

When Recorded Return to:

William G. Ridenour
Ridenour Hienton & Lewis, P.L.L.C.
201 N. Central Avenue, #3300
Phoenix, AZ 85004

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MORTGAGE

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Sally G. Padilla, Sandoval County Clerk



MORTGAGE

BUTERA PROPERTIES, LLC, a New Mexico limited liability company ("Grantor"), for consideration paid and in order to secure the payment of the indebtedness hereinafter referred to and the performance of the obligations, covenants, agreements and undertakings of Grantor hereinafter described, does hereby GRANT to **JOHNSON BANK**, a banking corporation organized and existing under the laws of the State of Wisconsin ("Lender"), its interest in certain water rights ("Water Rights") in Sandoval County, New Mexico, described in Exhibit A attached hereto and made a part hereof, together with:

- (i) Any interest the Grantor may have in all easements and rights of way used now or at any future time in connection with any wells utilized or proposed to be utilized to access the Water Rights or as a means of ingress to or egress from such property or for providing utilities to such property;
- (ii) all rights, estates, powers and privileges appurtenant or incident to the foregoing.

TO HAVE AND TO HOLD the property described above (the "**Mortgaged Property**") unto Lender with mortgage covenants, subject to the statutory mortgage condition for the breach of which it is subject to foreclosure as provided by law, and subject to the following terms, provisions and conditions herein set forth.

In order to secure the payment of the indebtedness hereinafter referred to and the performance of the obligations, covenants, agreements and undertakings of Grantor hereinafter described, Grantor hereby grants to the Lender (hereinafter defined) a security interest in any interest the Grantor may have in wells now or hereafter used to obtain the water subject to the Water Rights described in Exhibit A attached hereto and made a part hereof and, all issues, profits and proceeds from all or any part of the Property, all proceeds from the taking of the Property or any part thereof or any interest therein or right or estate appurtenant thereto by eminent domain or by purchase in lieu thereof, all money, funds, accounts, instruments, documents, general intangibles (including trademarks, trade names and symbols used in connection therewith), and the proceeds thereof (whether cash or noncash, moveable or immovable, tangible or intangible) received from the sale, exchange, transfer, collection or other disposition or substitution thereof, all notes or chattel paper arising from or related to the Property, all permits, licenses, franchises, certificates, and other rights

and privileges obtained, used, or useful in connection with the Property, including, without limitation, business licenses, state health department licenses, licenses to conduct business, licenses and rights obtained from any governmental, quasi-governmental or private person or entity whatsoever, all plans, specifications, maps, surveys, reports, architectural, engineering and construction contracts, books of account, insurance policies and other documents, of whatever kind or character, relating to the use, leasing or sale of the Water Rights or operation of the well sites, and all accounts and general intangibles under which such proceeds may arise, together with any sums of money that may now or at any time hereafter become due and payable to Grantor by virtue of any and all royalties, overriding royalties, bonuses, delay rentals and any other amount of any kind or character arising under any and all present and future leases covering the Property or any part thereof (all of the property described in this paragraph hereinafter collectively called the "Collateral") and all proceeds of the Collateral. (The Mortgaged Property and the Collateral are herein sometimes collectively called the "Property").

ARTICLE 1. SECURED INDEBTEDNESS

1.1 SECURED INDEBTEDNESS

This Mortgage ("Mortgage") is made to secure and enforce the payment of the following note, obligations, indebtedness and liabilities: (a) one certain promissory note dated January 27, 2006 in the principal amount of **TWENTY MILLION AND No/100 Dollars (\$20,000,000.00)**, made by **GREENPLEX INVESTMENTS, LLC, an Arizona limited liability company ("Debtor")**, and payable to the order of **JOHNSON BANK, a banking corporation organized and existing under the laws of the State of Wisconsin**, with interest at the rate or rates therein provided, both principal and interest being payable as therein provided and all amounts remaining unpaid thereon being finally due and payable on the Maturity Date, as the same is defined in the 20 Million Note (subject to any extension as provided therein) and containing a provision for the payment of a reasonable additional amount as attorneys' fees, and all other notes given in substitution therefor or in modification, increase, renewal or extension thereof, in whole or in part (such note and all other notes given in substitution therefor or in modification, increase, renewal or extension thereof, in whole or in part, are hereinafter called the "**20 Million Note**"); (b) one certain promissory note dated September 1, 2005 in the principal amount of **FIFTEEN MILLION AND No/100 Dollars (\$15,000,000.00)**, made by Debtor and payable to the order of **JOHNSON BANK, a banking corporation organized and existing under the laws of the State of Wisconsin** (such note and all other notes given in substitution therefor or in modification, increase, renewal or extension thereof, in whole or in part, are hereinafter called the "**15 Million Note**"; the 20 Million Note and the 15 Million Note collectively are hereinafter called the "**Note**" and the original payee named in the Note and all subsequent holders of the Note or any part thereof or any interest therein or any of the "secured indebtedness" [as hereinafter defined] are hereinafter collectively called the "**Lender**"); and (c) all loans and future advances made by the Lender to Debtor and all other debts, obligations and liabilities of every kind and character of Debtor now or hereafter existing in favor of the Lender (including all indebtedness incurred or arising pursuant to the provisions of this Mortgage or any other instrument now or hereafter evidencing, governing or securing the above described indebtedness or any part thereof) whether such debts, obligations or liabilities be direct or indirect, primary or secondary, joint or several, fixed or contingent, and whether originally payable to the Lender or to a third party and subsequently acquired by the Lender and whether such debts,

obligations and liabilities are evidenced by note, open account, overdraft, endorsement, surety agreement, guaranty or otherwise, it being contemplated that Debtor may hereafter become indebted to the Lender in further sum or sums. The indebtedness referred to in this Paragraph is hereinafter sometimes called the "secured indebtedness" or the "indebtedness secured hereby." This Mortgage shall secure up to a maximum amount at any given time of \$35,000,000.00.

1.2 CERTAIN TERMS

The Note, this Mortgage and certain other documents were executed and delivered between Grantor, Debtor and the Lender.

ARTICLE 2. REPRESENTATIONS, WARRANTIES AND COVENANTS

2.1 REPRESENTATIONS, WARRANTIES AND COVENANTS

Grantor represents, warrants and covenants to and with the Lender as follows:

(a) Financial Matters. Grantor is solvent, is not bankrupt and has no outstanding liens, suits, garnishments, bankruptcies or court actions which could render Grantor insolvent or bankrupt. There has not been filed by or against Grantor a petition in bankruptcy or a petition or answer seeking an assignment for the benefit of creditors, the appointment of a receiver, trustee, custodian or liquidator with respect to Grantor or any substantial portion of Grantor's property, reorganization, arrangement, rearrangement, composition, extension, liquidation or dissolution or similar relief under the Federal Bankruptcy Code or any state law. All reports, statements and other data furnished by Grantor to the Lender in connection with the loan evidenced by the Note are true and correct in all material respects and do not omit to state any fact or circumstance necessary to make the statements contained therein not misleading. No material adverse change has occurred since the dates of such reports, statements and other data in the financial condition of Grantor or of any tenant under leases described in such reports, statements and other data. For the purposes of this subparagraph, "Grantor" shall also include each of any joint venturers or general partners of Grantor and any guarantors of the Note.

(b) Title and Authority. Grantor is the lawful owner of good and marketable title to the Property and has the right and authority to transfer and mortgage the Mortgaged Property and to grant a security interest in the Collateral, subject only to the Permitted Encumbrances (as hereinafter defined). Grantor does not do business with respect to the Property under any trade name.

(c) Permitted Encumbrances. Grantor has previously granted to Arizona Business Bank a security interest as described in Exhibit B (the "Permitted Encumbrance") in a portion of the Property. Except for the Permitted Encumbrance, the Property is free and clear from all liens, security interests and encumbrances except the lien and security interest evidenced hereby. There are no mechanic's or materialmen's liens or other claims constituting a lien on the Property, or any part thereof.

(d) No Financing Statement. There is no financing statement that covers or purports to cover all or any part of the Property or its proceeds (because of an after-acquired property clause or otherwise) on file in any public office except to perfect the security interest herein provided.

(e) Location of Collateral. All tangible Collateral is (or will be) located on the property described in Exhibit A attached hereto.

(f) No Default or Consents Required. The execution, delivery and performance of this Mortgage, the Note and all other Loan Documents do not and will not contravene, result in a breach of, constitute a default under or result in the acceleration of indebtedness or obligations created, evidenced or secured by any mortgage, deed of trust, lease, promissory note, or other contract or agreement to which Grantor is a party or by which Grantor or any of its properties may be bound or affected and do not violate or contravene any law, order, decree, rule or regulation to which Grantor is subject. Except as expressly contemplated in the Loan Documents no consent, approval, authorization or order of, and no notice to or filing with, any court or governmental authority or third party is required in connection with the execution, delivery or performance by Grantor of any Loan Document or to consummate any transactions contemplated by the Loan Documents.

(g) Compliance with Covenants and Laws. (omitted).

(h) No Suits. There are no judicial or administrative actions, suits or proceedings pending or, to the best of Grantor's knowledge, threatened against or affecting Grantor (or any other person liable, directly or indirectly, for the secured indebtedness) or the Property or involving the validity, enforceability or priority of any of the Loan Documents.

