

# **EXHIBIT**

## **A**

FIRST AMENDMENT  
TO  
SETTLEMENT AGREEMENT  
(Osborn III Partners, LLC)

This First Amendment to Settlement Agreement (“First Amendment”) is entered into this 7<sup>th</sup> day of July, 2010, by and among (i) Osborn III Partners, LLC, an Arizona limited liability company (“Borrower”); (ii) Jonathon J. Vento, Lori Vento, and Jonathon J. Vento and Lori D. Vento, Trust Creators and Trustees of the Vento Family Trust dated April 25, 2003 (collectively, “Vento”); Donald J. Zeleznak, Shirley Zeleznak, and Donald J. Zeleznak and Shirley A. Zeleznak, Trustees of the Zeleznak Revocable Trust dated December 6, 2001 and amended February 6, 2004 (collectively, “D.Zeleznak” and together with Vento, the “Guarantors”); (iii) Ryan Zeleznak and RJZ Associates, LLC, an Arizona limited liability company (collectively, “R.Zeleznak”, and collectively with Borrower and Guarantors, the “Borrower Parties” and each a “Borrower Party”); (iv) Osborn III Loan LLC, an Arizona limited liability company (“Loan LLC”) and the Pass Through Investors (defined below) (collectively, the “Lenders”); and (v) ML Manager LLC, an Arizona limited liability company, as Manager of Loan LLC and as agent for the Pass Through Investors (“ML Manager”). For convenience the Lenders and ML Manager are sometimes collectively referred to herein as the “Lender Parties” and each a “Lender Party.” Collectively, Borrower, Guarantors, R.Zeleznak, Lenders and ML Manager are referred to herein as “Parties,” and each, a “Party.”

R E C I T A L S

A. Borrower Parties and Lender Parties entered into a Settlement Agreement (Osborn III Partners, LLC) dated April 27, 2010 (“Settlement Agreement”).

B. The Parties now wish to amend the Settlement Agreement by modifying certain exhibits to the Settlement Agreement as set forth herein.

A G R E E M E N T

Now therefore, for and in consideration of the foregoing premises and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Borrower Parties and Lender Parties do hereby agree as follows:

1. Recitals Incorporated. The Parties agree that the foregoing Recitals are true and correct and are incorporated herein by this reference. All Terms capitalized terms used but not defined herein shall have the meanings set forth in the Settlement Agreement.

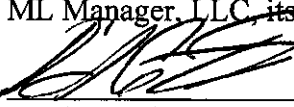
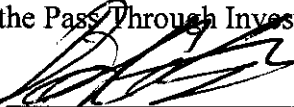
2. Exhibits Substituted. The form of Promissory Notes attached to the Settlement Agreement as Exhibits C and the form of the Deed of Trust attached to the Settlement Agreement as Exhibit D are deleted and the form of Promissory Notes and

Deed of Trust attached hereto are substituted as Exhibits C and D, respectively, to the Settlement Agreement.

3. Interest in Loan. The Loan LLC represents and warrants to the Borrower Parties that according to the records maintained by ML Servicing Co., Inc., the Loan LLC hold an undivided interest in the "Loan" (as defined in the settlement Agreement) equal to 64.389%. The Loan LLC will not reduce its interest in such Loan or the Collateral securing the Loan prior to the recording of the "Deed of Trust" (as defined in the Settlement Agreement) pursuant to the Settlement Agreement.

4. No Further Amendment. Except as amended hereby, the Settlement Agreement shall remain in full force and effect subject to the conditions stated therein. Any reference to "Agreement" in the Settlement Agreement shall mean the Settlement Agreement as amended by this First Amendment.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year set forth above.

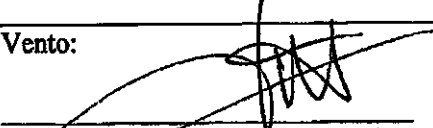

<p>Lenders and Agent:</p> <p>Osborn III Loan LLC, an Arizona limited liability company</p> <p>By: ML Manager, LLC, its Manager</p> <p>By:  Authorized Manager</p> <p>ML Manager, LLC, for itself and as Agent for the Pass Through Investors</p> <p>By:  Authorized Manager</p>	<p>Vento:</p> <p>_____ Jonathon J. Vento, individually and as Trust Creator and Trustee of the Vento Family Trust dated April 25, 2003.</p> <p>_____ Lori D. Vento, individually and as Trust Creator and Trustee of the Vento Family Trust dated April 25, 2003.</p>
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Deed of Trust attached hereto are substituted as Exhibits C and D, respectively, to the Settlement Agreement.

3. Interest in Loan. The Loan LLC represents and warrants to the Borrower Parties that according to the records maintained by ML Servicing Co., Inc., the Loan LLC hold an undivided interest in the "Loan" (as defined in the settlement Agreement) equal to 64.389%. The Loan LLC will not reduce its interest in such Loan or the Collateral securing the Loan prior to the recording of the "Deed of Trust" (as defined in the Settlement Agreement) pursuant to the Settlement Agreement.

4. No Further Amendment. Except as amended hereby, the Settlement Agreement shall remain in full force and effect subject to the conditions stated therein. Any reference to "Agreement" in the Settlement Agreement shall mean the Settlement Agreement as amended by this First Amendment.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year set forth above.

<p>Lenders and Agent:</p> <p>Osborn III Loan LLC, an Arizona limited liability company</p> <p>By: ML Manager, LLC, its Manager</p> <p>By: _____ Authorized Manager</p> <p>ML Manager, LLC, for itself and as Agent for the Pass Through Investors</p> <p>By: _____ Authorized Manager</p>	<p>Vento:</p> <p></p> <p>Jonathon J. Vento, individually and as Trust Creator and Trustee of the Vento Family Trust dated April 25, 2003.</p> <p></p> <p>Lori D. Vento, individually and as Trust Creator and Trustee of the Vento Family Trust dated April 25, 2003.</p>
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<p><b>Borrower:</b></p> <p>Osborn III Partners, LLC, an Arizona limited liability company</p> <p>By: Osborn Condominiums, LLC, an Arizona limited liability company Its: Sole Member</p> <p>By: Osborn Lofts Investors, LLC, an Arizona limited liability company Its: Sole Member</p> <p>By: Vento Investments, LLC, an Arizona limited liability company Its: Manager</p> <p>By: Jonathon Vento Its: Authorized Member</p> <p>By: Zeltor, LLC, a Nevada limited liability company Its: Manager</p> <p>By: Donald J. Zeleznak Its: Manager</p>	<p><b>Zeleznak:</b></p> <p><i>Donald J. Zeleznak</i> Donald J. Zeleznak, Individually and as Trustee of the Zeleznak Revocable Trust dated December 6, 2001 and amended February 6, 2004</p> <p><i>Shirley A. Zeleznak</i> Shirley A. Zeleznak, Individually and as Trustee of the Zeleznak Revocable Trust dated December 6, 2001 and amended February 6, 2004</p>
	<p><b>R. Zeleznak:</b></p> <p><i>Ryan Zeleznak</i> Ryan Zeleznak, Individually and as managing member of RJZ Associates, LLC</p>

EXHIBIT C  
NOTE

PROMISSORY NOTE  
(Ten Wine Lofts)

Phoenix, Arizona  
\_\_\_\_\_, 2010

\$ \_\_\_\_\_

This Promissory Note is made by the Maker to the Holder pursuant to that certain Settlement Agreement (Osborn III Partners, LLC) dated as of dated as of April 27, 2010 as amended by a First Amendment thereto dated July \_\_, 2010 (collectively, the "Settlement Agreement"), by and among the Borrower Parties and Lender Parties described therein. Pursuant to the Settlement Agreement, the Maker is required to deliver this Note and certain other Notes to the "Borrower" (as defined in the Settlement Agreement), or the Borrower's designee. The Holder named herein is the Borrower's designee with respect to this Note.

1. FUNDAMENTAL PROVISIONS.

The following terms will be used as defined terms in this Promissory Note (as it may be amended, modified, extended and renewed from time to time, the "Note"):

Payee and Holder: \_\_\_\_\_

Maker: Osborn III Loan LLC, an Arizona limited liability company ("Loan LLC).

Principal Amount: \$ \_\_\_\_\_

Interest Rate: Five percent (5%) per annum until the third (3<sup>rd</sup>) anniversary of the Effective Date (as defined in the Settlement Agreement), and thereafter nine percent (9%) per annum.

Maturity Date: The earlier of (i) fifteen years after the Effective Date (as defined in the Settlement Agreement) or (ii) the closing of any sale of, or a financing secured by, the real property ("Real Property") described in the Loan Documents (as defined in the Settlement Agreement). Notwithstanding the foregoing, if Maker is not the winning bidder at the Trustee's Sale (as defined in the Settlement Agreement), this Note shall automatically mature at the conclusion of such sale.

