and to apply the same first to the payment of receiver's expenses for management, operation and protection of such business and the Trust Property, and then in the manner provided in paragraph A(8)(c) herein. Upon appointment of said receiver, Trustor shall deliver possession of all Trust Property and the whole thereof to such receiver forthwith.

B(5). Upon default or breach of this Agreement by Trustor, in the event it becomes necessary for the Beneficiary to employ legal counsel or to take legal action to collect the indebtedness secured hereby, to enforce any provision hereof, or to protect any of Beneficiary's rights hereunder, Trustor agrees to pay to Beneficiary, in addition to taxable costs of any legal proceeding or action, attorneys' fees actually incurred, and all costs of preparation and conduct of such proceedings, including costs of title searches and title policy commitments, all of which shall be a lien upon the Trust Property and secured by these presents.



B(6). In addition to any remedies provided herein for breach or default hereof, Beneficiary shall have all other remedies provided for in the Loan Agreement and allowed under the laws of the State of Arizona (including specifically that of foreclosure of this instrument as though it were a mortgage), and the laws of the United States. No failure on the part of Beneficiary to exercise any of its rights hereunder arising upon any default or breach of covenant shall be construed to prejudice its rights in the event of any other or subsequent default or breach of covenant. No delay on the part of Beneficiary in exercising any of such rights shall be construed to preclude it from the exercise thereof at any time during the continuance of such default or breach of covenant. Beneficiary may enforce any one or more remedies or rights hereunder successively or concurrently at its option. By accepting payment of any sums secured hereby after its due date, Beneficiary shall not thereby waive the agreement herein contained that time is of the essence, no shall Beneficiary waive either its rights to require prompt payment when due of all other sums secured or to consider failure so to pay a default hereunder.

B(7). In the event of default in payment of any of the moneys to be paid under the terms of the Note secured hereby, or this Deed of Trust, or in the performance of any of the covenants and obligations of this Deed of Trust, or secured hereby, then any funds in the possession of Beneficiary under the provisions of paragraph A(6), may, at the option of Beneficiary, be applied to the payment of principal and/or interest upon the obligations secured hereby, in lieu of being applied to any of the purposes for which said fund is established under paragraph A(6).

#### GENERAL PROVISION

C(1). The taking or acceptance of this Deed of Trust shall in no event be considered as a waiver of or in any way to affect or impair any other security that the Beneficiary may have, or acquire simultaneously herewith, or hereafter acquire for the payment of the indebtedness hereby secured, nor shall the taking by Beneficiary at any time of any such additional security be construed as a waiver of, or in any way to affect or impair the security of this Deed of Trust; and the Beneficiary may resort, for the payment of the indebtedness secured hereby, to its several securities therefor in such or and manner as it may determine.

C(2). Without affecting the obligation of Trustor to pay and perform as herein required, without affecting the personal liability of any person for payment of the indebtedness secured hereby; and without affecting the lien or priority of lien hereof on the Trust Property, Beneficiary may, at its option, extend the time for payment of said indebtedness or any part hereof, reduce the payment thereon, give partial releases of any parts of the Trust Property from the lien, terms and provisions hereof, release any person liable on any of said indebtedness, accept a renewal note therefor, modify the terms of said indebtedness, take and release other or additional security, join in any extension or subordination agreement, or direct the Trustee to release from this Deed of Trust any part of the Trust Property. Any such action by Beneficiary or the Trustee at Beneficiary's direction may be taken without the consent of any junior lienholder, and shall not affect the priority of this Deed of Trust over any junior lien.

C(3). Upon written request of Beneficiary stating that all sums secured hereby have been paid, and upon surrender of this Deed of Trust and said Note to Trustee for cancellation and retention and upon payment of its fees, Trustee (and Beneficiary if necessary to clear title) shall reconvey, without warranty, the Trust Property. The recitals in such reconveyance of any matters or facts shall be conclusive proof of the truthfulness thereof. The grantee in such reconveyance may be described as "the person or persons legally entitled thereto." Upon Beneficiary's statement that all sums secured hereby have been paid, if requested by Trustor, Beneficiary shall deliver the original Note to Trustor showing the Note marked "paid". Five years after issuance of such full reconveyance, Trustee may destroy the Note and this Deed of Trust (unless directed in such request to retain them).

C(4). Trustor waives any requirements of presentment, demands for payment, notices of nonpayment or late payment protest, notices of protest, notices of dishonor, and all other formalities. Trustor waives all rights and/or privileges it might otherwise have to require Trustee and/or Beneficiary to proceed against or exhaust the assets encumbered hereby or by any other security document or instrument securing the Note or to proceed against any guarantor of such indebtedness, or to pursue any other remedy available to

Beneficiary in any particular manner or order under the legal or equitable doctrine or principle of marshalling and/or suretyship and further agrees that Trustee and/or Beneficiary may proceed against any and all of the assets encumbered hereby or by any other security document or instrument securing the note in the event of default and after expiration of any applicable grace period following notice in such order and manner as Beneficiary in its sole discretion may determine. Any Trustor that has signed this Deed of Trust as a surety or accommodation party, or that has subjected its property to this Deed of Trust to secure the indebtedness of another hereby expressly waives the benefits of the provisions of Arizona Revised Statutes §12-1641 et. seq., waives any defense arising by reason of any disability or other defense of Trustor or by reason of the cessation from any cause whatsoever of the liability of Trustor, and waives the benefit of any statutes of limitation affecting the enforcement hereof.