(i) Condition of Property (omitted).

(j) Organization. Grantor is duly organized and legally existing under the laws of the State of New Mexico. Grantor is duly qualified to do business in the State of New Mexico. Grantor has all requisite power and all governmental certificates of authority, licenses, permits, qualifications and other documentation to own, lease and operate its properties and to carry on its business as now conducted and as contemplated to be conducted. The foregoing representations in this subparagraph shall also apply to any corporation, partnership, joint venture or limited partnership which is a general partner, manager or joint venturer of Grantor.

(k) Enforceability. This Mortgage and all other instruments securing the payment of the Note constitute the legal, valid and binding obligations of Grantor enforceable in accordance with their terms, subject to laws affecting creditor's rights generally. The execution and delivery of, and performance under, this Mortgage and all other instruments securing the payment of the Note are within Grantor's powers and have been duly authorized by all requisite action and are not in contravention of the powers of Grantor's charter, by-laws or other corporate papers if Grantor is a corporation, or of Grantor's partnership or

joint venture agreement if Grantor is a partnership or joint venture, or of Grantor's limited partnership agreement if Grantor is a limited partnership.

(l) Not a Foreign Person. Grantor is not a "foreign person" within the meaning of the Internal Revenue Code of 1986, as amended (the "Code"), Sections 1445 and 7701 (i.e. Grantor is not a non-resident alien, foreign corporation, foreign partnership, foreign trust or foreign estate as those terms are defined in the Code and regulations promulgated thereunder).

(m) Warranty. Grantor shall warrant and forever defend the title to the Property against any and all claims, subject to the Permitted Encumbrances.

2.2 COVENANTS AND AGREEMENTS

So long as the secured indebtedness or any part thereof remains unpaid, Grantor covenants and agrees with the Lender as follows:

(a) Existence. Grantor will continuously maintain its existence and its right to do business in the State of New Mexico.

(c) Operation of Property. (omitted)

(d) Debts for Construction. (omitted).

(h) Condemnation. Immediately upon obtaining knowledge of the institution of any proceedings for the condemnation of the Property or any portion thereof, or any other proceedings arising out of injury or damage to the Property, or any portion thereof, Grantor will notify the Lender of the pendency of such proceedings. The Lender may participate in any such proceedings, and Grantor shall from time to time deliver to the Lender all instruments requested by it to permit such participation. Grantor shall, at its expense, diligently prosecute any such proceedings, and shall consult with the Lender, its attorneys and experts, and cooperate with them in the carrying on or defense of any such proceedings. All proceeds of condemnation awards or proceeds of sale in lieu of condemnation with respect to the Property and all judgments, decrees and awards for injury or damage to the Property shall be paid to the Lender and shall be applied, first, to reimburse the Lender for all costs and expenses, including reasonable attorney's fees, incurred in connection with collection of such proceeds and, second, the remainder of said proceeds shall be applied, at the discretion of the Lender, to the payment (without premium or penalty) of the secured indebtedness, either in whole or in part, whether or not then due and payable, in the order determined by the Lender in its sole discretion or paid out to repair or restore the Property so affected by such condemnation, injury or damage in the same manner as provided in subparagraph (h) of this Paragraph. In the event any of the foregoing proceeds are applied to the repair, restoration or replacement of the Property, Grantor shall promptly commence and complete such repair, restoration or replacement of the Property as nearly as possible to its value, condition and character immediately prior to such damage or taking in accordance with plans and specifications submitted to and approved by the Lender and otherwise in

accordance with the provisions of this Mortgage. Grantor hereby assigns and transfers all such proceeds, judgments, decrees and awards to the Lender and agrees to execute such further assignments of all such proceeds, judgments, decrees and awards as the Lender may request. The Lender is hereby authorized, in the name of Grantor, to execute and deliver valid acquittances for, and to appeal from, any such judgment, decree or award. The Lender shall not be, in any event or circumstances (**EVEN IF THE LENDER IS NEGLIGENT**), liable or responsible for failure to collect, or exercise diligence in the collection of, any such proceeds, judgments, decrees and/or awards.

(i) Protection and Defense of Lien. If the validity or priority of this Mortgage or of any rights, titles, liens or security interests created or evidenced hereby with respect to the Property or any part thereof shall be endangered or questioned or shall be attacked directly or indirectly or if any legal proceedings are instituted against Grantor with respect thereto, Grantor shall give prompt written notice thereof to the Lender. Grantor shall also at Grantor's own cost and expense diligently endeavor to cure any defect that may develop or be claimed, and will take all necessary and proper steps for the defense of such legal proceedings, including but not limited to the employment of counsel, the prosecution or defense of litigation and the release or discharge of the adverse claims, and the Lender (whether or not named as party to legal proceedings with respect thereto) is hereby authorized and empowered to take such additional steps as in its judgment and discretion may be necessary or proper for the defense of any such legal proceedings or the protection of the validity or priority of this Mortgage and the rights, titles, liens and security interests created or evidenced hereby, including but not limited to the employment of counsel, the prosecution or defense of litigation, the compromise or discharge of the adverse claims made with respect to the Property, the purchase of any tax title and the removal of prior liens or security interests (including but not limited to the payment of debts as they mature or the payment in full of matured or nonmatured debts, which are secured by these prior liens or security interests), and all expenses so incurred of every kind and character shall be a demand obligation owing by Grantor and the party incurring such expenses shall be subrogated to all rights of the person receiving such payment.

(j) No Other Liens. Grantor shall not, without the prior written consent of the Lender, create, place or permit to be created or placed, or through any act or failure to act, acquiesce in the placing of, or allow to remain, any deed of trust, mortgage, voluntary or involuntary lien, whether statutory, constitutional or contractual (except for the lien for ad valorem taxes on the Property which are not delinquent), security interest, encumbrance or charge, or conditional sale or other title retention document, against or covering the Property, or any part thereof, other than the Permitted Encumbrances, regardless of whether the same are expressly or otherwise subordinate to the lien or security interest created by this Mortgage, and should any of the foregoing become attached hereafter in any manner to any part of the Property without the prior written consent of the Lender, Grantor shall cause the same to be promptly discharged and released. Grantor shall own all parts of the Property and will not acquire any fixtures, equipment or other property forming a part of the Property pursuant to a lease, license or similar agreement, without the prior written consent of the Lender.

(k) Books and Records. Grantor shall keep accurate books and records in accordance with sound accounting principles in which full, true and correct entries shall be promptly made as to all operations on the Property, and will permit all such books and records (including without limitation all contracts, statements, invoices, bills and claims for labor, materials and services supplied for the construction and operation of the improvements forming a part of the Property) to be inspected and copied by the Lender and its duly accredited representatives at all times during reasonable business hours.

(m) Further Assurances. Grantor shall, on request of the Lender, (i) promptly correct any defect, error or omission which may be discovered in the contents of this Mortgage or in any other instrument now or hereafter executed in connection herewith or in the execution or acknowledgment thereof; (ii) execute, acknowledge, deliver and record or file such further instruments (including without limitation further deeds of trust, security agreements, financing statements, continuation statements and assignments of rents or leases) and do such further acts as may be necessary, desirable or proper to carry out more effectively the purposes of this Mortgage and such other instruments and to subject to the liens and security interests hereof and thereof any property intended by the terms hereof and thereof to be covered hereby and thereby including specifically, but without limitation, any renewals, additions, substitutions, replacements, or appurtenances to the Property; (iii) execute, acknowledge, deliver, procure and record or file any document or instrument (including specifically any financing statement) deemed advisable by the Lender to protect the lien or the security interest hereunder against the rights or interests of third persons; and (iv) provide such certificates, documents, reports, information, affidavits and other instruments and do such further acts as may be necessary, desirable or proper in the reasonable determination of the Lender to enable the Lender to comply with the requirements or requests of any agency having jurisdiction over the Lender or any examiners of such agencies with respect to the indebtedness secured hereby, Grantor or the Property; and Grantor shall pay all costs connected with any of the foregoing.