2. PROMISE TO PAY.

For value received, Maker promises to pay to the order of Holder, on or before the Maturity Date, by payment tendered to Holder at such place as the Holder hereof may from time to time designate in writing, the Principal Amount and all accrued but unpaid interest.

3. INTEREST; PAYMENTS.

(a) Simple interest shall accrue from the Effective Date of the Settlement Agreement on the unpaid principal balance of this Note at the Interest Rate.

- (b) On the Maturity Date, Maker shall pay to Holder all accrued but unpaid interest on the principal outstanding under this Note.
- (c) All payments of principal and interest due hereunder shall be made without any deduction or set off.
- (d) Interest shall be calculated on a 365-day year with respect to the unpaid balance of the Principal Amount and, in all cases, for the actual number of days in the period for which interest is charged..

4. PREPAYMENT.

Maker may prepay the outstanding principal balance of this Note, in whole or in part, at any time prior to the Maturity Date without the payment of any premium or penalty.

5. LAWFUL MONEY.

Principal and interest are payable in lawful money of the United States of America.

6. APPLICATION OF PAYMENTS.

Unless otherwise agreed to, in writing, or otherwise required by applicable law, payments will be applied first to accrued, unpaid interest, then to principal, and any remaining amount to any unpaid collection costs, late charges and other charges, provided, however, upon delinquency or other default, Payee reserves the right to apply payments among principal, interest, late charges, collection costs and other charges at its discretion.

7. SECURITY.

This Note is secured by the Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing by Maker in favor of Holder and certain other holders of other notes of Maker (the "Deed of Trust").

8. EVENT OF DEFAULT.

The occurrence of any of the following shall be an "Event of Default" hereunder:

- (a) The failure of Maker to pay any amounts when due under this Note;
- (b) If Maker shall take any action to prevent the Deed of Trust from being recorded against the Real Property immediately following the recording of the Trustee's Deed after the Sale Completion Date in accordance with the joint instructions of Maker and Holder given on or before the Effective Date of the Settlement Agreement;
- (c) The failure of Maker to cause the Trustee's Sale to occur by the date required in the Settlement Agreement unless such failure is due to any of the following (unless Maker causes such action to occur): (i) a Bankruptcy Action of a Borrower Party or a lien claimant or other person claiming an interest in the Real Property, (ii) an order of a state or federal court precluding the sale on any basis, or (iii) the refusal of the Title Company to issue an owner's policy to the purchaser under the sale based upon a failure of the Pass Through Investors to sign the substitution of Trustee, the statement of breach or any notices required to be executed by the beneficiary under a deed of trust in connection with a foreclosure.;



- (d) The occurrence of an event of default under any other promissory note secured by the Deed of Trust;
- (e) The occurrence of an "Accelerating Transfer" as defined in the Deed of Trust; or
- (f) The occurrence of a default by Maker under the Deed of Trust which is not cured within thirty days after written notice of the default is given to Maker by Holder.

9. REMEDIES.

Upon the occurrence of an Event of Default, then at the option of the Holder hereof, the entire balance of principal together with all accrued interest thereon, and all other amounts payable by Maker to Holder shall, without demand or notice, immediately become due and payable. Upon the occurrence of an Event of Default, including failure to pay upon final maturity, Holder, at its option, may also, if permitted under applicable law, add (i) all other amounts due under the Deed of Trust and (ii) any judgment for the Principal Amount, interest and other amounts and such sum will bear interest therefrom until paid at the annual rate of 10% per annum, subject to the limitations contained in Paragraph 14 hereof. No delay or omission on the part of the Holder hereof in exercising any right under this Note or under the Deed of Trust shall operate as a waiver of such right.

10. WAIVER.

Maker hereby waives diligence, demand for payment, presentment for payment, protest, notice of nonpayment, notice of protest, notice of dishonor, and all other notices or demands of any kind and expressly agrees that, without in any way affecting the liability of Maker, the holder hereof may extend any maturity date or accept additional security, release any person or entity liable, and release any security or guaranty.

11. CHANGE, DISCHARGE, TERMINATION, OR WAIVER.

No provision of this Note may be changed, discharged, terminated, or waived except in a writing signed by the party against whom enforcement of the change, discharge, termination, or waiver is sought. No failure on the part of the holder hereof to exercise and no delay by the holder hereof in exercising any right or remedy under this Note or under the law shall operate as a waiver thereof.

12. ATTORNEYS' FEES.

If this Note is not paid when due or if any Event of Default occurs, Maker promises to pay all costs of enforcement and collection and preparation therefor, including but not limited to, reasonable attorneys' fees, whether or not any action or proceeding is brought to enforce the provisions hereof (including, without limitation, all such costs incurred in connection with any bankruptcy, receivership, or other court proceedings (whether at the trial or appellate level)).

13. SEVERABILITY.

If any provision of this Note is unenforceable, the enforceability of the other provisions shall not be affected and they shall remain in full force and effect.

14. INTEREST RATE LIMITATION.

Holder and Maker agree that none of the terms and provisions contained herein or in the Deed of Trust shall be construed to create a contract for the use, forbearance or detention of money requiring payment of interest at a rate in excess of the maximum interest rate permitted to be charged by the

laws of the State of Arizona. In such event, if any holder of this Note shall collect monies which are deemed to constitute interest which would otherwise increase the effective interest rate on this Note to a rate in excess of the maximum rate permitted to be charged by the laws of the State of Arizona, all such sums deemed to constitute interest in excess of such maximum rate shall, at the option of the holder, be credited to the payment of other amounts payable hereunder or under the Deed of Trust or returned to Maker.

15. NUMBER AND GENDER.

In this Note the singular shall include the plural and the masculine shall include the feminine and neuter gender, and vice versa.

16. HEADINGS.

Headings at the beginning of each numbered section of this Note are intended solely for convenience and are not part of this Note.

17. BINDING EFFECT.

This Note will be binding upon, and inure to the benefit of, the holder hereof, Maker, and their respective successors and assigns. Maker may not delegate its obligations under this Note.

18. TIME OF THE ESSENCE.

Time is of the essence with regard to each provision of this Note as to which time is a factor.

19. CHOICE OF LAW.

This Note shall be governed by and construed in accordance with the laws of the State of Arizona without giving effect to conflict of laws principles.

20. NONRECOURSE.

Notwithstanding any provision of this Note to the contrary (but without in any manner releasing, impairing or otherwise affecting this Note or availing itself of any of its other rights and remedies under this Note upon the occurrence of an Event of Default hereunder or under the Deed of Trust), none of the entities or persons constituting the Maker and or their members, managers, beneficiaries and trustees shall have any personal liability for the repayment of this Note or any of the obligations under this Note and the Deed of Trust and the Payee and Holder will look solely to the collateral securing this Note under the Deed of Trust for repayment of this Note and the obligations under the Note and Deed of Trust; provided, however, if Maker is not the winning bidder at the Trustee's Sale, then Maker will be personally liable for repayment of this Note.

21. OTHER DEFINED TERMS. Capitalized terms used but not defined in this Note shall have the meanings set forth in the Settlement Agreement.

[SIGNATURE PAGE FOLLOWS]

OSBORN III LOAN LLC, an Arizona limited liability company

By: ML Manager LLC, an Arizona limited liability company, Its Manager

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

EXHIBIT D  
DEED OF TRUST

WHEN RECORDED MAIL TO

Snell & Wilmer L.L.P.  
One Arizona Center  
400 East Van Buren  
Phoenix, Arizona 85004-2202  
Attention: Nicholas J. Wood, Esq.

SPACE ABOVE THIS LINE FOR RECORDER'S USE

DEED OF TRUST, ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND FIXTURE FILING  
(Ten Wine Lofts)

TRUSTOR'S ORGANIZATIONAL IDENTIFICATION NO.: \_\_\_\_\_

THIS DEED OF TRUST, ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND FIXTURE FILING ("Deed of Trust") is made this \_\_\_\_ day of \_\_\_\_\_, 2010, among Osborn III Loan LLC, an Arizona limited liability company ("Loan LLC") (the "Trustor"), whose address is 14050 N. 83<sup>rd</sup> Avenue, Suite 180, Peoria, Arizona 85381, Attention: Mark Winkleman, Fidelity National Title Insurance Company ("Trustee"), whose address is \_\_\_\_\_, and Snell & Wilmer L.L.P., whose address is 400 East Van Buren, 19<sup>th</sup> Floor, Phoenix, Arizona 85004, and [Osborn III Partners LLC], whose address is \_\_\_\_\_ (collectively, "Beneficiary").

