

# EXHIBIT

# E

1 **GUST ROSENFELD P.L.C.**  
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JAN 15 2010



MICHAEL R. JAMES, CLERK  
M. VEJAF  
DEPUTY CLERK

5 **Attorneys for Plaintiffs**

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8 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

9 IN AND FOR THE COUNTY OF MARICOPA

CV2010-002179

10 ML MANAGER, LLC, an Arizona limited  
liability company, as authorized agent for  
11 certain investors; and JAMES J.  
CORDELLO and RYAN P. WALTER, Co-  
12 Trustees of THE MORTGAGES LTD.  
401(k) PLAN,

No.

**COMPLAINT**

(Contract/Guaranty/Deficiency)

13 Plaintiffs,

14 v.

15 GP PROPERTIES CAREFREE CAVE  
16 CREEK, L.L.C., an Arizona limited liability  
company; MICHAEL J. PELOQUIN and  
17 KAY M. PELOQUIN, husband and wife;  
and JOHN DOES and JANE DOES,

18 Defendants.

19  
20 For their Complaint, ML Manager, LLC, an Arizona limited liability  
21 company, in its capacity as authorized agent for certain below-described Investors, and  
22 James J. Cordello and Ryan P. Walter, as the Co-Trustees of the Mortgages Ltd. 401(k)  
23 Plan (collectively, "Plaintiffs"), allege as follows:

24 1. ML Manager, LLC, is a Plaintiff in its capacity as an authorized agent  
25 for the Investors in the below-described Loan which is the subject of this suit.  
26 Specifically, ML Manager, LLC is the authorized agent for the following Investors:

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- a. Athanasios Panagiotakopoulos and Athanasia Panagiotakopoulos, husband and wife as Joint Tenants with Right of Survivorship, as to an undivided 2.356%;
- b. Christo Panagiotakopoulos and Constance Panagiotakopoulos, husband and wife, and Athanasios Panagiotakopoulos, together as Joint Tenants with Right of Survivorship, as to an undivided 7.467%;
- c. Christo Panagiotakopoulos and Constance Panagiotakopoulos, husband and wife as Joint Tenants with Right of Survivorship, as to an undivided 8.309%;
- d. David Brian Stanton, Trustee of the David Brian Stanton Revocable Trust, dated August 25, 2004, and any amendments thereto, as to an undivided 1.429%;
- e. David Furst, Trustee of the DHF Corporation Retirement Trust dated, August 4, 1981, and any amendments thereto, as to an undivided 0.662%;
- f. Erika Carlson, Trustee of The Erika Ann Carlson Revocable Living Trust Agreement, and any amendments thereto, as to an undivided 2.747%;
- g. First Trust Company of Onaga, Custodian FBO Jan M. Sterling IRA #41021XXXXX, as to an undivided 0.770%;
- h. First Trust Company of Onaga, Custodian FBO Katalin A. Rader IRA #4102XXXXXX, as to an undivided 2.088%;
- i. First Trust Company of Onaga, Custodian FBO Kathleen K. Tomasulo IRA #41021XXXXX, as to an undivided 0.659%;
- j. First Trust Company of Onaga, Custodian FBO Michael Klimansky IRA #410214XXXX, as to an undivided 2.418%;
- k. First Trust Company of Onaga, Custodian FBO Patrick S. Mallonee IRA #410213XXXX, as to an undivided 2.198%;
- l. First Trust Company of Onaga, Custodian FBO Robert K. Rader IRA #4102XXXXXX, as to an undivided 1.275%;

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- m. First Trust Company of Onaga, Custodian FBO Scott B. Summers IRA #41021XXXXX, as to an undivided 6.986%;
- n. First Trust Company of Onaga, Custodian FBO Stephen B. Howell IRA #41021XXXXX, as to an undivided 0.440%;
- o. Kevin Goff and Ki Ngo, as Joint Tenants with Right of Survivorship, as to an undivided 1.099%;
- p. Linda A. Reeves, Trustee of The Linda Ann Reeves Trust, dated March 2, 2005, and any amendments thereto, as to an undivided 2.198%;
- q. Paul A. Schultz, Jr. and Jacqueline Schultz, Trustees of the Paul A. Schultz, Jr. and Jacqueline Schultz Trust, dated June 1, 1994, and any amendments thereto, as to an undivided 3.297%;
- r. Robert G. Furst, Trustee of the Robert G. Furst & Associates Defined Benefit Pension Plan, as to an undivided 0.554%;
- s. Robert G. Roden, Trustee of the Robert G. Roden Living Trust, dated October 1, 2004, and any amendments thereto, as to an undivided 4.395%; and
- t. William J. Miller and Sandra B. Miller, Trustees of the Miller Family Trust, dated February 7, 2000, and any amendments thereto, as to an undivided 1.789%.