(n) Fees and Expenses; Indemnification. Grantor shall pay all appraisal fees, filing and recording fees, inspection fees, survey fees, taxes, brokerage fees and commissions, abstract fees, title policy fees, uniform commercial code search fees, escrow fees, attorneys' fees, and all other costs and expenses of every character incurred by Grantor or the Lender in connection with the loan evidenced by the Note, either at the closing thereof or at any time during the term thereof, or otherwise attributable or chargeable to Grantor as owner of the Property, and will reimburse the Lender for all such costs and expenses incurred by it. Grantor shall pay all expenses and reimburse the Lender for any expenditures, including reasonable attorneys' fees and legal expenses, incurred or expended in connection with (i) the breach by Grantor of any covenant herein or in any other instrument securing the payment of the Note, (ii) the Lender's exercise of any of its rights and remedies hereunder or under the Note or any other instrument securing the payment of the Note or the Lender's protection of the Property and its lien and security interest therein, or (iii) any amendments to this Mortgage, the Note or any other Loan Document or any matter requested by Grantor or any approval required hereunder. Grantor shall indemnify and hold harmless the Lender (for purposes of this paragraph, the term "the Lender" shall include the directors, officers, partners, employees and agents of the Lender and any persons or entities owned or controlled

by, owning or controlling, or under common control or affiliated with the Lender) from and against, and reimburse them for, all claims, demands, liabilities, losses, damages, causes of action, judgments, penalties, costs and expenses (including, without limitation, reasonable attorneys' fees) which may be imposed upon, asserted against or incurred or paid by them by reason of, on account of or in connection with any bodily injury or death or property damage occurring in or upon or in the vicinity of the Property through any cause whatsoever or asserted against them on account of any act performed or omitted to be performed hereunder or on account of any transaction arising out of or in any way connected with the Property or with this Mortgage, the Note or any other instrument securing the payment of the Note. **WITHOUT LIMITATION, THE FOREGOING INDEMNITIES SHALL APPLY TO EACH INDEMNIFIED PARTY WITH RESPECT TO CLAIMS, DEMANDS, LIABILITIES, LOSSES, DAMAGES, CAUSES OF ACTION, JUDGMENTS, PENALTIES, COSTS AND EXPENSES (INCLUDING WITHOUT LIMITATION REASONABLE ATTORNEYS' FEES) WHICH IN WHOLE OR IN PART ARE CAUSED BY OR ARISE OUT OF THE NEGLIGENCE OF SUCH (OR ANY OTHER) INDEMNIFIED PARTY OR ANY STRICT LIABILITY. HOWEVER, SUCH INDEMNITIES SHALL NOT APPLY TO ANY INDEMNIFIED PARTY TO THE EXTENT THE SUBJECT OF THE INDEMNIFICATION IS CAUSED BY OR ARISES OUT OF THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF SUCH INDEMNIFIED PARTY.** The foregoing indemnities shall not terminate upon release, foreclosure or other termination of this Mortgage but will survive foreclosure of this Mortgage or conveyance in lieu of foreclosure and the repayment of the secured indebtedness and the discharge and release of this Mortgage and the other documents evidencing or securing the secured indebtedness. Any amount to be paid under this subparagraph by Grantor to the Lender shall be a demand obligation owing by Grantor to the Lender and shall be subject to and governed by the provisions of Paragraph 2.3.

(p) Tax on Lien. (omitted).

(q) Change of Name or Identity. Grantor shall not change its name or identity (including its trade name or names) without notifying the Lender of such change in writing at least thirty (30) days prior to the effective date of such change. Grantor shall execute and deliver to the Lender, prior to or contemporaneously with the effective date of any such change, any financing statement or financing statement change required by the Lender to establish or maintain the validity, perfection and priority of the security interest granted herein. At the request of the Lender, Grantor shall execute a certificate in form satisfactory to the Lender listing the trade names under which Grantor intends to operate the Property, and representing and warranting that Grantor does business under no other trade name with respect to the Property.

(r) Location and Use of Collateral. All tangible Collateral will be used in the business of Grantor and shall remain in Grantor's possession or control at all times at Grantor's risk of loss and shall be located on the real property described in Exhibit A hereto.

(s) Estoppel Certificate. Grantor shall at any time and from time to time furnish promptly upon request by the Lender a written statement in such form as is required by the

Lender stating that the Note, this Mortgage and the other instruments securing the payment of the Note are valid and binding obligations of Grantor, enforceable against Grantor in accordance with their terms; the unpaid principal balance of the Note; the date to which interest on the Note is paid; that the Note, this Mortgage and the other instruments securing the payment of the Note have not been released, subordinated or modified; and that there are no offsets or defenses against the enforcement of the Note, this Mortgage or any other instrument securing the payment of the Note, or if any of the foregoing statements are untrue, specifying the reasons therefor.

(t) Proceeds of Collateral. Grantor shall account fully and faithfully for and, if the Lender so elects, shall promptly pay or turn over to the Lender the proceeds in whatever form received from disposition in any manner of any of the Collateral, except as otherwise specifically authorized herein. Grantor shall at all times keep the Collateral and its proceeds separate and distinct from other property of Grantor and shall keep accurate and complete records of the Collateral and its proceeds.

(u) Permitted Encumbrances. Grantor shall comply with and will perform all of the covenants, agreements and obligations imposed upon it or the Property in the Permitted Encumbrances in accordance with their respective terms and provisions. Grantor shall not modify or permit any modification of any Permitted Encumbrance, without the prior written consent of the Lender.

2.3 RIGHT OF THE LENDER TO PERFORM

Grantor agrees that, if Grantor fails to perform any act or to take any action which hereunder Grantor is required to perform or take, or to pay any money which hereunder Grantor is required to pay, or takes any action prohibited hereby, the Lender may, but shall not be obligated to, perform or cause to be performed such act or take such action or pay such money or remedy any action so taken, and any expenses so incurred by the Lender, and any money paid by the Lender in connection therewith, shall be a demand obligation owing by Debtor to the Lender and the Lender, upon making such payment, shall be subrogated to all of the rights of the person, corporation or body politic receiving such payment. Any amounts due and owing by Debtor to the Lender pursuant to this Mortgage shall bear interest from the date such amount becomes due until paid at the rate of interest payable on matured but unpaid principal of or interest on the Note and shall be a part of the secured indebtedness and shall be secured by this Mortgage and by any other instrument securing the secured indebtedness.

ARTICLE 3. Assignment of Rents

(omitted)

ARTICLE 4. REMEDIES IN EVENT OF DEFAULT

4.1 DEFAULTS

The term "default" as used in this Mortgage shall mean the occurrence of any of the following events:

(a) the failure of Debtor to make due and punctual payment of the Note or of any other secured indebtedness or of any installment of principal thereof or interest thereon, or of any other amount required to be paid under the Note, this Mortgage or any other instrument securing the payment of the Note, as the same shall become due and payable, whether at maturity or when accelerated pursuant to any power to accelerate contained in the Note or contained herein; or

(b) the failure of Debtor or Grantor timely and properly to observe, keep or perform any covenant, agreement, warranty or condition herein or in any other Loan Document required to be observed, kept or performed (except a failure described in any other subparagraph of this paragraph 4.1, including subparagraph 4.1(a)), if such failure continues for thirty (30) days after receipt by Debtor or Grantor of written notice and demand for the performance of such covenant, agreement, warranty or condition; provided that if Debtor or Grantor shall within such thirty (30) day period commence action to cure such failure but is unable, by reason of the nature of the performance required, to cure same within such period, and if Debtor or Grantor continues such action thereafter diligently and without unnecessary delays, Grantor shall not be in default hereunder until the expiration of a period of time as may be reasonably necessary to cure such failure, provided further that in any event Grantor shall be in default hereunder if such failure is not cured on or before sixty (60) days after receipt by Grantor of the above described written demand for performance; or

(c) any representation contained herein or in any other Loan Document or otherwise made by Debtor or Grantor or any other person or entity to the Lender in connection with the loan evidenced by the Note is false or misleading in any material respect;

(d) Debtor or Grantor becomes insolvent, or makes a transfer in fraud of creditors, or makes an assignment for the benefit of creditors, or admits in writing its inability to pay its debts as they become due; or

(e) Debtor or Grantor is generally not paying its debts as such debts become due; or

(f) a receiver, trustee or custodian is appointed for, or takes possession of, all or substantially all of the assets of Debtor, Grantor or any of the Property, either in a proceeding brought by Debtor or Grantor or in a proceeding brought against Debtor or Grantor and such appointment is not discharged or such possession is not terminated within sixty (60) days after the effective date thereof or Debtor or Grantor consents to or acquiesces in such appointment or possession; or

(g) Debtor or Grantor files a petition for relief under the Federal Bankruptcy Code or any other present or future federal or state insolvency, bankruptcy or similar law (all of the foregoing hereinafter collectively called "applicable Bankruptcy Law") or an

involuntary petition for relief is filed against Debtor or Grantor under any applicable Bankruptcy Law and such petition is not dismissed within sixty (60) days after the filing thereof, or an order for relief naming Debtor or Grantor is entered under any applicable Bankruptcy Law, or any composition, rearrangement, extension, reorganization or other relief of debtors now or hereafter existing is requested or consented to by Debtor or Grantor; or

(h) the Property or any part thereof is taken on execution or other process of law in any action against Grantor; or

(i) Grantor fails to have discharged within a period of thirty (30) days any attachment, sequestration or similar writ levied upon any property of Grantor; or

(j) Debtor or Grantor fails to pay within thirty (30) days any final money judgment against Debtor/Grantor as applicable; or

(k) any of the events referred to in subheadings (e), (f), (g), (h), (j) or (k) shall occur with respect to any manager of Debtor or Grantor or any guarantor of the payment of the secured indebtedness or any part thereof and shall not be remedied within the time set forth in the subheadings; or

(l) Grantor abandons all or a portion of the Property; or

(m) the holder of any lien or security interest on the Property (without hereby implying the consent of the Lender to the existence or creation of any such lien or security interest) declares a default thereunder or institutes foreclosure or other proceedings for the enforcement of its remedies thereunder; or