This Deed of Trust is made pursuant to the terms of that certain Settlement Agreement dated April 27, 2010 as amended by a First Amendment thereto dated July \_\_, 2010 (collectively, the "Settlement Agreement"), by and among the Trustor, the Beneficiary and certain other parties.

TRUSTOR, in consideration of certain financial accommodations provided by Beneficiary to Trustor, in connection with which Trustor shall receive substantial benefits, and the trust herein created, irrevocably grants and conveys to Trustee, in trust, WITH POWER OF SALE, for the benefit of Beneficiary, the real property ("Real Property") located in the County of Maricopa, State of Arizona, as described on Exhibit A hereto and incorporated herein by reference;

TOGETHER with all the improvements now or hereafter erected on the Real Property, and all easements, rights, appurtenances and rents (subject however to the rights and authorities given herein to Beneficiary to collect and apply such rents), all of which shall be deemed to be and remain a part of the estate encumbered by this Deed of Trust; and all of the foregoing, together with said property are hereinafter referred to as the "Property"; and

TOGETHER with all of Trustor's right, title, and interest in the following described property (the "Personal Property") used in connection with or otherwise relating to the Real Property, whether now owned or hereafter acquired and located on the Property, together with all replacements and substitutions therefor and all cash and non-cash proceeds: (i) all types of property included within the term "equipment" as defined by the Uniform Commercial Code as adopted in the State of Arizona (the "UCC"), including machinery, furniture, appliances, trade fixtures, tools, and office and record keeping equipment; (ii) all inventory, raw materials, work in process and materials or supplies used or consumed in the construction and operation of the Property; (iii) all permits, licenses, approvals, warranties,

construction agreements, intellectual property, and general intangibles; (iv) any and all plans and specifications, designs, drawings and other matters prepared for any construction on any real property owned by or leased to Trustor or regarding any improvements to any of such real property; and (v) goodwill;

TO SECURE to Beneficiary the following (the "Obligations"): (i) the repayment of the obligations more particularly described in the following: (a) that certain Promissory Note dated of even date herewith, in the principal sum of not less than \$510,000 made by Trustor and payable to Snell & Wilmer L.L.P., with interest thereon, (b) that certain Promissory Note dated of even date herewith, in the principal sum of not less than \$365,000 made by Trustor and payable to Osborn III Partners, LLC (or its designee or assignee pursuant to the Settlement Agreement), with interest thereon (individually, a "Note", and collectively, the "Notes"); (ii) the repayment of all other sums which may be owed by Trustor to Beneficiary, or any of them, pursuant to any Note or this Deed of Trust; and (iii) the payment of all other sums, with interest thereon, advanced in accordance herewith to protect the security of this Deed of Trust.

COVENANTS. Trustor and Beneficiary covenant and agree as follows:

1. Payment of Principal and Interest. Trustor shall cause to be paid when due the principal and interest indebtedness evidenced by each Note, and all other amounts, as provided in the Notes.

2. Application of Payments. Unless applicable law provides otherwise, all payments received by any Beneficiary under its respective Note shall be applied as provided in such Note.

3. Impositions. Beneficiary understands that Trustor does not intend to pay, or cause to be paid, prior to delinquency, all real property taxes and assessments, general and special, and all other taxes and assessments of any kind or nature whatsoever, (including, without limitation, nongovernmental levies or assessments such as maintenance charges, levies, or charges resulting from covenants, conditions and restrictions affecting the Property) that are assessed or imposed upon the Property or become due and payable and that create, may create, or appear to create a lien upon the Property (the above are sometimes referred to herein individually as an "Imposition" and collectively as "Impositions"), and Beneficiary may, at Beneficiary's sole election, but without any obligation so to do, advance any amounts required to pay any Impositions, which advances, if any, shall be secured hereby and shall be repayable to Beneficiary at the Maturity Date of the Notes together with interest thereon at the rate provided for in the Notes from the date of such advance.

4. Protection of Beneficiary's Security; Additional Security; Modifications of Obligations. If any action or proceeding is commenced which materially affects Beneficiary's interest in the Property, then Beneficiary, at Beneficiary's option, in Beneficiary's sole and absolute discretion, upon notice to Trustor, may make such appearances, disburse such sums, including reasonable attorneys' fees, and take such action as is necessary to protect Beneficiary's interest.

Any amounts disbursed by a Beneficiary pursuant to this paragraph 4, with interest thereon, at the interest rate provided for in the Notes held by such Beneficiary, shall become additional indebtedness of Trustor secured by this Deed of Trust. Unless Trustor and Beneficiary agree to other terms of payment, such amounts shall be payable upon the Maturity Date of the Notes. Nothing contained in this paragraph 4 shall require Beneficiary to incur any expense or take any action hereunder.

Any taking of additional security, execution of partial releases of the security, or any extension of the time of payment of, or modification of other terms of any of the Obligations shall not diminish the force, effect or lien of this Deed of Trust, shall not alter the priority of the lien of this Deed of Trust, and shall not affect or impair the liability of any maker, guarantor, surety or endorser for the payment or

performance of any of the Obligations. In the event Beneficiary at any time holds additional security for any of the Obligations, it may enforce the sale thereof or otherwise realize upon the same, at its option, either before, concurrently with, or after a sale or realization is made hereunder.

5. Substitute Trustee. Beneficiary may, for any reason or cause, from time to time remove Trustee and appoint a successor trustee to any Trustee appointed hereunder. Without conveyance of the Property, the successor trustee shall succeed to all the title, power and duties conferred upon the Trustee herein and by applicable law.

6. Inspection. Beneficiary may make or cause to be made reasonable entries upon and inspections of the Property, provided that Beneficiary shall give Trustor notice prior to any such inspection specifying reasonable cause therefor related to Beneficiary's interest in the Property.

7. Condemnation. The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of the Property, or part thereof, or for conveyance in lieu of condemnation, are hereby assigned and shall be paid to Beneficiary to the extent of the Obligations.

8. Trustor Not Released; Forbearance by Beneficiary Not a Waiver. Extension of the time for payment or modification of amortization of the sums secured by this Deed of Trust granted by Beneficiary to Trustor or any successor in interest of Trustor shall not operate to release, in any manner, the liability of the original Trustor and Trustor's successors in interest. Beneficiary shall not be required to commence proceedings against such successor or refuse to extend time for payment or otherwise modify amortization of the sums secured by this Deed of Trust by reason of any demand made by the original Trustor and Trustor's successors in interest. Any forbearance by Beneficiary in exercising any right or remedy hereunder, or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any such right or remedy.

9. Successors and Assigns Bound. The covenants and agreements herein contained shall bind, and the rights hereunder shall inure to, the respective successors and assigns of Beneficiary and Trustor.

10. Notice. Except for any notice required under applicable law to be given in another manner, (a) any notice to Trustor provided for in this Deed of Trust shall be given by delivering it or by mailing such notice by certified mail addressed to Trustor at the Trustor's address provided on the first page of this Deed of Trust, and (b) any notice to Beneficiary shall be given by certified mail to Beneficiary's address provided on the first page of this Deed of Trust or to such other address as Trustor or Beneficiary may designate by notice to other as provided herein. Any notice provided for in this Deed of Trust shall be deemed to have been given to Trustor or Beneficiary when given in the manner designated herein.

11. Governing Law. The laws applicable to this Deed of Trust shall be the laws of the State of Arizona. If any provision of this Deed of Trust is unenforceable, the enforceability of the other provisions shall not be affected, and they shall remain in full force and effect. As used herein, "costs," "expenses" and "attorneys' fees" include all sums to the extent not prohibited by applicable law or limited herein.

12. Transfer of the Property or a Beneficial Interest in Trustor. If an Accelerating Transfer (as defined below) shall occur, without the prior written consent of all the Beneficiaries, then any Beneficiary may, at its option, require immediate payment in full of all sums evidenced by the Note made by Trustor to such Beneficiary. As used herein, "Accelerating Transfer" shall mean (a) all or any part of

the Property or any of Trustor's interest in the Property is sold or transferred, (b) the closing of any sale of, or a financing secured by, the Property, or any of it, or (c) any new members are admitted into the Loan LLC and, in connection therewith, any other members of the Loan LLC receives any funds from the admittance of such new members

13. Acceleration; Remedies. Subject to paragraph 19 of this Deed of Trust, upon the occurrence of an Event of Default (as such term is defined in any Note), each Beneficiary may, at its option, declare all or any part of the Obligations owed to such Beneficiary immediately due and payable without any presentment, demand, protest or notice of any kind, and invoke the power of sale provided herein. Beneficiary shall be entitled to collect all reasonable costs and expenses incurred in pursuing the remedies provided in this paragraph 13, including, but not limited to reasonable attorneys' fees.