C(5). Beneficiary or Trustee, or both, shall have the right to inspect the Trust Property at all reasonable times.

C(6). Time is of the essence hereof. This Deed of Trust applies to, inures to the benefit of, and binds all parties hereto, their heirs, legatees, devisees, personal representatives, successors and assigns. The term "Beneficiary" shall include not only the original Beneficiary hereunder but also any future owner and holder, including assignees and pledges, of the Note secured hereby. The provisions hereof shall apply to the parties according to the context thereof and without regard to the number or gender of words or expressions used.

C(7). The acceptance by the Trustee of this trust shall be evidenced when this Deed of Trust, duly executed and acknowledged, is made a public record as provided by law.

C(8). The right to plead any and all statutes of limitations as a defense to any obligation secured by this Deed of Trust is hereby waived.

C(9). The trust created hereby is irrevocable by the Trustor.

C(10). The Deed of Trust cannot be changed except by agreement, in writing, signed by Trustor and Beneficiary.

C(11). This Deed of Trust shall be construed in accordance with the laws of the State of Arizona.

C(12). The liability of each person or party signing this Deed of Trust as Trustor shall be joint and several.

C(13). No offset or claim that Trustor now or may in the future have against Beneficiary shall relieve Trustor from paying installments or performing any other obligation herein or secured hereby.

C(14). The undersigned Trustor requests that a copy of any notice of sale hereunder be mailed to it at its mailing address hereafter set forth on the first page hereof or to such other address as Trustor may, from time to time, designate in writing.

C(15). The undersigned Trustor will, upon request of the Trustee, promptly correct any defect, error or omission which may be discovered in the contents of this Deed of Trust or in the execution or acknowledgment hereof, and will execute, acknowledge and deliver such further instruments and do such further acts as may be necessary or as may be reasonable requested by the Trustee to carry out more effectively the purposes of this Deed of Trust, to subject to the lien and security interest hereby created any of Trustor's properties, rights or interest covered or intended to be covered hereby, and to perfect and maintain such lien and security interest.

C(16). Should any term provision, covenant or condition of this Deed of Trust be held to be void or invalid, the same shall not affect any other term, provision, covenant or condition of this Deed of Trust, but the remainder hereof shall be effective as though such term provision, covenant or condition had not been contained herein. Also, should this instrument be or become ineffective as a deed of trust, then the

provisions hereof shall be construed and enforced as a realty mortgage with the Trustor being the mortgagor, and Beneficiary becoming the mortgagee.

C(17). All notices required or permitted to be given hereunder shall be in writing, and shall become effective seventy-two (72) hours after such are deposited in the United States mail, certified or registered, postage prepaid, addressed as shown above, or to such other address as such party may, from time to time, designate in writing. If hand delivered or faxed, the notice shall become effective upon delivery/fax confirmation.

C(18). Trustor agrees to exonerate, protect, indemnify and defend Beneficiary and Trustee acting on behalf of and at the direction of Beneficiary from and save them harmless against, any and all liability, expenses (including attorneys' fees), or damage of any kind or nature and from any suits, claims and demands, or on account of any matter or thing, whether in suit or not, which arises out of any of the documents relating to the original Note or securing the original Note, and is in connection with any disputes between Trustor and any materialman, supplier, contractor, subcontractor, purchaser, broker municipal or public authority, or lessee, except those arising out of the gross negligence or willful misconduct of Beneficiary. Trustor waives any and all right to claim or recover against Beneficiary, its officers, employees, agents and representatives for loss of or damage to Trustor, the Trust Property, Trustor's other property or the property of others under Trustor's control from any cause, except those arising out of the gross negligence or willful misconduct of Beneficiary.

#### SECURITY AGREEMENT

D(1). Trustor hereby grants and conveys to Beneficiary, as secured party, a security interest in and to all personal property, rights and interests described on **Exhibit "B"** attached hereto and made a part hereof (the "Collateral") as security for the payment of all indebtedness and the performance of all obligations secured by this Deed of Trust (if applicable).

D(2). This Deed of Trust shall constitute a security agreement within the meaning of the Arizona Uniform Commercial Code (hereinafter called the "Code"). In the event of a default under this Deed of Trust, the Beneficiary shall have the option of exercising any and all remedies available to a secured party under the Code with respect to the Collateral. In the event the Beneficiary shall elect to proceed with respect to the Collateral separately from the real property, fifteen (15) days' notice of the sale (either public or private) of the Collateral shall be reasonable notice. The reasonable expenses incurred by the Beneficiary in connection with retaking, holding, preparing for sale and selling the collateral shall include, without limitation, reasonable attorneys' fees and legal expenses incurred by Beneficiary.

IN WITNESS WHEREOF, this Deed of Trust has been executed by Trustor as of the date first set forth above.