(n) without the prior written consent of the Lender (which consent may be withheld for any reason or for no reason), Grantor sells, leases, exchanges, assigns, transfers, conveys or otherwise disposes of all or any part of the Property or any interest therein (except for the disposition of worn-out or obsolete personal property or fixtures under the circumstances described in subparagraph 2.2(g) hereof), or legal or equitable title to the Property, or any part thereof or any interest therein, is vested in any other party, in any manner whatsoever, by operation of law or otherwise, whether any of the foregoing is voluntary or involuntary, it being understood that the consent of the Lender required hereunder may be refused by the Lender in its sole and absolute discretion or may be predicated upon any terms, conditions and covenants deemed advisable or necessary in the sole and absolute discretion of the Lender, including but not limited to the right to change the interest rate, date of maturity or payments of principal and/or interest on the Note, to require payment of any amount as additional consideration as a transfer fee or otherwise and to require assumption of the obligations under the Loan Documents; or

(o) without the prior written consent of the Lender (which consent may be withheld for any reason or for no reason), Grantor creates, places or permits to be created or placed, or through any act or failure to act, acquiesces in the placing of, or allows to remain,

any deed of trust, mortgage, voluntary or involuntary lien, whether statutory, constitutional or contractual (except for the lien for ad valorem taxes on the Property which are not delinquent), security interest, encumbrance or charge, or conditional sale or other title retention document, against or covering the Property, or any part thereof, other than encumbrances permitted by the Lender, regardless of whether the same are expressly or otherwise subordinate to the lien or security interest created herein or in any other Loan Document, or acquires any fixtures, equipment or other property forming a part of the Property pursuant to a lease, license or similar agreement, it being understood that the consent of the Lender required hereunder may be refused by the Lender in its sole and absolute discretion or for any reason or may be predicated upon any terms, conditions and covenants deemed advisable or necessary in the sole and absolute discretion of the Lender including but not limited to the right to change the interest rate, date of maturity or payments of principal and/or interest on the Note, to require payment of any amount as a fee or other consideration and to require a payment on the principal of the Note; or

(p) the Property is so demolished, destroyed or damaged that, in the judgment of the Lender, it cannot be restored or rebuilt with available funds to a profitable condition within a reasonable period of time; or

(q) so much of the Property is taken in condemnation, or sold in lieu of condemnation, or the Property is so diminished in value due to any injury or damages to the Property, that the remainder thereof cannot, in the judgment of the Lender, continue to be operated profitably for the purpose for which it was being used immediately prior to such taking, sale or diminution; or

(r) **Debtor or Grantor dissolves, liquidates, merges or consolidates or any interest in Grantor is sold, assigned, transferred, mortgaged, pledged, encumbered, or otherwise disposed of, voluntarily or involuntarily, without the prior written consent of the Lender; provided, however, sales, assignments and transfers of membership interests in Debtor or Grantor between existing members of Debtor/Grantor as applicable, or to heirs, or to entities created for estate planning purposes, shall not trigger default; or**

(s) any failure of any representation or warranty made under any Certification of Non Foreign Status furnished the Lender in connection with the Note to be true and correct in all respects or any failure to perform or other breach of any covenant therein; or

(t) any failure of any representation or warranty made in any guaranty of the payment of the secured indebtedness or any part thereof to be true and correct in all material respects or any failure to perform or other breach of any covenant in the guaranty; or

(u) Grantor's failure to provide or maintain any insurance coverage required by this Mortgage continues for three (3) business days after receipt by Debtor or Grantor of written notice of such failure.

4.2 ACCELERATION

Upon the occurrence of a default, the Lender shall have the option of declaring all secured indebtedness in its entirety to be immediately due and payable, and the liens and security interests evidenced hereby shall be subject to foreclosure in any manner provided for herein or provided for by law as the Lender may elect.

4.3 POSSESSION

Upon the occurrence of a default, or any event or circumstance which, with the lapse of time or the giving of notice, or both, would constitute a default hereunder, the Lender is authorized prior or subsequent to the institution of any foreclosure proceedings to enter upon the Property, or any part thereof, and to take possession of the Property and of all books, records and accounts relating thereto and to exercise without interference from Grantor any and all rights which Grantor has with respect to the management, possession, operation, protection or preservation of the Property, including the right to rent the same for the account of Grantor and to deduct from such rents all costs, expenses and liabilities of every character incurred by the Lender in collecting such rents and in managing, operating, maintaining, protecting or preserving the Property and to apply the remainder of such rents on the indebtedness secured hereby in such manner as the Lender may elect. All such costs, expenses and liabilities incurred by the Lender in collecting such rents and in managing, operating, maintaining, protecting or preserving the Property, if not paid out of rents as hereinabove provided, shall constitute a demand obligation owing by Grantor and shall bear interest from the date of expenditure until paid at the rate of interest payable on matured but unpaid principal of or interest on the Note, all of which shall constitute a portion of the secured indebtedness. If necessary to obtain the possession provided for above, the Lender may invoke any and all legal remedies to dispossess Grantor, including specifically one or more actions for forcible entry and detainer, trespass to try title and restitution. **IN CONNECTION WITH ANY ACTION TAKEN BY THE LENDER PURSUANT TO THIS PARAGRAPH 4.3, THE LENDER SHALL NOT BE LIABLE FOR ANY LOSS SUSTAINED BY GRANTOR RESULTING FROM ANY FAILURE TO LET THE PROPERTY, OR ANY PART THEREOF, OR FROM ANY OTHER ACT OR OMISSION OF THE LENDER IN MANAGING THE PROPERTY (REGARDLESS OF WHETHER SUCH LOSS IS CAUSED BY THE NEGLIGENCE OF THE LENDER) UNLESS SUCH LOSS IS CAUSED BY THE WILLFUL MISCONDUCT AND BAD FAITH OF THE LENDER, NOR SHALL THE LENDER BE OBLIGATED TO PERFORM OR DISCHARGE ANY OBLIGATION, DUTY OR LIABILITY UNDER ANY LEASE AGREEMENT COVERING THE PROPERTY OR ANY PART THEREOF OR UNDER OR BY REASON OF THIS INSTRUMENT OR THE EXERCISE OF RIGHTS OR REMEDIES HEREUNDER. GRANTOR SHALL AND DOES HEREBY AGREE TO INDEMNIFY THE LENDER FOR, AND TO HOLD THE LENDER HARMLESS FROM, ANY AND ALL LIABILITY, LOSS OR DAMAGE WHICH MAY OR MIGHT BE INCURRED BY THE LENDER UNDER ANY SUCH LEASE AGREEMENT OR UNDER OR BY REASON OF THIS DEED OF TRUST OR THE EXERCISE OF RIGHTS OR REMEDIES HEREUNDER AND FROM ANY AND ALL CLAIMS AND DEMANDS WHATSOEVER WHICH MAY BE ASSERTED AGAINST THE LENDER BY REASON OF ANY ALLEGED OBLIGATIONS OR UNDERTAKINGS ON ITS PART TO PERFORM OR DISCHARGE ANY OF THE TERMS, COVENANTS OR AGREEMENTS CONTAINED IN ANY SUCH LEASE AGREEMENT, REGARDLESS OF WHETHER SUCH LIABILITY, LOSS, DAMAGE,**

CLAIMS OR DEMANDS ARE THE RESULT OF THE NEGLIGENCE OF THE LENDER OR ANY STRICT LIABILITY. Should the Lender incur any such liability, the amount thereof, including costs, expenses and reasonable attorney's fees, shall be secured hereby and Grantor shall reimburse the Lender therefor immediately upon demand. Nothing in this Paragraph 4.3 shall impose any duty, obligation or responsibility upon the Lender for the control, care, management or repair of the Property, nor for the carrying out of any of the terms and conditions of any such lease agreement; nor shall it operate to make the Lender responsible or liable for any waste committed on the Property by the tenants or by any other parties or for any dangerous or defective condition of the Property, **OR FOR ANY NEGLIGENCE IN THE MANAGEMENT, UPKEEP, REPAIR OR CONTROL OF THE PROPERTY RESULTING IN LOSS OR INJURY OR DEATH TO ANY TENANT, LICENSEE, EMPLOYEE OR STRANGER OR ANY STRICT LIABILITY.** Grantor hereby assents to, ratifies and confirms any and all actions of the Lender with respect to the Property taken under this Paragraph 4.3. For purposes of this paragraph, the term "Lender" shall include the directors, officers, employees, attorneys and agents of the Lender and any persons or entities owned or controlled by, owning or controlling, or under common control or affiliated with the Lender.

4.4 FORECLOSURE

(omitted).

4.5 JUDICIAL FORECLOSURE

(omitted)

4.6 RECEIVER

In addition to all other remedies herein provided for, Grantor agrees that upon the occurrence of a default, or any event or circumstance which, with the lapse of time or the giving of notice, or both, would constitute a default hereunder, the Lender shall as a matter of right be entitled to the appointment of a receiver or receivers for all or any part of the Property, whether such receivership be incident to a proposed sale of such property or otherwise, and without regard to the value of the Property or the solvency of any person or persons liable for the payment of the indebtedness secured hereby, and Grantor does hereby consent to the appointment of such receiver or receivers, waives any and all defenses to such appointment and agrees not to oppose any application therefor by the Lender, but nothing herein is to be construed to deprive the Lender of any other right, remedy or privilege it may now have under the law to have a receiver appointed; provided, however, that the appointment of such receiver, trustee or other appointee by virtue of any court order, statute or regulation shall not impair or in any manner prejudice the rights of the Lender to receive payment of the rents and income assigned to the Lender pursuant to this Mortgage or any other Loan Document.