If Beneficiary invokes the power of sale provided pursuant to this Deed of Trust, Beneficiary shall execute or cause Trustee to execute a written notice of the occurrence of an event of default and of Beneficiary's election to cause the Property to be sold and shall cause such notice to be recorded in each county in which the Property or some part thereof is located. Beneficiary or Trustee shall mail copies of such notice in the manner prescribed by applicable law. Trustee shall give public notice of sale to the persons and in the manner prescribed by applicable law. After the lapse of such time as may be required by applicable law, Trustee, without demand on Trustor, shall sell the Property at public auction to the highest bidder at the time and place and under the terms designated in the notice of sale in one or more parcels and in such order as Trustee may determine. Trustee may postpone the sale of all or any parcel of the Property by public announcement at the time and place of any previously scheduled sale. Beneficiary or Beneficiary's designee may purchase the Property at any sale.

Trustee shall deliver to the purchaser Trustee's deed conveying the Property so sold without any covenant or warranty, expressed or implied. The recitals in the Trustee's deed shall be prima facie evidence of the truth of the statements made therein. Trustee shall apply the proceeds of the sale in the following order: (a) to all reasonable costs and expenses of the sale, including, but not limited to, reasonable trustee's and attorneys' fees and costs of title evidence; (b) to all sums secured by this Deed of Trust; and (c) the excess, if any, to the person or persons legally entitled thereto.

14. Assignment of Rents; Appointment of Receiver; Beneficiary in Possession. As additional security hereunder, Trustor hereby assigns to Beneficiary the rents of the Property, provided that Trustor shall, prior to acceleration under paragraph 13 hereof or abandonment of the Property, have the right to collect and retain such rents as they become due and payable.

Upon acceleration under paragraph 13 hereof or abandonment of the Property, Beneficiary, by judicially appointed receiver, shall be entitled to enter upon, take possession of and manage the Property and to collect the rents of the Property including those past due. All rents collected by Beneficiary or the receiver shall be applied first to payment of the costs of management of the Property and collection of rents, including, but not limited to, receiver's fees, premiums on receiver's bond and reasonable attorneys' fees, and then to the sums secured by this Deed of Trust. Beneficiary and the receiver shall be liable to account only for those rents actually received.

15. Release. Upon payment of all sums secured by this Deed of Trust, Beneficiary shall release this Deed of Trust. Trustor shall pay all costs of recordation of any such release. This Deed of Trust can not be released without the written consent of all the Beneficiaries named herein.

16. Time of Essence. Time is of the essence of each covenant of this Deed of Trust.



17. Grant of Security Interest. As further security for the payment and performance of the obligations secured hereby, Trustor grants to Beneficiary a lien on and security interest in and to all of the Personal Property, and this Deed of Trust constitutes a security agreement with Trustor, as the debtor, and Lender, as the secured party.

18. Fixture Filing. Upon its recording in the property records, this Deed of Trust shall be effective as a financing statement filed as a fixture filing.

19. Intercreditor Arrangements. By acceptance of this Deed of Trust, each Beneficiary hereby agrees as follows:

(a) Each Beneficiary shall hold a *pari passu* interest in this Deed of Trust and in the Property pursuant to this Deed of Trust.

(b) If an event of default shall occur under any Note or this Deed of Trust, the Beneficiary whose Note is in default shall give written notice to all other Beneficiaries. Thereafter, any of the Beneficiaries may cause a judicial or non-judicial sale of the Property to be conducted pursuant to this Deed of Trust, and/or exercise any other remedies permitted under this Deed of Trust.

(c) If a judicial or non-judicial sale of the Property, or any of it, does occur under this Deed of Trust, all proceeds from such sale that are to be paid to the Beneficiaries under this Deed of Trust shall be paid to each Beneficiary based upon such Beneficiary's "Pro-Rata Interest" at the time the sale occurs. As used herein, a Beneficiary's Pro-Rata Interest is a fraction, the numerator of which is the total amount of the Obligations owed to such Beneficiary, and the denominator of which is the total amount of all Obligations owed to all the Beneficiaries.

(d) Each Beneficiary agrees that it shall not amend or modify this Deed of Trust or such Beneficiary's Note, without the prior written consent of all the Beneficiaries, and no modifications or amendments to this Deed of Trust or any Note will be effective without the consent of all the Beneficiaries.

(e) No Beneficiary can assign its interest in this Deed of Trust or the Note held by such Beneficiary without the prior written consent of each of the Beneficiaries (not to be unreasonably withheld), and any assignment without such consent shall be *void ab initio*; provided, however, Osborn III Partners LLC may assign its interest in this Deed of Trust and the Note payable to Osborn III Partners LLC without consent from any other party.

(f) None of the Beneficiaries shall commence a judicial action against the Trustor for payment on such Beneficiary's Note.

(g) In the event that any Beneficiary intends to make a protective advance pursuant to paragraph 4 of this Deed of Trust, such Beneficiary shall give all the other Beneficiaries not less than five days' prior written notice before making such protective advance.

(h) Each of the Beneficiaries agrees to cooperate with one another in good faith to develop a plan to enforce their remedies under this Deed of Trust following the occurrence of an Event of Default, including, without limitation, development of a post-foreclosure plan. The Beneficiaries agree they shall take title to the Property as tenants in common in the event that the credit bid provided under this Deed of Trust is the winning bid in a non-judicial sale of the Property under this Deed of Trust.

20. Non-recourse. Notwithstanding any provision of the Note or this Deed of Trust to the contrary (but without in any manner releasing, impairing or otherwise affecting the Note or this Deed of Trust, or availing itself of any of its other rights and remedies under the Note or this Deed of Trust, upon the occurrence of an Event of Default under the Note or under this Deed of Trust), none of the entities or persons constituting the Trustor and or their members, managers, beneficiaries and trustees shall have any personal liability for the repayment of the Note or any of the obligations under the Note and this Deed of Trust and the Beneficiary will look solely to the Property pledged to secure the Note under the Deed of Trust for repayment of the Note and the obligations under the Note and this Deed of Trust; provided, however, if Trustor is not the winning bidder at the Trustee's Sale, then Trustor will be personally liable for repayment of the Note.

21. Governing Law. This Deed of Trust shall be governed by the laws of the State of Arizona, without giving effect to conflicts of laws rules.

THE COURTS OF ARIZONA, FEDERAL OR STATE, SHALL HAVE EXCLUSIVE JURISDICTION OF ALL LEGAL ACTIONS ARISING OUT OF THIS DEED OF TRUST. BY EXECUTING THIS DEED OF TRUST, THE UNDERSIGNED SUBMITS TO THE JURISDICTION OF THE FEDERAL AND STATE COURTS OF ARIZONA. THE UNDERSIGNED WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO ENFORCE OR DEFEND ANY RIGHTS (A) UNDER THIS DEED OF TRUST OR (B) ARISING FROM ANY RELATIONSHIP EXISTING IN CONNECTION WITH THIS DEED OF TRUST, AND THE UNDERSIGNED AGREES THAT ANY SUCH ACTION OR PROCEEDING SHALL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY.

[SIGNATURE PAGE FOLLOWS]

Dated as of the date first stated above.

OSBORN III LOAN LLC, an Arizona limited liability company

By: ML Manager LLC, an Arizona limited liability company, Its sole Manager

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF ARIZONA            )  
  ) ss.  
County of Maricopa         )

The foregoing instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_, 2010, by \_\_\_\_\_, the \_\_\_\_\_ of ML Manager LLC, an Arizona limited liability company, as sole Manager of Osborn III Partners LLC, an Arizona limited liability company on behalf of such limited liability company.

\_\_\_\_\_  
Notary Public

My Commission Expires:  
\_\_\_\_\_

**EXHIBIT A**

**Legal Description**

**[See Attached]**

2329796/28149.010

FIRST AMENDMENT  
TO  
SETTLEMENT AGREEMENT  
(Central & Monroe, LLC)

This First Amendment to Settlement Agreement (“First Amendment”) is entered into this 7<sup>th</sup> day of July, 2010, by and among (i) Central & Monroe, LLC, an Arizona limited liability company (“Borrower”); (ii) Jonathon J. Vento, Lori Vento, and Jonathon J. Vento and Lori D. Vento, Trust Creators and Trustees of the Vento Family Trust dated April 25, 2003 (collectively, “Vento”); Donald J. Zeleznak, Shirley Zeleznak, and Donald J. Zeleznak and Shirley A. Zeleznak, Trustees of the Zeleznak Revocable Trust dated December 6, 2001 and amended February 6, 2004 (collectively, “D.Zeleznak” and together with Vento, the “Guarantors”); (iii) Ryan Zeleznak and RJZ Associates, LLC, an Arizona limited liability company (collectively, “R.Zeleznak”, and collectively with Borrower and Guarantors, the “Borrower Parties” and each a “Borrower Party”); (iv) C&M Loan LLC, an Arizona limited liability company (“Loan LLC”) and the Pass Through Investors (defined below) (collectively, the “Lenders”); and (v) ML Manager LLC, an Arizona limited liability company, as Manager of Loan LLC and as agent for the Pass Through Investors (“ML Manager”). For convenience the Lenders and ML Manager are sometimes collectively referred to herein as the “Lender Parties” and each a “Lender Party.” Collectively, Borrower, Guarantors, R.Zeleznak, Lenders and ML Manager are referred to herein as “Parties,” and each, a “Party.”