2. The Investors identified in paragraph 1 above entered into certain Master Agency Agreements and/or Agency Agreements with Mortgages Ltd. whereby Mortgages Ltd. was designated as the Investors' authorized agent (the "Agent") to take various actions, including, without limitation, the filing of actions against these defendants. ML Manager, LLC is the assignee and Mortgages Ltd. is the assignor of the rights and authorizations granted to the Agent under those certain Master Agency Agreements and/or Agency Agreements between the above Investors and Mortgages Ltd. The United States Bankruptcy Court for the District of Arizona, in the process of adjudicating the Mortgages Ltd. bankruptcy, has found that ML Manager, LLC "does

1 have authority to deal with the loans and the collateral securing the loans to the extent  
2 provided by the governing documents including but not limited to the applicable  
3 subscription agreements and agency agreements.” (October 21, 2009 Memorandum  
4 Decision, Case No. 2:08-bk-07465-RJH.)

5 3. Plaintiffs James J. Cordello and Ryan P. Walter are the Co-Trustees of  
6 the Mortgages Ltd. 401(k) Plan, and reside in Maricopa County, Arizona, and hold a  
7 46.864% undivided interest in the Loan.

8 4. Defendant GP Properties Carefree Cave Creek, L.L.C., is an  
9 Arizona limited liability company (“GP Properties”), authorized to do business in the  
10 State of Arizona, with its principal offices located in Maricopa County, Arizona.

11 5. Defendants Michael J. Peloquin and Kay M. Peloquin (collectively,  
12 “Peloquin”), husband and wife, upon information and belief, are residents in Maricopa  
13 County, Arizona.

14 6. Defendants John Does and Jane Does are fictitious names  
15 designating an individual or individuals, masculine or feminine or legal entities  
16 unknown to Plaintiffs whose true name or names Plaintiffs pray may be inserted when  
17 discovered as if correctly named originally.

18 7. Defendants caused acts to occur in Maricopa County out of which  
19 this Complaint arises.

20 8. Jurisdiction and venue are proper in Maricopa County, Arizona.

21 9. On or about July 18, 2007, Scott M. Coles or Christopher J. Olson,  
22 CPA, Trustees of the Mortgages Ltd. 401(k) Plan (the “Plan”), made a loan to GP  
23 Properties in the original principal face amount \$4,550,000.00 (the “Loan”), as  
24 evidenced by, among other things, that certain Promissory Note (Interest  
25 Only/Commercial) dated July 18, 2007, having a maturity date of July 19, 2008 (the  
26 “Note”) executed by GP Properties in favor of the Plan. A true and correct copy of the

1 Note is attached hereto as Exhibit A and is incorporated herein by this reference.

2 10. As security for the Note, GP Properties executed a Deed of Trust,  
3 Assignment of Rents and Leases, Security Agreement and Fixture Filing (the “Deed of  
4 Trust”) in favor of the Plan. The Deed of Trust was dated July 18, 2007 and recorded  
5 on July 19, 2007 at Instrument No. 2007-0823307, records of Maricopa County,  
6 Arizona, and encumbers certain real property described therein (the “Property”). A true  
7 and correct copy of the Deed of Trust is attached hereto as Exhibit B and is  
8 incorporated herein by this reference.

9 11. Michael J. Peloquin and Kay M. Peloquin, husband and wife,  
10 guaranteed, among other things, the payment of the Note as evidenced by that certain  
11 Loan Guaranty dated July 18, 2007 (the “Guaranty”), executed by Peloquin in favor of  
12 the Plan. A true and correct copy of the Guaranty is attached hereto as Exhibit C, and  
13 is incorporated herein by this reference.

14 12. The Investors, through their authorized agent ML Manager, LLC,  
15 and the Plan are the owners and holders of the Note, the beneficial interest under the  
16 Deed of Trust, the Guaranty and the other documents evidencing, securing or relating to  
17 the Loan (collectively, the “Loan Documents”)

18 13. GP Properties defaulted under the Note by, among other things,  
19 failing to pay the Note in full upon the maturity date, July 19, 2008, and thereafter by  
20 failing to pay real estate taxes, accrued default interest, late charges, costs, expenses and  
21 fees or otherwise to perform the other obligations required under the Deed of Trust,  
22 affecting the Property securing the Note.