Any money advanced by the Lender in connection with any such receivership shall be a demand obligation owing by Grantor to the Lender and shall bear interest from the date of making such advancement by the Lender until paid at the rate of interest payable on matured but unpaid principal of or interest on the Note and shall be a part of the secured indebtedness and shall be secured by this Mortgage and by any other instrument securing the secured indebtedness.

4.7 PROCEEDS OF SALE

The proceeds of any sale held by public officer in foreclosure of the liens evidenced hereby shall be applied:

FIRST, to the payment of all necessary costs and expenses incident to the foreclosure sale as the case may be, including but not limited to all court costs and charges of every character in the event foreclosed by suit, together with reasonable attorneys' fees of the Lender;

SECOND, to the payment in full of the secured indebtedness (including specifically without limitation the principal, interest and reasonable attorneys' fees due and unpaid on the Note and the amounts due and unpaid and owed to the Lender under this Mortgage) in such order as the Lender may elect; and

THIRD, the remainder, if any there shall be, shall be paid to Grantor or to other parties entitled thereto by law.

4.8 THE LENDER AS PURCHASER

The Lender shall have the right to become the purchaser at any sale held by any receiver or public officer, and any Lender purchasing at any such sale shall have the right to credit upon the amount of the bid made therefor, to the extent necessary to satisfy such bid, the secured indebtedness owing to such Lender, or if such Lender holds less than all of such indebtedness the pro rata part thereof owing to such Lender, accounting to all other Beneficiaries not joining in such bid in cash for the portion of such bid or bids apportionable to such nonbidding Lender or Beneficiaries.

4.9 UNIFORM COMMERCIAL CODE

(omitted).

4.10 PARTIAL FORECLOSURE

Intentionally Omitted.

4.11 REMEDIES CUMULATIVE

All remedies herein expressly provided for are cumulative of any and all other remedies existing at law or in equity and are cumulative of any and all other remedies provided for in any other instrument securing the payment of the secured indebtedness, or any part thereof, or otherwise benefitting the Lender, and the Lender shall, in addition to the remedies herein provided, be entitled to avail itself of all such other remedies as may now or hereafter exist at law or in equity for the collection of the secured indebtedness and the enforcement of the covenants herein and the foreclosure of the liens and security interests evidenced hereby, and the resort to any remedy provided for hereunder or under any such other instrument or provided for by law shall not prevent the concurrent or subsequent employment of any other appropriate remedy or remedies.

4.12 RESORT TO ANY SECURITY

The Lender may resort to any security given by this Mortgage or to any other security now existing or hereafter given to secure the payment of the secured indebtedness, in whole or in part, and in such portions and in such order as may seem best to the Lender in its sole and uncontrolled discretion, and any such action shall not in any way be considered as a waiver of any of the rights, benefits, liens or security interests evidenced by this Mortgage.

4.13 WAIVER

To the full extent Grantor may do so, Grantor agrees that Grantor shall not at any time insist upon, plead, claim or take the benefit or advantage of any law now or hereafter in force pertaining to the rights and remedies of sureties or providing for any stay, extension or redemption, and Grantor, for Grantor and Grantor's heirs, devisees, representatives, successors and assigns, and for any and all persons ever claiming any interest in the Property, to the extent permitted by law, hereby waives and releases all rights of redemption, valuation, appraisal, stay of execution, notice of intention to mature or declare due the whole of the secured indebtedness, notice of election to mature or declare due the whole of the secured indebtedness and all rights to a marshaling of the assets of Grantor, including the Property, or to a sale in inverse order of alienation in the event of foreclosure of the liens and security interests hereby created. Grantor shall not have or assert any right under any statute or rule of law pertaining to the marshaling of assets, sale in inverse order of alienation, the exemption of homestead, the administration of estates of decedents or other matters whatever to defeat, reduce or affect the right of the Lender under the terms of this Mortgage to a sale of the Property for the collection of the secured indebtedness without any prior or different resort for collection, or the right of the Lender under the terms of this Mortgage to the payment of such indebtedness out of the proceeds of sale of the Property in preference to every other claimant whatever. If any law referred to in this paragraph and now in force, of which Grantor or Grantor's heirs, devisees, representatives, successors and assigns and such other persons claiming any interest in the Property might take advantage despite this paragraph, shall hereafter be repealed or cease to be in force, such law shall not thereafter be deemed to preclude the application of this paragraph.

4.14 DELIVERY OF POSSESSION AFTER FORECLOSURE

In the event there is a foreclosure sale hereunder and at the time of such sale Grantor or Grantor's heirs, devisees, representatives, successors or assigns or any other persons claiming any interest in the Property are occupying or using the Property, or any part thereof, each and all shall immediately become the tenant of the purchaser at such sale. Each such tenant shall, subject to any written nondisturbance or attornment agreement between it and the Lender, have only a tenancy from day-to-day, terminable at the will of either landlord or tenant, at a reasonable rental per day based upon the value of the property occupied, such rental to be due daily to the purchaser. In the event the tenant fails to surrender possession of such property upon demand, the purchaser shall be entitled to institute and maintain an action for termination of the rental agreement and possession of the premises in the Metropolitan or District Court of the county in which the Property is located.

4.15 TENDER AFTER ACCELERATION

If, following the occurrence of a default and the acceleration of the secured indebtedness but prior to the foreclosure of this Mortgage against the Property, Grantor shall tender to the Lender payment of an amount sufficient to pay the entire secured indebtedness, such tender shall be deemed to be a voluntary prepayment under the Note and, consequently, Grantor shall also pay to the Lender any charge or premium required under the Note to be paid in order to prepay principal and, if such principal payment is made during any period when prepayment is prohibited by this Mortgage or the Note, the applicable charge or premium shall be the maximum prepayment penalty provided for in the Note; provided, however, that in no event shall any amount payable under this paragraph, when added to the interest otherwise payable on the Note and the other secured indebtedness, exceed the maximum interest permitted under applicable law.⁸

4.16 COLLECTION EXPENSES

Upon the occurrence of a default, Grantor shall reimburse the Lender for all expenses incurred by the Lender as a result of such default, including, but not limited to, all travel costs, third-party appraisal fees, environmental report preparation and testing fees, architectural and engineering expenses, and legal fees and expenses.

4.17 REDEMPTION

If the Property is sold at a foreclosure sale following a court ordered judicial foreclosure, the redemption period after such foreclosure sale shall be one month instead of nine months as provided in Section 39-5-19 NMSA 1978, as amended.

4.18 WAIVER OF DEFICIENCY STATUTE PROTECTIONS/FAIR MARKET VALUE FOR CALCULATING DEFICIENCIES

(a) To the extent permitted by law, Grantor agrees that the Lender shall be entitled to seek a deficiency judgment from Grantor and any other party obligated on the Note or guaranty of the Note equal to the difference between the amount owing on the Note and the amount for which the Property was sold pursuant to a judicial or nonjudicial foreclosure sale. Grantor recognizes that this provision is a waiver of any statute or law that permits Grantor or any guarantor to present competent evidence of the fair market value of the Property as of the date of any foreclosure sale and to offset against any deficiency the amount by which the foreclosure sale is determined to be less than such fair market value. Grantor further recognizes and agrees that this waiver will create an irrebuttable presumption that the foreclosure sales price is equal to the fair market value of the Property for purposes of calculating deficiencies owed by Grantor and Guarantor, other borrowers on the Note, and others against whom recovery of a deficiency is sought.

(b) Alternatively, if a court of competent jurisdiction finds the foregoing waiver is unenforceable, the following shall be the basis for the finder of fact's determination of the fair market value of the Property as of the date of a foreclosure sale:

(i) The Property shall be valued in an "as is" condition as of the date of the foreclosure sale, without any assumption or expectation that the Property will be repaired or improved in any manner before a resale of the Property after foreclosure.

(ii) The valuation shall be based upon an assumption that the foreclosure purchaser desires a prompt resale of the Property for cash promptly (but no later than twelve months) following the foreclosure sale.

(iii) All reasonable closing costs customarily borne by the seller in a commercial real estate transaction should be deducted from the gross fair market value of the Property, including, without limitation, brokerage commissions, title insurance, a survey of the Mortgaged Property, tax prorations, attorney's fees, and marketing costs.

(iv) The gross fair market value of the Property shall be further discounted to account for any estimated holding costs associated with maintaining the Property pending sale, including, without limitation, utilities expenses, property management fees, taxes and assessments (to the extent not accounted for in (iii) above), and other maintenance expenses.

(v) Any expert opinion testimony given or considered in connection with a determination of the fair market value of the Property must be given by persons having at least five (5) years experience in appraising property similar to the Property and who have conducted and prepared a complete written appraisal of the Property taking into consideration the factors set forth above.

ARTICLE 5. MISCELLANEOUS

5.1 TERMINATION

If all of the secured indebtedness be paid as the same becomes due and payable and if all of the covenants, warranties, undertakings and agreements made in this Mortgage are kept and performed, then and in that event only, all rights under this Mortgage shall terminate and the Property shall become wholly clear of the liens, security interests, conveyances and assignments evidenced hereby, which shall be released by the Lender in due form at Grantor's cost.