R E C I T A L S

A. Borrower Parties and Lender Parties entered into a Settlement Agreement (Central & Monroe, LLC) dated April 27, 2010 (“Settlement Agreement”).

B. The Parties now wish to amend the Settlement Agreement by modifying certain exhibits to the Settlement Agreement as set forth herein.

A G R E E M E N T

Now therefore, for and in consideration of the foregoing premises and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Borrower Parties and Lender Parties do hereby agree as follows:

1. Recitals Incorporated. The Parties agree that the foregoing Recitals are true and correct and are incorporated herein by this reference. All Terms capitalized terms used but not defined herein shall have the meanings set forth in the Settlement Agreement.

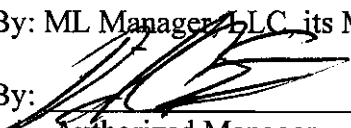

2. Exhibits Substituted. The form of Promissory Notes attached to the Settlement Agreement as Exhibits C and the form of the Deed of Trust attached to the Settlement Agreement as Exhibit D are deleted and the form of Promissory Notes and

Deed of Trust attached hereto are substituted as Exhibits C and D, respectively, to the Settlement Agreement.

3. Interest in Loan. The Loan LLC represents and warrants to the Borrower Parties that according to the records maintained by ML Servicing Co., Inc., the Loan LLC hold an undivided interest in the "Loan" (as defined in the settlement Agreement) equal to 82.497% . The Loan LLC will not reduce its interest in such Loan or the Collateral securing the Loan prior to the recording of the "Deed of Trust" (as defined in the Settlement Agreement) pursuant to the Settlement Agreement.

4. No Further Amendment. Except as amended hereby, the Settlement Agreement shall remain in full force and effect subject to the conditions stated therein. Any reference to "Agreement" in the Settlement Agreement shall mean the Settlement Agreement as amended by this First Amendment.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year set forth above.

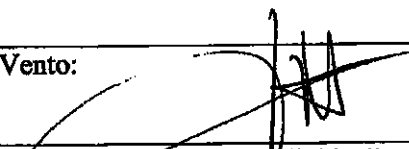
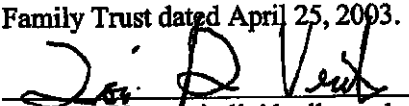
<p>Lenders and Agent:</p> <p>C&amp;M Loan LLC, an Arizona limited liability company</p> <p>By: ML Manager, LLC, its Manager</p> <p>By:  Authorized Manager</p> <p>ML Manager, LLC, for itself and as Agent for the Pass Through Investors</p> <p>By:  Authorized Manager</p>	<p>Vento:</p> <p>_____ Jonathon J. Vento, individually and as Trust Creator and Trustee of the Vento Family Trust dated April 25, 2003.</p> <p>_____ Lori D. Vento, individually and as Trust Creator and Trustee of the Vento Family Trust dated April 25, 2003.</p>
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Deed of Trust attached hereto are substituted as Exhibits C and D, respectively, to the Settlement Agreement.

3. Interest in Loan. The Loan LLC represents and warrants to the Borrower Parties that according to the records maintained by ML Servicing Co., Inc., the Loan LLC hold an undivided interest in the "Loan" (as defined in the settlement Agreement) equal to 82.497%. The Loan LLC will not reduce its interest in such Loan or the Collateral securing the Loan prior to the recording of the "Deed of Trust" (as defined in the Settlement Agreement) pursuant to the Settlement Agreement.

4. No Further Amendment. Except as amended hereby, the Settlement Agreement shall remain in full force and effect subject to the conditions stated therein. Any reference to "Agreement" in the Settlement Agreement shall mean the Settlement Agreement as amended by this First Amendment.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year set forth above.

<p>Lenders and Agent:</p> <p>C&amp;M Loan LLC, an Arizona limited liability company</p> <p>By: ML Manager, LLC, its Manager</p> <p>By: _____ Authorized Manager</p> <p>ML Manager, LLC, for itself and as Agent for the Pass Through Investors</p> <p>By: _____ Authorized Manager</p>	<p>Vento:</p> <p></p> <p>Jonathon J. Vento, individually and as Trust Creator and Trustee of the Vento Family Trust dated April 25, 2003.</p> <p></p> <p>Lori D. Vento, individually and as Trust Creator and Trustee of the Vento Family Trust dated April 25, 2003.</p>
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<p><b>Borrower:</b> Central &amp; Monroe, LLC, an Arizona limited liability company</p> <p><b>By:</b> Grace-Monroe, LLC, an Arizona Limited liability company <b>Its:</b> Manager and Member</p> <p><b>By:</b> Vento Investments, LLC, an Arizona limited liability company <b>Its:</b> Manager</p> <p><b>By:</b> Jonathon Vento <b>Its:</b> Authorized Member</p> <p><b>By:</b> Zeltor, LLC, a Nevada limited liability company <b>Its:</b> Manager</p> <p><b>By:</b> Donald J. Zeleznak <b>Its:</b> Manager</p>	<p><b>Zeleznak:</b> <i>Donald J. Zeleznak</i> Donald J. Zeleznak, Individually and as Trustee of the Zeleznak Revocable Trust dated December 6, 2001 and amended February 6, 2004</p> <p><i>Shirley A. Zeleznak</i> Shirley A. Zeleznak, Individually and as Trustee of the Zeleznak Revocable Trust dated December 6, 2001 and amended February 6, 2004</p>
	<p><b>R. Zeleznak:</b> <i>Ryan Zeleznak</i> Ryan Zeleznak, Individually and as managing member of RJZ Associates, LLC</p>



EXHIBIT C  
NOTE

PROMISSORY NOTE  
(Central & Monroe)

\$ \_\_\_\_\_

Phoenix, Arizona  
\_\_\_\_\_, 2010

This Promissory Note is made by the Maker to the Holder pursuant to that certain Settlement Agreement (Central & Monroe, LLC) dated as of April 27, 2010, as amended by a First Amendment thereto dated July \_\_, 2010 (collectively, the "Settlement Agreement"), by and among the Borrower Parties and Lender Parties described therein. Pursuant to the Settlement Agreement, the Maker is required to deliver this Note to the "Borrower" (as defined in the Settlement Agreement), or the Borrower's designee. The Holder named herein is the Borrower's designee with respect to this Note.

1. FUNDAMENTAL PROVISIONS.

The following terms will be used as defined terms in this Promissory Note (as it may be amended, modified, extended and renewed from time to time, the "Note"):

Payee and Holder: \_\_\_\_\_

Maker: C&M Loan LLC, an Arizona limited liability company ("Loan LLC")

Principal Amount: \$ \_\_\_\_\_

Interest Rate: Five percent (5%) per annum until the third (3<sup>rd</sup>) anniversary of the Effective Date (as defined in the Settlement Agreement), and thereafter nine percent (9%) per annum.

Maturity Date: The earlier of (i) fifteen years after the Effective Date (as defined in the Settlement Agreement) or (ii) the occurrence of a Capital Event. Notwithstanding the foregoing, if Maker is not the winning bidder at the Trustee's Sale (as defined in the Settlement Agreement), this Note shall automatically mature at the conclusion of such sale.

Capital Event: (i) The closing of any further sale of the real property (the "Real Property") described in the Deed of Trust, or any portion of such property, after the Maker obtains title to the Real Property, (ii) the closing of a loan to Maker secured by the Real Property, or any of it, if any of the net proceeds from such loan are distributed to the members of the Loan LLC, (iii) any new members are admitted into the Loan LLC and, in connection therewith, any other members of the Loan LLC receive any funds from the admittance of such new members, or (iv) any payment is made to Maker by a title insurance company pursuant to a claim on a title insurance policy relating to the Real Property (provided it shall not be a Capital Event if any payment is made to a lien claimant or its successors and assigns (other than Maker) by such title insurance company). For the purpose of clarity, under the foregoing, the Maker may obtain a financing or refinancing for construction, maintenance or rehabilitation of the Real Property and as long as no net proceeds from the loan are distributed to any member of the Loan LLC, no

Capital Event shall have occurred and no payment is then due under this provision

2. PROMISE TO PAY.

For value received, Maker promises to pay to the order of Holder, on or before the Maturity Date, by payment tendered to Holder at such place as the Holder hereof may from time to time designate in writing, the Principal Amount and all accrued but unpaid interest.