23 14. Demand was made that GP Properties and Peloquin cure the  
24 defaults under the Loan Documents. GP Properties and Peloquin failed to cure such  
25 defaults.

26 15. Pursuant to the Note and the Guaranty, GP Properties and Peloquin

1 are individually and independently obligated to pay the principal amount of the Note,  
2 together with accrued and accruing interest (including default interest), late charges,  
3 costs, expenses and fees.

4 16. As a result of the default under the Loan, a non-judicial trustee's  
5 sale foreclosure proceeding was initiated against the Property.

6 17. On October 21, 2009, the trustee under the Deed of Trust sold the  
7 Property at trustee's sale to the Plaintiffs, as the highest bidder, for the sum of  
8 \$1,100,000.00 as evidenced by a Trustee's Deed (the "Trustee's Deed"), dated October  
9 30, 2009 and recorded on October 30, 2009 as Instrument No. 2009-1008212, records of  
10 Maricopa County, Arizona. A true and correct copy of the Trustee's Deed is attached  
11 hereto as **Exhibit D**, and is incorporated herein by this reference.

12 18. At the time of the trustee's sale, the total indebtedness due and  
13 owing under the Note was \$8,447,239.57, as itemized below:

14	Unpaid balance of Note	
	Principal	\$4,550,000.00
15	Interest @ Default Rate (27.00%)	1,709,662.50
	(From May 7, 2008 – October 21, 2009)	
16	Monthly Servicing Fees	480.00
	(From July 1, 2008 – October 21, 2009)	
17	Late Charge on Payment due	16,256.77
	July 1, 2008	
18	Late Charges on Matured Loan	2,157,215.80
	(From July 19, 2008 – November 21, 2009)	
19	Closeout Fees	1,500.00
	Recording Fees	100.00
20	Attorneys' Fees	7,293.50
	Attorneys' Costs	383.24
21	Posting of Notices	110.00
	Publication of Notices	427.96
22	Total	<u>\$8,443,429.77</u>

23 After subtracting the amount of the successful bid of \$1,100,000.00 for the  
24 Property at the trustee's sale from the total indebtedness due and owing, there remains a  
25 deficiency balance due and owing to the Plaintiffs, of not less than \$7,343,429.77, plus  
26 accrued and accruing interest, late charges, costs of collection and attorneys' fees. The

1 deficiency balance continues to accrue interest at the default rate of 27.00%, until paid  
2 in full.

3           19. Pursuant to A.R.S. §§ 33-814 and 44-141, GP Properties is liable  
4 to the Plaintiffs, for the above deficiency balance, plus interest at the rate per annum set  
5 forth in the Note from the date of the trustee's sale, together with all costs and  
6 disbursements, including attorneys' fees, of this action.

7           20. Pursuant to A.R.S. §§ 12-1566, 25-214 and -215, 33-814 and 44-  
8 141, Peloquin and the present marital community property of Peloquin are each liable to  
9 the Plaintiffs, for the above deficiency balance, plus interest at the rate per annum set  
10 forth in the Note from the date of the trustee's sale, together with all costs and  
11 disbursements, including attorneys' fees, of this action.

12           21. Pursuant to A.R.S. §§ 12-341.01 and 33-814 and the Loan  
13 Documents, the Plaintiffs are entitled to an award of its attorneys' fees and costs  
14 incurred herein. In the event this matter is decided by default, the Plaintiffs allege that  
15 \$5,000.00 is a reasonable fee for their attorneys in this action.