5.2 WAIVER BY THE LENDER

The Lender may at any time and from time to time (a) waive or not enforce compliance by Grantor with any covenant herein made by Grantor; (b) consent to Grantor doing any act which hereunder Grantor is prohibited from doing, or consent to Grantor failing to do any act which hereunder Grantor is required to do; (c) release any part of the Property, or any interest therein, from the lien and security interest of this Mortgage, or (d) release any party liable, either directly or indirectly, for the secured indebtedness or for any covenant herein or in any other instrument now or hereafter securing the payment of the secured indebtedness, without impairing or releasing the

liability of any other party. No such act shall in any way impair the rights of the Lender hereunder except to the extent specifically agreed to by the Lender in writing.

5.3 ACTIONS BY THE LENDER

The lien, security interest and other security rights of the Lender hereunder shall not be impaired by any indulgence, moratorium or release granted by the Lender, including but not limited to (a) any renewal, extension, increase or modification which the Lender may grant with respect to any secured indebtedness, (b) any surrender, compromise, release, renewal, extension, exchange or substitution which the Lender may grant in respect of the Property, or any part thereof or any interest therein, or (c) any release or indulgence granted to any endorser, guarantor or surety of any secured indebtedness. The taking of additional security by the Lender shall not release or impair the lien, security interest or other security rights of the Lender hereunder or affect the liability of Grantor or of any endorser or guarantor or other surety or improve the right of any permitted junior lienholder in the Property.

5.4 RIGHTS OF THE LENDER

The Lender may waive any default without waiving any other prior or subsequent default. The Lender may remedy any default without waiving the default remedied. Neither the failure by the Lender to exercise, nor the delay by the Lender in exercising, any right, power or remedy upon any default shall be construed as a waiver of such default or as a waiver of the right to exercise any such right, power or remedy at a later date. No single or partial exercise by the Lender of any right, power or remedy hereunder shall exhaust the same or shall preclude any other or further exercise thereof, and every such right, power or remedy hereunder may be exercised at any time and from time to time. No modification or waiver of any provision hereof nor consent to any departure by Grantor therefrom shall in any event be effective unless the same shall be in writing and signed by the Lender and then such waiver or consent shall be effective only in the specific instances, for the purpose for which given and to the extent therein specified. No notice to nor demand on Grantor in any case shall of itself entitle Grantor to any other or further notice or demand in similar or other circumstances. Acceptance by the Lender of any payment in an amount less than the amount then due on any secured indebtedness shall be deemed an acceptance on account only and shall not in any way affect the existence of a default hereunder.

5.5 FILING AND RECORDATION

Grantor shall cause this Mortgage and all amendments and supplements thereto and substitutions therefor and all financing statements and continuation statements relating hereto to be recorded, filed, re-recorded and refiled in such manner and in such places as the Lender shall reasonably request, and shall pay all such recording, filing, re-recording and re-filing taxes, fees and other charges.

5.6 DEALING WITH SUCCESSOR

In the event the ownership of the Property or any part thereof becomes vested in a person other than Grantor, the Lender may, without notice to Grantor, deal with such successor or successors in interest with reference to this Mortgage and to the indebtedness secured hereby in the

same manner as with Grantor, without in any way vitiating or discharging Grantor's liability hereunder or for the payment of the indebtedness secured hereby. No sale of the Property, no forbearance on the part of the Lender and no extension of the time for the payment of the indebtedness secured hereby given by the Lender shall operate to release, discharge, modify, change or affect, in whole or in part, the liability of Grantor hereunder or for the payment of the indebtedness secured hereby or the liability of any other person hereunder or for the payment of the indebtedness secured hereby, except as agreed to in writing by the Lender.

5.7 PLACE OF PAYMENT

The Note and all other secured indebtedness which may be owing hereunder at any time by Grantor shall be payable at the place designated in the Note, or if no such designation is made, at the office of the Lender at the address indicated in this Mortgage, or at such other place in Phoenix, Arizona as the Lender may designate in writing.

5.8 SUBROGATION

To the extent that proceeds of the Note are used to pay indebtedness secured by any outstanding lien, security interest, charge or prior encumbrance against the Property, such proceeds have been advanced by the Lender at Grantor's request and the Lender shall be subrogated to any and all rights, security interests and liens owned or held by any owner or holder of such outstanding liens, security interests, charges or encumbrances, irrespective of whether the liens, security interests, charges or encumbrances are released; provided, however, that the terms and provisions of this Mortgage shall govern the rights and remedies of the Lender and shall supersede the terms, provisions, rights and remedies under and pursuant to the instruments creating the lien or liens to which the Lender is subrogated hereunder.

5.9 APPLICATION OF INDEBTEDNESS

If any part of the secured indebtedness is not, for any reason, lawfully secured by this Mortgage, then the Lender may without notice to Grantor apply payments made on the secured indebtedness first in discharge of the part not secured by this Mortgage. If for any reason any part of the secured indebtedness is not lawfully secured by the entire Property, then the Lender may without notice to Grantor apply payments made on the secured indebtedness first in discharge of that part. If the Lender has full recourse against Grantor or any guarantor for part, but not all, of the secured indebtedness for any reason, then the Lender may without notice to Grantor apply foreclosure proceeds which are to be applied to the secured indebtedness first against that portion of the secured indebtedness for which the Lender does not have full recourse against Grantor or the guarantor. Similarly, the Lender may without notice to Grantor apply any cash payments actually paid by Grantor or any guarantor before final maturity of the Note (by acceleration or otherwise) to the portion of the secured indebtedness for which the Lender does not have full recourse against Grantor or the guarantor.

5.10 USURY

It is the intent of the Lender and Grantor in the execution of the Note, this Mortgage and all other instruments now or hereafter securing the Note or executed in connection therewith or under any other written or oral agreement by Grantor in favor of the Lender to contract in strict compliance with applicable usury law. In furtherance thereof, the Lender and Grantor stipulate and agree that none of the terms and provisions contained in the Note, this Mortgage or any other instrument securing the Note or executed in connection herewith, or in any other written or oral agreement by Grantor in favor of the Lender, shall ever be construed to create a contract to pay for the use, forbearance or detention of money, interest at a rate in excess of the maximum interest rate permitted to be charged by applicable law; that neither Grantor nor any guarantors, endorsers or other parties now or hereafter becoming liable for payment of the Note or the other indebtedness secured hereby shall ever be obligated or required to pay interest on the Note or on indebtedness arising under any instrument securing the Note or executed in connection therewith, or in any other written or oral agreement by Grantor in favor of the Lender, at a rate in excess of the maximum interest which may be lawfully charged under applicable law; and that the provisions of this paragraph shall control over all other provisions of the Note, this Mortgage and any other instruments now or hereafter securing the Note or executed in connection herewith or any other oral or written agreements which may be in apparent conflict herewith. The Lender expressly disavows any intention to charge or collect excessive unearned interest or finance charges in the event the maturity of the Note is accelerated. If the maturity of the Note shall be accelerated for any reason or if the principal of the Note is paid prior to the end of the term of the Note, and as a result thereof the interest received for the actual period of existence of the loan evidenced by the Note exceeds the applicable maximum lawful rate, the Lender shall, at its option, either refund to Grantor the amount of such excess or credit the amount of such excess against the principal balance of the Note then outstanding and thereby shall render inapplicable any and all penalties of any kind provided by applicable law as a result of such excess interest. If the Lender shall contract for, charge or receive any amount or amounts and/or any other thing of value which are determined to constitute interest and which would increase the effective interest rate on the Note or the other indebtedness secured by the Loan Documents to a rate in excess of that permitted to be charged by applicable law, the amount determined to constitute interest in excess of the lawful rate shall, following such determination, at the option of the Lender, be either immediately returned to Grantor or credited against the principal balance of the Note then outstanding, in which event any and all penalties of any kind under applicable law as a result of such excess interest shall be inapplicable. By execution of this Mortgage, Grantor acknowledges that it believes the loan evidenced by the Note to be non-usurious and agrees that if, at any time, Grantor should have reason to believe that such loan is in fact usurious, it will give the Lender notice of such condition and Grantor agrees that the Lender shall have ninety (90) days in which to make appropriate refund or other adjustment in order to correct such condition if in fact such exists. The term "applicable law" as used in this paragraph shall mean the laws of the State of New Mexico or the laws of the United States, whichever laws allow the greater rate of interest, as such laws now exist or may be changed or amended or come into effect in the future.

5.11 NOTICE

Any notice, request, demand or other communication required or permitted hereunder, or under the Note, or under any other instrument securing the payment of the Note (unless otherwise expressly provided therein) shall be given in writing by (a) personal delivery, or (b) expedited

commercial delivery service with proof of delivery, or (c) United States mail, postage prepaid, registered or certified mail, return receipt requested, or (d) telecopy, sent to the intended addressee at the address shown on the signature page of this Mortgage, or to such different address as the addressee shall have designated by written notice sent in accordance herewith, and shall be deemed to have been given and received either at the time of personal delivery or, in the case of delivery service or mail, as of the date of first attempted delivery at the address and in the manner provided herein, or in the case of telecopy, upon receipt.