3. INTEREST; PAYMENTS.

- (a) Simple interest shall accrue from the Effective Date of the Settlement Agreement on the unpaid principal balance of this Note at the Interest Rate.
- (b) On the Maturity Date, Maker shall pay to Holder all accrued but unpaid interest on the principal outstanding under this Note.
- (c) All payments of principal and interest due hereunder shall be made without any deduction or set off.
- (d) Interest shall be calculated on a 365-day year with respect to the unpaid balance of the Principal Amount and, in all cases, for the actual number of days in the period for which interest is charged.

4. PREPAYMENT.

Maker may prepay the outstanding principal balance of this Note, in whole or in part, at any time prior to the Maturity Date without payment of any premium or penalty.

5. LAWFUL MONEY.

Principal and interest are payable in lawful money of the United States of America.

6. APPLICATION OF PAYMENTS.

Unless otherwise agreed to, in writing, or otherwise required by applicable law, payments will be applied first to accrued, unpaid interest, then to principal, and any remaining amount to any unpaid collection costs, late charges and other charges, provided, however, upon delinquency or other default, Payee reserves the right to apply payments among principal, interest, late charges, collection costs and other charges at its discretion.

7. SECURITY.

This Note is secured by the Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing by Maker in favor of Holder and certain other holders of other notes of Maker (the "Deed of Trust").

8. EVENT OF DEFAULT.

The occurrence of any of the following shall be an "Event of Default" hereunder:

- (a) The failure of Maker to pay any amounts when due under this Note;

- (b) If Maker shall take any action to prevent the Deed of Trust from being recorded against the Real Property immediately following the recording of the Trustee's Deed after the Sale Completion Date in accordance with the joint instructions of Maker and Holder given on or before the Effective Date of the Settlement Agreement;
- (c) The failure of Maker to cause the Trustee's Sale to occur by the date required in the Settlement Agreement unless such failure is due to any of the following (unless Maker causes such action to occur): (i) a Bankruptcy Action of a Borrower Party or a lien claimant or other person claiming an interest in the Real Property, (ii) an order of a state or federal court precluding the sale on any basis, or (iii) the refusal of the Title Company to issue an owner's policy to the purchaser under the sale based upon a failure of the Pass Through Investors to sign the substitution of Trustee, the statement of breach or any notices required to be executed by the beneficiary under a deed of trust in connection with a foreclosure.;
- (d) The occurrence of an event of default under any other promissory note secured by the Deed of Trust;
- (e) The occurrence of an "Accelerating Transfer" as defined in the Deed of Trust;
- (f) The occurrence of an event of default under the Senior Loan (defined below) which is not cured within any cure period allowed under the Senior Loan; or
- (g) The occurrence of a default by Maker under the Deed of Trust which is not cured within thirty days after written notice of the default is given to Maker by Holder.

9. REMEDIES.

Upon the occurrence of an Event of Default, then at the option of the Holder hereof, the entire balance of principal together with all accrued interest thereon, and all other amounts payable by Maker to Holder shall, without demand or notice, immediately become due and payable. Upon the occurrence of an Event of Default, including failure to pay upon final maturity, Holder, at its option, may also, if permitted under applicable law, add (i) all other amounts due under the Deed of Trust and (ii) any judgment for the Principal Amount, interest and other amounts and such sum will bear interest therefrom until paid at the annual rate of 10% per annum, subject to the limitations contained in Paragraph 14 hereof. No delay or omission on the part of the Holder hereof in exercising any right under this Note or under the Deed of Trust shall operate as a waiver of such right.

10. WAIVER.

Maker hereby waives diligence, demand for payment, presentment for payment, protest, notice of nonpayment, notice of protest, notice of dishonor, and all other notices or demands of any kind and expressly agrees that, without in any way affecting the liability of Maker, the holder hereof may extend any maturity date or accept additional security, release any person or entity liable, and release any security or guaranty.

11. CHANGE, DISCHARGE, TERMINATION, OR WAIVER.

No provision of this Note may be changed, discharged, terminated, or waived except in a writing signed by the party against whom enforcement of the change, discharge, termination, or waiver is sought. No failure on the part of the holder hereof to exercise and no delay by the holder hereof in exercising any right or remedy under this Note or under the law shall operate as a waiver thereof.

12. ATTORNEYS' FEES.

If this Note is not paid when due or if any Event of Default occurs, Maker promises to pay all costs of enforcement and collection and preparation therefor, including but not limited to, reasonable attorneys' fees, whether or not any action or proceeding is brought to enforce the provisions hereof (including, without limitation, all such costs incurred in connection with any bankruptcy, receivership, or other court proceedings (whether at the trial or appellate level)).

13. SEVERABILITY.

If any provision of this Note is unenforceable, the enforceability of the other provisions shall not be affected and they shall remain in full force and effect.

14. INTEREST RATE LIMITATION.

Holder and Maker agree that none of the terms and provisions contained herein or in the Deed of Trust shall be construed to create a contract for the use, forbearance or detention of money requiring payment of interest at a rate in excess of the maximum interest rate permitted to be charged by the laws of the State of Arizona. In such event, if any holder of this Note shall collect monies which are deemed to constitute interest which would otherwise increase the effective interest rate on this Note to a rate in excess of the maximum rate permitted to be charged by the laws of the State of Arizona, all such sums deemed to constitute interest in excess of such maximum rate shall, at the option of the holder, be credited to the payment of other amounts payable hereunder or under the Deed of Trust or returned to Maker.

15. NUMBER AND GENDER.

In this Note the singular shall include the plural and the masculine shall include the feminine and neuter gender, and vice versa.

16. HEADINGS.

Headings at the beginning of each numbered section of this Note are intended solely for convenience and are not part of this Note.

17. BINDING EFFECT.

This Note will be binding upon, and inure to the benefit of, the holder hereof, Maker, and their respective successors and assigns. Maker may not delegate its obligations under this Note.

18. TIME OF THE ESSENCE.

Time is of the essence with regard to each provision of this Note as to which time is a factor.

19. CHOICE OF LAW.

This Note shall be governed by and construed in accordance with the laws of the State of Arizona without giving effect to conflict of laws principles.

20. NONRECOURSE.

Notwithstanding any provision of this Note to the contrary (but without in any manner releasing, impairing or otherwise affecting this Note or availing itself of any of its other rights and remedies under

this Note upon the occurrence of an Event of Default hereunder or under the Deed of Trust), none of the entities or persons constituting the Maker and or their members, managers, beneficiaries and trustees shall have any personal liability for the repayment of this Note or any of the obligations under this Note and the Deed of Trust and the Payee and Holder will look solely to the collateral securing this Note under the Deed of Trust for repayment of this Note and the obligations under the Note and Deed of Trust; provided, however, if Maker is not the winning bidder at the Trustee's Sale, then Maker will be personally liable for repayment of this Note.

21. SUBORDINATION.

By acceptance of the Note, so long as no default is continuing under this Note, the Holder agrees that it will subordinate the obligations of Maker to Holder under this Note and the Deed of Trust to a loan (the "Senior Loan") made to Maker which does not constitute or result in a Capital Event, so long as the proceeds of such loan are used solely to pay property taxes associated with the Real Property, and maximum principal amount of such loan does not exceed \$1,000,000; such subordination agreement to be reasonably satisfactory to the Maker, the lender making such Senior Loan (the "Senior Lender") and Payee.

22. OTHER DEFINED TERMS. Capitalized terms used but not defined in this Note shall have the meanings set forth in the Settlement Agreement.

[SIGNATURE PAGE FOLLOWS]

C&M LOAN LLC, an Arizona limited liability company

By: ML Manager LLC, an Arizona limited liability company, its Manager

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

EXHIBIT D  
DEED OF TRUST



WHEN RECORDED MAIL TO

Snell & Wilmer L.L.P.  
One Arizona Center  
400 East Van Buren  
Phoenix, Arizona 85004-2202  
Attention: Nicholas J. Wood, Esq.

SPACE ABOVE THIS LINE FOR RECORDER'S USE

DEED OF TRUST, ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND FIXTURE FILING  
(Central & Monroe)

TRUSTOR'S ORGANIZATIONAL IDENTIFICATION NO.: \_\_\_\_\_

THIS DEED OF TRUST, ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND FIXTURE FILING ("Deed of Trust") is made this \_\_\_\_ day of \_\_\_\_\_, 2010, among C&M Loan LLC, an Arizona limited liability company ("Loan LLC") (the "Trustor"), whose address is 14050 N. 83<sup>rd</sup> Avenue, Suite 180, Peoria, Arizona 85381, Attention: Mark Winkleman, Fidelity National Title Insurance Company ("Trustee"), whose address is \_\_\_\_\_, and [Central & Monroe LLC], whose address is \_\_\_\_\_, [Central & Monroe LLC], whose address is \_\_\_\_\_, and [Central & Monroe LLC], whose address is \_\_\_\_\_ (collectively, "Beneficiary").