TRUSTOR(S)

By:

David Haney

STATE OF ARIZONA )

COUNTY OF Maricopa )ss )

This instrument was acknowledged before me on this 13 day of February, 2006, David Haney, Trustor

Notary Public



My commission expires

EXHIBIT "A"  
Legal Description

That portion of the Northeast quarter of Section 30, Township 2 North, Range 7 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, being more particularly described as follows:

COMMENCING at the Northeast corner of said Section 30, from which the East quarter corner bears South 00 degrees 02 minutes 36 seconds East, a distance of 2641.80 feet;

Thence South 20 degrees 47 minutes 05 seconds West, a distance of 1632.04 feet to the Northeasterly corner of a parcel of land, this being the TRUE POINT OF BEGINNING;

Thence South 22 degrees 41 minutes 58 seconds West, a distance of 315.63 feet;

Thence North 89 degrees 18 minutes 02 seconds West, a distance of 60.57 feet to the beginning of a non-tangent curve, the center of which bears South 73 degrees 58 minutes 20 seconds West, a distance of 164.00 feet;

Thence Northwesterly along the arc of said curve, a distance of 98.89 feet through a central angle of 34 degrees 33 minutes 01 second;

Thence North 50 degrees 34 minutes 41 seconds West, a distance of 195.26 feet to the beginning of a tangent curve concave Northeasterly, having a radius of 141.00 feet;

Thence Northerly along the arc of said curve, a distance of 27.19 feet through a central angle of 11 degrees 03 minutes 22 seconds to the beginning of a tangent curve concave Easterly, having a radius of 48.00 feet;

Thence Northerly along the arc of said curve, a distance of 30.88 feet through a central angle of 36 degrees 51 minutes 18 seconds;

Thence North 02 degrees 40 minutes 23 seconds West, a distance of 32.21 feet to the beginning of a tangent curve Westerly, having a radius of 52.00 feet;

Thence Northerly along the arc of said curve, a distance of 6.98 feet through a central angle of 07 degrees 41 minutes 46 seconds to the beginning of a tangent curve concave Easterly, having a radius of 124.00 feet;

Thence Northerly along the arc of said curve, a distance of 31.19 feet through a central angle of 14 degrees 24 minutes 38 seconds;

Thence North 04 degrees 02 minutes, 29 seconds East a distance of 11.56 feet to the beginning of a non-tangent curve whose center bears South 25 degrees, 57 minutes, 31 seconds East, a distance of 12.00 feet;

Thence Northerly along the Arc of said curve a distance of 6.28 feet through a central angle of 30 degrees 00 minutes 00 seconds;

Thence South 85 degrees 57 minutes 31 seconds East, a distance of 296.71 feet to the TRUE POINT OF BEGINNING.

EXHIBIT "B"

(a) All personal property, (including, without limitation, all goods, supplies, equipment, furniture, furnishings, fixtures, machinery, inventory, and construction materials (in which Trustor now or hereafter acquires an interest or right, which is now or hereafter located on or affixed to the 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 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 Property, 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 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 partners or shareholders, rights under any and all contracts related to the Property of the Improvements amounts payable on account of the sale of partnership interests in Trustor or the capital stock of Trustor, accounts and other accounts receivable, deposit accounts, security deposits, chattel paper, notes, drafts, contract rights, instruments, general intangibles, and principal, interest and payments due on account of goods sold or leased, services rendered, loans made or credit extended, together with title to or interest in all agreements, documents, and instruments, evidencing, securing or guarantying the same;

(d) All other intangible property and rights relating to the Premises, the Improvements, the personal property described in Paragraph (a) above or the operation, occupancy, or use thereof, including, without limitation, all governmental and non-governmental permits, licenses, 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 in any way relating to the Premises or the Improvements. To include Equitable Interest in Liquor License.

(e) 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-,

(f) All reserves, deferred payments, deposits, impound accounts, refunds, cost savings, and payments of any kind relating to the construction of any Improvements on the Premises,

(g) All Water stock relating to the Premises;

(h) 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 Personal Property, or any other part of the Trust Estate:

(i) 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 relating 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.



(j) All proceeds from sale or disposition of any of the aforesaid collateral;

(k) All Trustor's rights in proceeds of the loan evidenced by the Note;

(l) All of Trustor's rights in Financial Institution Deposit Accounts made by Sir Mortgage and Finance of Arizona for the benefit of Trustor under the Loan Agreement, if any. All of Trustor's rights to security, cleaning, or other deposits relation to occupancy agreements relating to any portion of the Property.

(m) Trustor(s) Tax ID Number N/A hereby grants to assignee a security interest in any or all of as title and interest in the account(s) with MERIDIAN BANK, N.A., 3550 North Central Avenue, Phoenix, AZ 85012.

(n) All of Trustor's rights in any impound account held by SIR Mortgage & Finance of Arizona, Inc.

As used in the Exhibit "B", the terms "Premises", "Improvements" and "Personal Property" shall have the meanings set forth in the Loan Documents. All references to "Trustor" shall include to mean "Borrower" and Debtor