5.12 HEIRS, SUCCESSORS AND ASSIGNS

The terms, provisions, covenants and conditions hereof shall be binding upon Grantor, and the heirs, devisees, representatives, successors and assigns of Grantor including all successors in interest of Grantor in and to all or any part of the Property, and shall inure to the benefit of the Lender and its representatives, successors, substitutes and assigns and shall constitute covenants running with the land. All references in this Mortgage to Grantor or the Lender shall be deemed to include all such heirs, devisees, representatives, successors, substitutes and assigns.

5.13 SEVERABILITY

A determination that any provision of this Mortgage is unenforceable or invalid shall not affect the enforceability or validity of any other provision and any determination that the application of any provision of this Mortgage to any person or circumstance is illegal or unenforceable shall not affect the enforceability or validity of such provision as it may apply to any other persons or circumstances.

5.14 GENDER AND NUMBER

Within this Mortgage, words of any gender shall be held and construed to include any other gender, and words in the singular number shall be held and construed to include the plural and words in the plural number shall be held and construed to include the singular, unless in each instance the context otherwise requires.

5.15 COUNTERPARTS

This Mortgage may be executed in any number of counterparts with the same effect as if all parties hereto had signed the same document. All such counterparts shall be construed together and shall constitute one instrument, but in making proof hereof it shall only be necessary to produce one such counterpart.

5.16 JOINT AND SEVERAL

Where two or more persons or entities have executed this Mortgage, unless the context clearly indicates otherwise, the term "Grantor" as used in this Mortgage means the Grantors hereunder or either or any of them and the obligations of Grantor hereunder shall be joint and several.

5.17 REPORTING REQUIREMENTS

Grantor agrees to comply with any and all reporting requirements applicable to the transaction evidenced by the Note and secured by this Mortgage which are set forth in any law, statute, ordinance, rule, regulation, order or determination of any governmental authority, including but not limited to The International Investment Survey Act of 1976, The Agricultural Foreign Investment Disclosure Act of 1978, The Foreign Investment in Real Property Tax Act of 1980 and the Tax Reform Act of 1984 and further agrees upon request of the Lender to furnish the Lender with evidence of such compliance.

5.18 HEADINGS

The paragraph headings contained in this Mortgage are for convenience only and shall in no way enlarge or limit the scope or meaning of the various and several paragraphs hereof.

5.19 CONSENT OF THE LENDER

Except where otherwise provided herein, in any instance hereunder where the approval, consent or the exercise of judgment of the Lender is required, the granting or denial of such approval or consent and the exercise of such judgment shall be within the sole discretion of the Lender, and the Lender shall not, for any reason or to any extent, be required to grant such approval or consent or exercise such judgment in any particular manner, regardless of the reasonableness of either the request or the Lender's judgment.

5.20 MODIFICATION OR TERMINATION

The Loan Documents may only be modified or terminated by a written instrument or instruments executed by the party against which enforcement of the modification or termination is asserted. Any alleged modification or termination which is not so documented shall not be effective as to any party.

5.21 NEGATION OF PARTNERSHIP

Nothing contained in the Loan Documents is intended to create any partnership, joint venture or association between Grantor and the Lender, or in any way make the Lender a co-principal with Grantor with reference to the Property, and any inferences to the contrary are hereby expressly negated.

5.22 GRANTOR'S FINANCIAL STATEMENTS AND REPORTS

Grantor's Financial Statements and Reports. Grantor will deliver to Lender, or cause to be delivered to Lender, at Lender's reasonable request, financial and operating statements for Grantor and, if applicable, the guarantors (for so long as the guaranty is in effect) for the previous year within one hundred twenty (120) days after the end of each fiscal year of Grantor, which shall have the certification of Grantor or be compiled by an independent certified public accounting firm acceptable

to Lender. Upon an Event of Default, which remains uncured beyond any applicable grace period, Grantor shall immediately deliver to Lender, upon Lender's request, financial and operating statements audited by an independent certified public accounting firm. Upon Lender's reasonable request, made from time to time, Grantor will deliver to Lender such other reports, financial statements and information concerning Grantor or the guarantors, if applicable, (for so long as the guaranty is in effect) as Lender may reasonably request.

All such financial and operating statements shall be prepared using generally accepted accounting principles consistently applied from period to period.

In addition to the above, Grantor will deliver to Lender, or cause to be delivered to Lender, at Lender's request, financial and operating statements for the Trust Property including, but not limited to, operating budgets, leasing and rent schedules, leases, and income and expense statements.

5.28 MODIFICATION BY SUBSEQUENT OWNERS

Grantor agrees that it shall be bound by any modification of this Mortgage or any of the other Loan Documents made by the Lender and any subsequent owner of the Property, with or without notice to Grantor, and no such modification shall impair the obligations of Grantor under this Mortgage or under any Loan Document. Nothing in this paragraph shall be construed as permitting any transfer of the Property which would constitute a default under this Mortgage.

5.29 ENTIRE AGREEMENT

The Loan Documents constitute the entire understanding and agreement between Grantor and the Lender with respect to the transactions arising in connection with the indebtedness secured hereby and supersede all prior written or oral understandings and agreements between Grantor and the Lender with respect thereto. Grantor hereby acknowledges that, except as incorporated in writing in the Loan Documents, there are not, and were not, and no persons are or were authorized by the Lender to make, any representations, understandings, stipulations, agreements or promises, oral or written, with respect to the transaction which is the subject of the Loan Documents.

5.30 GOVERNING LAW, JURISDICTION AND SERVICE OF PROCESS

THIS MORTGAGE SHALL IN ALL RESPECTS BE GOVERNED BY, AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW MEXICO.

5.31 WAIVER OF JUDICIAL PROCEDURAL MATTERS

GRANTOR HEREBY EXPRESSLY AND UNCONDITIONALLY WAIVES, IN CONNECTION WITH ANY SUIT, ACTION OR PROCEEDING BROUGHT BY THE LENDER IN CONNECTION WITH ANY OF THE LOAN DOCUMENTS, ANY AND EVERY RIGHT IT MAY HAVE TO (I) INJUNCTIVE RELIEF, (II) A TRIAL BY JURY, (III) INTERPOSE ANY COUNTERCLAIM THEREIN (OTHER THAN A COMPULSORY COUNTERCLAIM) AND (IV) HAVE THE SAME CONSOLIDATED WITH ANY OTHER OR SEPARATE SUIT, ACTION OR PROCEEDING. NOTHING IN THIS PARAGRAPH

SHALL PREVENT OR PROHIBIT GRANTOR FROM INSTITUTING OR MAINTAINING A SEPARATE ACTION AGAINST THE LENDER WITH RESPECT TO ANY ASSERTED CLAIM.

5.32 LIMITATION ON INDEMNIFICATION - SECTION 56-7-1 NMSA 1978, AS AMENDED

To the extent, if at all, that any provision requiring one party to indemnify, hold harmless, insure, or defend another party (including such other party's employees or agents) contained herein or in any related documents is found to be within the scope of Section 56-7-1 NMSA 1978, as amended, or in any way subject to, or conditioned upon consistency with the provisions thereof for its enforceability, then such provision, regardless of whether it makes reference to this or any other limitation provision, shall not extend to liability, claims, damages, losses or expenses, including attorney fees, arising out of bodily injury to persons or damage to property caused by or resulting from, in whole or in part, the negligence, act or omission of the indemnitee or additional insured, as the case may be, its officers, employees or agents, and shall be further modified, if required, by the provisions of Section 56-7-1, NMSA 1978, as amended.

5.33 SIMPLE DESCRIPTION

As required by Section 14-11-10.1 NMSA 1978, as amended, a simple description of the Mortgaged Property is: certain deep well water rights as reflected in File No. RG 88934 in the records of the New Mexico State Engineer and related interests in wells in Sandoval County, New Mexico

5.34 ORAL AGREEMENTS

Grantor confirms that Grantor is aware of the provisions of Section 58-6-5 NMSA 1978, as amended, providing that no contract, promise or commitment to loan money to or grant, extend or renew credit or any modification thereof, in any amount greater than \$25,000, not primarily for personal, family or household purposes, made by a financial institution, including Lender, is enforceable unless in writing and signed by the party to be charged, or by that party's authorized representative. This section is also deemed to be incorporated by reference into each and every Loan Document.

5.35 WAIVER OF NEW MEXICO STATUTES

Grantor has carefully reviewed and consulted with counsel with respect to the applicability of the Loan evidenced by the Loan Documents of the provisions of Sections 48-7-19, 48-7-20 and 48-7-21, NMSA 1978, as amended, and has concluded to the satisfaction of Grantor that these statutory provisions were solely intended to provide the response of New Mexico to the invitation of the United States Congress to enact legislation covering a period between March 15, 1979 and October 15, 1982, as provided in the Garn-St. Germain Depository Institutions Act of 1982, and, as such, these statutory provisions have no applicability to the Loan. Accordingly, for the purpose of inducing Lender to make the Loan, and upon the understanding that, were it not for this waiver by Grantor, Lender would not make the Loan to Grantor, Grantor knowingly and intentionally waives

Section 48-7-19, 48-7-20 and 48-7-21, NMSA 1978, as amended, with respect to the Loan and this Mortgage, and reaffirms the enforceability of the provisions of this Mortgage to the extent, if at all, these provisions conflict with Sections 48-7-19, 48-7-20 and 48-7-21 NMSA 1978, as amended.