This Deed of Trust is made pursuant to the terms of that certain Settlement Agreement dated April 27, 2010 as amended by a First Amendment thereto dated July \_\_, 2010 (collectively, the "Settlement Agreement"), by and among the Trustor, the Beneficiary and certain other parties.

TRUSTOR, in consideration of certain financial accommodations provided by Beneficiary to Trustor, in connection with which Trustor shall receive substantial benefits, and the trust herein created, irrevocably grants and conveys to Trustee, in trust, WITH POWER OF SALE, for the benefit of Beneficiary, the real property ("Real Property") located in the County of Maricopa, State of Arizona, as described on Exhibit A hereto and incorporated herein by reference;

TOGETHER with all the improvements now or hereafter erected on the Real Property, and all easements, rights, appurtenances and rents (subject however to the rights and authorities given herein to Beneficiary to collect and apply such rents), all of which shall be deemed to be and remain a part of the estate encumbered by this Deed of Trust; and all of the foregoing, together with said property are hereinafter referred to as the "Property"; and

TOGETHER with all of Trustor's right, title, and interest in the following described property (the "Personal Property") used in connection with or otherwise relating to the Real Property, whether now owned or hereafter acquired, together with all replacements and substitutions therefor and all cash and non-cash proceeds: (i) all types of property included within the term "equipment" as defined by the Uniform Commercial Code as adopted in the State of Arizona (the "UCC"), including machinery, furniture, appliances, trade fixtures, tools, and office and record keeping equipment; (ii) all inventory, raw materials, work in process and materials or supplies used or consumed in the construction and operation

of the Property; (iii) all permits, licenses, approvals, warranties, construction agreements, intellectual property, and general intangibles; (iv) any and all plans and specifications, designs, drawings and other matters prepared for any construction on any real property owned by or leased to Trustor or regarding any improvements to any of such real property; and (v) goodwill;

TO SECURE to Beneficiary the following (the "Obligations"): (i) (a) the repayment of the obligations more particularly described in that certain Promissory Note dated of even date herewith, in the principal sum of not less than \$230,000 made by Trustor and payable to Central & Monroe, LLC (or its designee or assignee pursuant to the Settlement Agreement), with interest thereon, and (b) the repayment of the obligations more particularly described in that certain Promissory Note dated of even date herewith, in the original sum of not less than \$260,000, made by Trustor and payable to Central & Monroe, LLC (or its designee or assignee pursuant to the Settlement Agreement), and (c) the repayment of the obligations more particularly described in that certain Promissory Note dated of even date herewith, in the original sum of not less than \$125,000, made by Trustor and payable to Central & Monroe, LLC (or its designee or assignee pursuant to the Settlement Agreement) with interest thereon (collectively, the "Note"); (ii) the repayment of all other sums which may be owed by Trustor to Beneficiary, or any of them, pursuant to the Note or this Deed of Trust; and (iii) the payment of all other sums, with interest thereon, advanced in accordance herewith to protect the security of this Deed of Trust.

COVENANTS. Trustor and Beneficiary covenant and agree as follows:

1. Payment of Principal and Interest. Trustor shall cause to be paid when due the principal and interest indebtedness evidenced by each Note, and all other amounts, as provided in the Notes.

2. Application of Payments. Unless applicable law provides otherwise, all payments received by any Beneficiary under its respective Note shall be applied as provided in such Note.

3. Impositions. Beneficiary understands that Trustor does not intend to pay, or cause to be paid, prior to delinquency, all real property taxes and assessments, general and special, and all other taxes and assessments of any kind or nature whatsoever, (including, without limitation, nongovernmental levies or assessments such as maintenance charges, levies, or charges resulting from covenants, conditions and restrictions affecting the Property) that are assessed or imposed upon the Property or become due and payable and that create, may create, or appear to create a lien upon the Property (the above are sometimes referred to herein individually as an "Imposition" and collectively as "Impositions"), and Beneficiary may, at Beneficiary's sole election, but without any obligation so to do, advance any amounts required to pay any Impositions, which advances, if any, shall be secured hereby and shall be repayable to Beneficiary at the Maturity Date of the Note together with interest thereon at the rate provided for in the Note from the date of such advance.

4. Protection of Beneficiary's Security; Additional Security; Modifications of Obligations. If any action or proceeding is commenced which materially affects Beneficiary's interest in the Property, then Beneficiary, at Beneficiary's option, in Beneficiary's sole and absolute discretion, upon notice to Trustor, may make such appearances, disburse such sums, including reasonable attorneys' fees, and take such action as is necessary to protect Beneficiary's interest.

Any amounts disbursed by a Beneficiary pursuant to this paragraph 4, with interest thereon, at the interest rate provided for in the Note held by Beneficiary, shall become additional indebtedness of Trustor secured by this Deed of Trust. Unless Trustor and Beneficiary agree to other terms of payment, such amounts shall be payable upon the Maturity Date of the Note. Nothing contained in this paragraph 4 shall require Beneficiary to incur any expense or take any action hereunder.

Any taking of additional security, execution of partial releases of the security, or any extension of the time of payment of, or modification of other terms of any of the Obligations shall not diminish the force, effect or lien of this Deed of Trust, shall not alter the priority of the lien of this Deed of Trust, and shall not affect or impair the liability of any maker, guarantor, surety or endorser for the payment or performance of any of the Obligations. In the event Beneficiary at any time holds additional security for any of the Obligations, it may enforce the sale thereof or otherwise realize upon the same, at its option, either before, concurrently with, or after a sale or realization is made hereunder.

5. Substitute Trustee. Beneficiary may, for any reason or cause, from time to time remove Trustee and appoint a successor trustee to any Trustee appointed hereunder. Without conveyance of the Property, the successor trustee shall succeed to all the title, power and duties conferred upon the Trustee herein and by applicable law.

6. Inspection. Beneficiary may make or cause to be made reasonable entries upon and inspections of the Property, provided that Beneficiary shall give Trustor notice prior to any such inspection specifying reasonable cause therefor related to Beneficiary's interest in the Property.

7. Condemnation. The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of the Property, or part thereof, or for conveyance in lieu of condemnation, are hereby assigned and shall be paid to Beneficiary to the extent of the Obligations subject to the rights thereto of any senior lien holder on the Property.

8. Trustor Not Released; Forbearance by Beneficiary Not a Waiver. Extension of the time for payment or modification of amortization of the sums secured by this Deed of Trust granted by Beneficiary to Trustor or any successor in interest of Trustor shall not operate to release, in any manner, the liability of the original Trustor and Trustor's successors in interest. Beneficiary shall not be required to commence proceedings against such successor or refuse to extend time for payment or otherwise modify amortization of the sums secured by this Deed of Trust by reason of any demand made by the original Trustor and Trustor's successors in interest. Any forbearance by Beneficiary in exercising any right or remedy hereunder, or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any such right or remedy.

9. Successors and Assigns Bound. The covenants and agreements herein contained shall bind, and the rights hereunder shall inure to, the respective successors and assigns of Beneficiary and Trustor.

10. Notice. Except for any notice required under applicable law to be given in another manner, (a) any notice to Trustor provided for in this Deed of Trust shall be given by delivering it or by mailing such notice by certified mail addressed to Trustor at the Trustor's address provided on the first page of this Deed of Trust, and (b) any notice to Beneficiary shall be given by certified mail to Beneficiary's address on the first page of this Deed of Trust or to such other address as Trustor or Beneficiary may designate by notice to the other as provided herein. Any notice provided for in this Deed of Trust shall be deemed to have been given to Trustor or Beneficiary when given in the manner designated herein.

11. Governing Law. The laws applicable to this Deed of Trust shall be the laws of the State of Arizona. If any provision of this Deed of Trust is unenforceable, the enforceability of the other provisions shall not be affected, and they shall remain in full force and effect. As used herein, "costs," "expenses" and "attorneys' fees" include all sums to the extent not prohibited by applicable law or limited herein.

12. Transfer of the Property or a Beneficial Interest in Trustor. If an Accelerating Transfer (as defined below) shall occur, without the prior written consent of all the Beneficiaries, then any Beneficiary may, at its option, require immediate payment in full of all sums evidenced by the Note made by Trustor to such Beneficiary. As used herein, "Accelerating Transfer" shall mean (a) all or any part of the Property or any of Trustor's interest in the Property is sold or transferred, or (b) the occurrence of a Capital Event. "Capital Event" means as defined in the Note.