16           WHEREFORE, Plaintiffs demand judgment in favor of the Plaintiffs  
17 against GP Properties and Peloquin, jointly and severally, as follows:

18           A. For the sum of not less than \$7,343,429.77, together with all  
19 additional amounts that the Plaintiffs pay to protect the Property, including real estate  
20 taxes, prior to judgment;

21           B. For interest thereon from the date of trustee's sale (i.e., October 21,  
22 2009) at the default rate of 27.00%, until paid in full;

23           C. For the sum of \$5,000.00, as and for Plaintiffs' attorneys' fees if  
24 this matter is concluded by default; otherwise for such sum as the court determines;

25           D. For Plaintiffs' costs and disbursements incurred herein.

26           E. For interest on such attorneys' fees and costs, at the highest rate



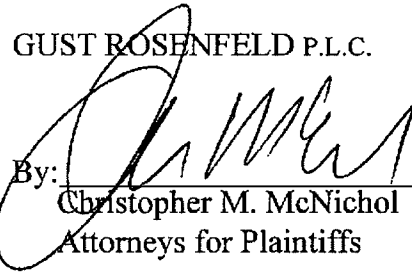
1 permitted by law from the date of entry of judgment until paid in full;

2 F. For post-judgment collection fees and costs upon application by  
3 Plaintiff; and

4 H. For such other and further relief as this Court may deem just and  
5 proper under the circumstances.

6 DATED this 15<sup>th</sup> day of January, 2010.

7 GUST ROSENFELD P.L.C.

8  
9 By:   
10 Christopher M. McNichol  
11 Attorneys for Plaintiffs

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Exhibit A

Note

**PROMISSORY NOTE**  
Interest Only/Commercial

Loan No. 860206

July 18, 2007

Loan Amount: \$4,550,000.00

"Maker" (individually and collectively):

GP Properties Carefree Cave Creek, L.L.C., an Arizona limited liability company  
P. O. Box 15195  
Phoenix, AZ 85060

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

**1. PROMISE TO PAY**

a. As consideration for the receipt of a loan and other value, Maker hereby promises to pay the outstanding balance of the Designated Loan Amount \$4,550,000.00 in United States currency (the "Principal"), plus interest, to the order of the Holder, Scott M. Coles or Christopher J. Olson, CPA, Trustees of the Mortgages Ltd. 401(k) Plan, or any subsequent holder of this Promissory Note (this "Note"). Maker understands and agrees that Scott M. Coles or Christopher J. Olson, CPA, Trustees of the Mortgages Ltd. 401(k) Plan, may subsequently transfer this Note, subject to the terms and conditions contained herein. Scott M. Coles or Christopher J. Olson, CPA, Trustees of the Mortgages Ltd. 401(k) Plan, or anyone who takes this Note by transfer and who is entitled to receive payments under this Note, is referred to hereinafter as the "Holder."

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

**3. INTEREST**

Interest will be charged on that portion of the Principal which has been committed by Holder, beginning, at Holder's discretion, on the Loan Funding Date or the Commitment Termination Date (in the event that the Loan closing was delayed for any reason other than one caused by Holder) continuing until the Principal has been paid in full. The Loan Funding Date is the date upon which Lender allocates and designates sums sufficient to fund this Loan. The Commitment Termination Date is the date upon which Lender's Loan commitment expires. Beginning on the Loan Funding Date or the Commitment Termination Date, as the case may be, and so long as no event of default exists, interest will accrue and be paid at the rate of 12.25% per annum. In the event of default, Maker agrees to pay the Default Interest Rate as set forth herein.

**4. PAYMENTS**

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



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**PROMISSORY NOTE**

Loan No. 860206

July 18, 2007

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

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

c. All remaining Principal, together with accrued unpaid interest and any other amounts due hereunder or under the Loan Documents (collectively, the "Maker's Liabilities") shall be due and payable in full on July 19, 2008 (the "Maturity Date"), unless Maker's Liabilities become due and payable sooner because of acceleration, in which case Maker's Liabilities shall be due and payable in full on the date of such acceleration. Maker understands that the Maturity Date requires Maker to pay all Principal, interest and all other charges then due.

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

**5. RIGHT TO PREPAY AND PREPAYMENT PREMIUM**

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

- (1) All sums due under the Note are current;
- (2) Prepayment is made on a monthly payment due date;
- (3) Payment of a prepayment premium equal to 5% of the Principal balance of the Note before reduction, if Prepayment is made before July 19, 2007; **and**
- (4) At the time of making a Prepayment, Maker advises Servicing Agent, in writing that Maker is making a Prepayment.

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

**6. LOAN CHARGES**

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

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



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Handwritten initials in black ink, appearing to be "MB". Below the initials, the word "initials" is printed in a small font.