5.36 LIMITED RECOURSE.

The Note, this Mortgage and other Loan Documents shall be nonrecourse to Grantor and any officer, shareholder, member, or limited or general partner of any of them and their respective affiliates and their respective officers, agents, directors, employees, attorneys, designees, successors and assigns and the Lender agrees that it will not exercise any right to institute any action against Grantor or any officer, shareholder, member, or limited or general partner of any of them and their respective affiliates and their respective officers, agents, directors, employees, attorneys, designees, successor and assigns for the payment of any sum of money or the performance of any other obligation which is, or may be, payable or due under this Mortgage, Note, the Security Agreement or all Loan Documents. Notwithstanding the foregoing, nothing contained herein shall be deemed to prejudice the rights of the Lender, as defined in the Note, (a) to foreclose by judicial foreclosure the Mortgage or to enforce any of its other rights or remedies under any documents securing the Note relating to the Property; (b) to recover from Grantor and/or any officer, shareholder, member, or limited or general partner of Grantor any funds, damages or costs incurred as a result of fraud, intentional misrepresentation or waste by Grantor and/or any officer, shareholder, member, or limited or general partner of Grantor; (c) to recover any damage due to waste occurring subsequent to a five-day written notice to Grantor of an event of default by or on behalf of the Grantor from and after the date hereof; (d) to recover from Grantor and/or any officer, shareholder, member, or limited or general partner of Grantor any condemnation or insurance proceeds, or other funds or payments attributable to the Property misappropriated by Grantor and/or any officer, shareholder, member, or limited or general partner of Grantor or any affiliate of Grantor; (e) to recover any real property taxes owed at the time Grantor obtains title to the Property; (f) after the occurrence of a default and upon 5-days' written notice to Grantor, to recover any tenant security deposits, prepaid rents or other similar sums paid to, received by Grantor in connection with the operation of the Property subsequent to the default; (g) after the occurrence of a default and upon 5-days' written notice to Grantor, to recover any gross revenue, income or profit from the Property received subsequent to the occurrence of a default hereunder sufficient to pay any portion of the indebtedness secured by this Mortgage securing the Note, operating and maintenance expenses of the Property, insurance premiums for the Property, deposits required to be made into a reserve account for replacement or other sums required by the documents securing the Note to be paid or deposited, to the extent such sums were not paid or deposited during such period; (h) subject to the provisions below, to recover from Grantor and/or any officer, shareholder, member, or limited or general partner of Grantor costs, including those of investigation and clean-up, incurred in connection with the presence, use or release on, under or about the Property of hazardous or toxic substances in violation of environmental laws, rules or regulations; or (i) to collect reasonable attorneys' fees incurred in collecting any of the foregoing. Any amounts owed pursuant to the foregoing shall be payable upon demand by Lender and shall bear interest from the date of demand at the Default Interest Rate.

With regard to (h) above nothing contained herein shall be construed to limit the right of Grantor: (i) at its option, to be exercised within ten (10) days following Grantor's receipt of the notice from Lender described below, to elect to take steps which may be required to contest, satisfy

or discharge any such liability, in which event Lender shall permit Grantor to take such steps for so long as Grantor shall be acting diligently and in accordance with the applicable environmental laws, provided Grantor shall post any bond or other security required by the applicable environmental laws, (ii) to perform or pay for any clean-up of hazardous materials or (iii) to pursue its legal remedies against any person or entity who may be responsible for the payment or discharge of such liabilities or the costs thereof. Lender shall give Grantor prompt notice in writing of any violation of any environmental law or lien or charge against the Property with respect to the release or presence of any hazardous material at the Property.

[SIGNATURE BLOCKS ON FOLLOWING PAGE]

IN WITNESS WHEREOF, this instrument is executed by the undersigned as of
9/25, 2009.

GRANTOR:

Grantor's Address:

7835 East Redfield Road, Suite 100
Scottsdale, AZ 85260

BUTERA PROPERTIES, LLC
a New Mexico limited liability company

By: Recorp Investments, Inc.,
an Arizona corporation
Its: Manager

By: [Signature]
David P. Maniatis, President

DEBTOR:

Debtor's Address:

7835 East Redfield Road, Suite 100
Scottsdale, AZ 85260

GREENPLEX INVESTMENTS, LLC
an Arizona limited liability company

By: [Signature]
Its: _____

Lender's Address:

Johnson Bank
3131 East Camelback Road, Suite 100
Phoenix, AZ 85016

State of Arizona)
County of Maricopa)

This instrument was acknowledged before me on Sept. 25, 2009, by David P. Maniatis, President of Recorp Investments, Inc., an Arizona corporation, as Manager of BUTERA PROPERTIES, LLC, a New Mexico limited liability company.

WITNESS my hand and official seal.

My commission Expires
9-13-2011



[Signature]
Notary Public

State of Arizona)

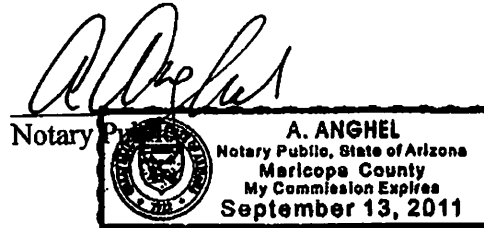
County of Maricopa)

This instrument was acknowledged before me on Sept. 25, 2008, by David P. Mariotis, the Manager of GREENPLEX INVESTMENTS, LLC, an Arizona limited liability company.

WITNESS my hand and official seal.

My commission Expires:

9-13-2011



William G. Ridenour, Esq.
Ridenour, Hienton & Lewis, P.L.L.C.
201 North Central Ave., Suite 3300
Phoenix, Arizona 85004

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Exhibit "A"

Description of Water Rights

Certain "deep well" water/water rights existing pursuant to or resulting from (a) the Notice of Intention to Appropriate filed on June 12, 2006 in New Mexico State Engineer File No. RG 88934, and (b) the Notice of Intention to Appropriate filed on January 9, 2008 in New Mexico State Engineer File No. RG 88934;

Along with any interest the Grantor may have in all easements and rights of way used now or at any future time in connection with any wells utilized or proposed to be utilized to access the Water Rights on the following described real property in Sandoval County, New Mexico:

A TRACT OF LAND, BEING THAT PORTION OF THE US GOVERNMENT BOMBING SITE INCLUDING THE BUFFER ZONE WITHIN THE PORTION OF THE ABOVE DESCRIPTION, SAID TRACT BEING A PORTION OF SECTION 11, A PORTION OF SECTION 14, A PORTION OF SECTION 12 AND A PORTION OF SECTION 12, TOWNSHIP 12 NORTH, RANGE 1 WEST N.M.P.M., SANDOVAL COUNTY, NEW MEXICO MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS DESCRIPTION AS FOLLOWS:

Commencing at the Point of Beginning; THE SOUTHEAST CORNER OF THIS TRACT WHENCE THE NORTHEAST CORNER OF SAID SECTION 13, BEARS N. 73 deg. 13' 57" E. A DISTANCE OF 526.89 feet; Thence North 90 deg. 00' 00" West, ALONG THE SOUTH OF THIS TRACT, a distance of 4760.52 feet TO A POINT ON THE WEST LINE OF SAID SECTION 13; Thence North 00 deg 05' 53" East, ALONG THE WEST LINE OF SAID SECTION 13, a distance of 97.88 feet TO THE NORTHWEST CORNER OF SAID SECTION 13; Thence North 89 deg. 25' 46" West, ALONG THE SOUTH LINE OF SAID SECTION 11, a distance of 2631.83 feet TO THE SOUTH QUARTER CORNER OF SAID SECTION 11; Thence North 00 deg. 33' 29" East, ALONG THE NORTH-SOUTH CENTER LINE OF SAID SECTION 11, a distance of 5264.82 feet TO THE NORTH QUARTER CORNER OF SAID SECTION 11; Thence South 89 deg. 23' 59" East, ALONG THE NORTH LINE OF SAID SECTION 11, a distance of 2637.27 feet TO THE NORTHEAST CORNER OF SAID SECTION 11; Thence North 88 deg. 59' 11" East, ALONG THE NORTH LINE OF SAID SECTION 12, a distance of 4704.38 feet TO THE NORTHEAST CORNER OF THIS TRACT, A POINT ON THE EAST LINE OF THE BOMBING RANGE BUFFER ZONE; Thence South 00 deg. 00' 00" West, ALONG THE EAST LINE OF SAID BUFFER ZONE, a distance of 5444.25 feet to the Point of Beginning

Exhibit "B"

Permitted Encumbrance

Previously granted to Arizona Business Bank:

1300 acre feet of water per year from Butera's pro-rata share of the 16,000 acre feet (consumptive use) of water produced from the certain wells in any calendar year, existing under, pursuant to or resulting from the Notice of Intention to Appropriate filed on June 12, 2006 in New Mexico State Engineer File No. RG 88934 and associated with wells in SW1/4SW1/4NE1/4 Section 12, Township 12 North, Range 1 West, NMPM, Sandoval County, New Mexico, described in said File RG 88934 as POD 2 and described in the June 12, 2006 Notice of Intention to Appropriate.

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