13. Acceleration; Remedies. Subject to paragraph 19 of this Deed of Trust, upon the occurrence of an Event of Default (as such term is defined in the Note), each Beneficiary may, at its option, declare all or any part of the Obligations owed to such Beneficiary immediately due and payable without any presentment, demand, protest or notice of any kind, and invoke the power of sale provided herein. Beneficiary shall be entitled to collect all reasonable costs and expenses incurred in pursuing the remedies provided in this paragraph 13, including, but not limited to reasonable attorneys' fees.

If Beneficiary invokes the power of sale provided pursuant to this Deed of Trust, Beneficiary shall execute or cause Trustee to execute a written notice of the occurrence of an event of default and of Beneficiary's election to cause the Property to be sold and shall cause such notice to be recorded in each county in which the Property or some part thereof is located. Beneficiary or Trustee shall mail copies of such notice in the manner prescribed by applicable law. Trustee shall give public notice of sale to the persons and in the manner prescribed by applicable law. After the lapse of such time as may be required by applicable law, Trustee, without demand on Trustor, shall sell the Property at public auction to the highest bidder at the time and place and under the terms designated in the notice of sale in one or more parcels and in such order as Trustee may determine. Trustee may postpone the sale of all or any parcel of the Property by public announcement at the time and place of any previously scheduled sale. Beneficiary or Beneficiary's designee may purchase the Property at any sale.

Trustee shall deliver to the purchaser Trustee's deed conveying the Property so sold without any covenant or warranty, expressed or implied. The recitals in the Trustee's deed shall be prima facie evidence of the truth of the statements made therein. Trustee shall apply the proceeds of the sale in the following order: (a) to all reasonable costs and expenses of the sale, including, but not limited to, reasonable trustee's and attorneys' fees and costs of title evidence; (b) to all sums secured by this Deed of Trust; and (c) the excess, if any, to the person or persons legally entitled thereto.

14. Assignment of Rents; Appointment of Receiver; Beneficiary in Possession. As additional security hereunder, Trustor hereby assigns to Beneficiary the rents of the Property, provided that Trustor shall, prior to acceleration under paragraph 13 hereof or abandonment of the Property, have the right to collect and retain such rents as they become due and payable.

Upon acceleration under paragraph 13 hereof or abandonment of the Property, Beneficiary, by judicially appointed receiver, shall be entitled to enter upon, take possession of and manage the Property and to collect the rents of the Property including those past due. All rents collected by Beneficiary or the receiver shall be applied first to payment of the costs of management of the Property and collection of rents, including, but not limited to, receiver's fees, premiums on receiver's bond and reasonable attorneys' fees, and then to the sums secured by this Deed of Trust. Beneficiary and the receiver shall be liable to account only for those rents actually received.

15. Release. Upon payment of all sums secured by this Deed of Trust, Beneficiary shall release this Deed of Trust. Trustor shall pay all costs of recordation of any such release. This Deed of Trust can not be released without the written consent of all the Beneficiaries named herein.

16. Time of Essence. Time is of the essence of each covenant of this Deed of Trust.

17. Grant of Security Interest. As further security for the payment and performance of the obligations secured hereby, Trustor grants to Beneficiary a lien on and security interest in and to all of the Personal Property, and this Deed of Trust constitutes a security agreement with Trustor, as the debtor, and Lender, as the secured party.

18. Fixture Filing. Upon its recording in the property records, this Deed of Trust shall be effective as a financing statement filed as a fixture filing.

19. Intercreditor Arrangements. By acceptance of this Deed of Trust, if there is more than one Note secured by this Deed of trust, each Beneficiary hereby agrees as follows:

(a) Each Beneficiary shall hold a *pari passu* interest in this Deed of Trust and in the Property pursuant to this Deed of Trust.

(b) If an event of default shall occur under any Note or this Deed of Trust, the Beneficiary whose Note is in default shall give written notice to all other Beneficiaries. Thereafter, any of the Beneficiaries may cause a judicial or non-judicial sale of the Property to be conducted pursuant to this Deed of Trust, and/or exercise any other remedies permitted under this Deed of Trust.

(c) If a judicial or non-judicial sale of the Property, or any of it, does occur under this Deed of Trust, all proceeds from such sale that are to be paid to the Beneficiaries under this Deed of Trust shall be paid to each Beneficiary based upon such Beneficiary's "Pro-Rata Interest" at the time the sale occurs. As used herein, a Beneficiary's Pro-Rata Interest is a fraction, the numerator of which is the total amount of the Obligations owed to such Beneficiary, and the denominator of which is the total amount of all Obligations owed to all the Beneficiaries.

(d) Each Beneficiary agrees that it shall not amend or modify this Deed of Trust or such Beneficiary's Note, without the prior written consent of all the Beneficiaries, and no modifications or amendments to this Deed of Trust or any Note will be effective without the consent of all the Beneficiaries.

(e) No Beneficiary can assign its interest in this Deed of Trust or the Note held by such Beneficiary without the prior written consent of each of the Beneficiaries (not to be unreasonably withheld), and any assignment without such consent shall be *void ab initio*; provided, however, Central & Monroe LLC may assign its interest in this Deed of Trust and the Note payable to Central & Monroe LLC without consent from any other party.

(f) None of the Beneficiaries shall commence a judicial action against the Trustor for payment on such Beneficiary's Note without the prior written consent of all the Beneficiaries, which consent shall not be unreasonably withheld.

(g) In the event that any Beneficiary intends to make a protective advance pursuant to paragraph 4 of this Deed of Trust, such Beneficiary shall give all the other Beneficiaries not less than five days' prior written notice before making such protective advance.

(h) Each of the Beneficiaries agrees to cooperate with one another in good faith to develop a plan to enforce their remedies under this Deed of Trust following the occurrence of an Event of Default, including, without limitation, development of a post-foreclosure plan. The Beneficiaries agree they shall take title to the Property as tenants in common in the event that the

credit bid provided under this Deed of Trust is the winning bid in a non-judicial sale of the Property under this Deed of Trust.

20. Non-recourse. Notwithstanding any provision of the Note or this Deed of Trust to the contrary (but without in any manner releasing, impairing or otherwise affecting the Note or this Deed of Trust, or limiting Beneficiary's other rights and remedies under the Note or this Deed of Trust, upon the occurrence of an Event of Default under the Note or under this Deed of Trust), none of the entities or persons constituting the Trustor and or their members, managers, beneficiaries and trustees shall have any personal liability for the repayment of the Note or any of the obligations under the Note and this Deed of Trust and the Beneficiary will look solely to the Property pledged to secure the Note under the Deed of Trust for repayment of the Note and the obligations under the Note and this Deed of Trust; provided, however, if Trustor is not the winning bidder at the Trustee's Sale, then Trustor will be personally liable for repayment of the Note.

21. Subordination. By acceptance of this Deed of Trust each Beneficiary (for itself only) hereby agrees that it will subordinate the obligations of Trustor to Beneficiary under the Note and this Deed of Trust as provided in Section 21 of the Note.

22. Governing Law. This Deed of Trust shall be governed by the laws of the State of Arizona, without giving effect to conflicts of laws rules.

THE COURTS OF ARIZONA, FEDERAL OR STATE, SHALL HAVE EXCLUSIVE JURISDICTION OF ALL LEGAL ACTIONS ARISING OUT OF THIS DEED OF TRUST. BY EXECUTING THIS DEED OF TRUST, THE UNDERSIGNED SUBMITS TO THE JURISDICTION OF THE FEDERAL AND STATE COURTS OF ARIZONA. THE UNDERSIGNED WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO ENFORCE OR DEFEND ANY RIGHTS (A) UNDER THIS DEED OF TRUST OR (B) ARISING FROM ANY RELATIONSHIP EXISTING IN CONNECTION WITH THIS DEED OF TRUST, AND THE UNDERSIGNED AGREES THAT ANY SUCH ACTION OR PROCEEDING SHALL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY.

[SIGNATURE PAGES FOLLOW]

Dated as of the date first stated above.

C&M LOAN LLC, an Arizona limited liability company

By: ML Manager LLC, an Arizona limited liability company, its sole Manager

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF ARIZONA            )  
  )ss.  
County of Maricopa         )

The foregoing instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_, 2010, by \_\_\_\_\_, the \_\_\_\_\_ of ML Manager LLC, an Arizona limited liability company as sole Manager of C&M Loan LLC, an Arizona limited liability company on behalf of such limited liability company.

\_\_\_\_\_  
Notary Public

My Commission Expires:  
\_\_\_\_\_

EXHIBIT A

Legal Description

[See Attached]