**PROMISSORY NOTE**

Loan No. 860206

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**7. MAKER'S FAILURE TO PAY AS REQUIRED**

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

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

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

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

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

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

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

**8. NOTICES**

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



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*[Handwritten Signature]*  
initials

**PROMISSORY NOTE**

Loan No. 860206

July 18, 2007

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**9. OBLIGATIONS OF PERSONS UNDER THIS NOTE**

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

**10. WAIVERS**

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

**11. SECURITY**

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

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

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

**12. TIME**

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

**13. GENERAL**

- a. This Note is binding on Maker and Maker's heirs, personal representatives, successors, permitted assigns, beneficiaries and trustees.



*[Handwritten Signature]*  
Initials

PROMISSORY NOTE

Loan No. 860206

July 18, 2007

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b. This Note and the benefits hereunder are not assignable or transferable by Maker. However, Holder may assign its rights under this Note and the other Loan Documents without prior notice to Maker.

c. Maker acknowledges that Mortgages Ltd. is Holder's Servicing Agent.

d. This Note shall be governed by, construed and enforced in accordance with the laws of the State of Arizona, without regard to the choice of law rules of the State of Arizona. Maker hereby submits to the jurisdiction of any Arizona State or Federal Court sitting in the City of Phoenix in any action or proceeding arising out of or relating to this Note. Maker hereby waives the defense of an inconvenient forum.

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

f. This Note, together with the other Loan Documents, sets forth the entire agreement and understanding between Maker and Holder, and supersedes all prior agreements, arrangements and understandings, written or oral, between Maker and Holder.

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

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

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

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

SEE ATTACHED SIGNATURE PAGE



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Handwritten initials in black ink, appearing to be "MJS", written over a horizontal line. Below the line, the word "initials" is printed in a small, lowercase font.





**Exhibit B**

Deed of Trust

When recorded return to:

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

2712395-16-4-1--  
Floresc

CHICAGO TITLE INSURANCE COMPANY

COMMERCIAL

2712395-16  
1/4  
DEED OF TRUST, ASSIGNMENT OF RENTS AND LEASES,  
SECURITY AGREEMENT AND FIXTURE FILING

Loan No. 860206  
Secured Loan Amount: \$4,550,000.00

July 18, 2007

"Trustor" (individually and collectively):

GP Properties Carefree Cave Creek, L.L.C., an Arizona limited liability  
company  
P. O. Box 15195  
Phoenix, AZ 85060

"Trustee":

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

"Beneficiary":

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

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

#### 1. TRUST PROPERTY

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

- a. Buildings, structures, fixtures or other improvements now or hereafter placed on the Real Property (collectively, the "Improvements");
- b. All existing and future leases, subleases, licenses and other agreements for the use and occupancy of all or any portion of the Real Property;
- c. All rents, issues and profits and income generated by the Real Property (the "Property Income");



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

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

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

2. TRUSTOR'S REPRESENTATIONS AND WARRANTIES

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

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

3. SECURITY

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

- a. Strict performance of every obligation of Trustor and the third party borrower, if any, under all Loan Documents;
- b. Payment of all sums due under the Note including the principal amount of the "Initial Funding" of \$4,556,000.00, interest thereon and all other charges assessed thereunder, such as late charges, notice fees and prepayment premiums;
- c. In the event that this Deed of Trust secures a Note with an Equity-Flex<sup>®</sup> Mortgage-Line and "Advances," as defined therein, are made by Beneficiary, then payment of the aggregate amount of all Advances and all Equity-Flex Fees (as defined in said Note);
- d. In the event of default, payment of interest at the "Default Interest Rate," as defined by the Note;



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

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

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

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

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

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

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

4. TRUSTOR'S OBLIGATIONS

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

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



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

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

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

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

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



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

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

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

j. **Environmental Matters.**

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



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

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

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

a. Equity-Flex®. If that this Deed of Trust secures a Note with an Equity-Flex® Mortgage Line, Trustor may use, subject to the conditions set forth in the Note, the existing equity in the Trust Property in order to obtain additional funds beyond the amount of the initial Funding of \$4,550,000.00 up to the Secured Loan Amount of \$4,550,000.00. This Deed of Trust secures the entire Secured Loan Amount regardless of the amount of the initial Funding or any subsequent draws ('Advances') on the Loan account. The payoff amount required to release this Deed of Trust shall be based on the actual outstanding balance of the Loan account at the time of payoff.

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

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

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

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

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



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

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

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

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

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

**6. CONSTRUCTION MORTGAGE**

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

**7. CONDEMNATION**

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

**8. BENEFICIARY'S OPTIONS**

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

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



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

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

9. SECURITY AGREEMENT AND FIXTURE FILING

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

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

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

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

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

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

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

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

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



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

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

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



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

Name and Address of Debtor: liability company	GP Properties Carefree Cave Creek, L.L.C., an Arizona limited P. O. Box 15195 Phoenix, AZ 85060
Name and Address of Record Owner: liability company	GP Properties Carefree Cave Creek, L.L.C., an Arizona limited P. O. Box 15195 Phoenix, AZ 85060
Description of Real Estate:	See <u>Exhibit A</u> attached hereto.
Name and Address of Secured Party:	Mortgages Ltd., as agent 55 E. Thomas Road Phoenix, Arizona 85012

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

**10. RELEASE AND RECONVEYANCE**

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

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

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

**11. ASSIGNMENT OF RENTS, LEASES AND PROFITS**

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

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

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



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

**12. DEFAULT AND REMEDIES**

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

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

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



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

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

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

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

**13. SUCCESSOR TRUSTEE**

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



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**14. ALIENATION**

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

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

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

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

or

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

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

**15. THIRD PARTY BORROWER PROVISIONS.**

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

a. Trustor waives each of the following:

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

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

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

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

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

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

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



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**DEED OF TRUST, ASSIGNMENT OF RENTS AND LEASES,  
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- i. **Promotional Information.** Beneficiary shall have the right to release information related to this Deed of Trust and the other Loan Documents ("Promotional Information"), including photographs of the Trust Property, characteristics of the Trust Property, Loan characteristics, financing terms and aspects of underwriting, for advertising, marketing and other promotional purposes, such as commercials, advertising fliers, trade articles, Internet releases and public presentations. Beneficiary shall not be held liable to Trustor for the release of Promotional Information.
- j. **Modification.** This Deed of Trust may be amended, modified, superseded, cancelled, renewed or extended and the terms or covenants hereof may be waived only by a written instrument executed by all Parties.
- k. **Waiver.** The failure of Beneficiary, at any time or times, to require performance of any provision of this Deed of Trust shall in no manner affect the right of Beneficiary at a later time to enforce that provision. Further, if payment of any sum secured hereby is accepted after its due date, Beneficiary does not waive its right either to require prompt payment when due of all other sums or to declare a default for failure to pay as required by the Loan Documents. No waiver by Beneficiary of the breach of any term or covenant contained in this Deed of Trust, whether by conduct or otherwise, in any one or more instances, shall be deemed to be, or construed as, a further or continuing waiver by Beneficiary of any such breach, or a waiver of the breach of any other term or covenant contained in this Deed of Trust.
- l. **Waiver of Statute of Limitations.** To the extent permitted by applicable law, Trustor hereby waives the right to assert any statute of limitations as a bar to the enforcement of the lien created by any of the Loan Documents or to any action brought to enforce the Note or any other obligations secured by any of the Loan Documents.
- m. **Waiver of Homestead and Redemption.** Trustor hereby waives all right of homestead exemption in the Trust Property. Trustor hereby waives all right of redemption on behalf of Trustor and on behalf of all other persons acquiring any interest or title in the Trust Property subsequent to the date of this Deed of Trust, except decree or judgment creditors of Trustor.
- n. **Interpretation.** As used in this Deed of Trust, the word "include(s)" means "include(s), without limitation," and the word "including" means "including, without limitation."
- o. **Variable Rate.** THIS DEED OF TRUST MAY SECURE A VARIABLE INTEREST RATE LOAN.

SEE ATTACHED SIGNATURE PAGE



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DEED OF TRUST, ASSIGNMENT OF RENTS AND LEASES,  
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IN WITNESS WHEREOF, this Deed of Trust has been executed as of the date set forth on the first page.

TRUSTOR:

GP Properties Carefree Cave Creek, L.L.C., an Arizona limited liability company

*Michael J. Peloquin*  
By: Michael J. Peloquin  
Its: Manager

STATE OF AZ                    )  
  )ss  
COUNTY OF MARICOPA        )

The foregoing instrument was acknowledged before me 19 day of July, 2007 by Michael J. Peloquin of GP Properties Carefree Cave Creek, L.L.C., an Arizona limited liability company on behalf of the LLC

*Nechelle Wimmer*  
Notary Public

My Commission Expires:





EXHIBIT "A"

Loan No.: 860206  
Borrower: GP Properties Carefree Cave Creek, L.L.C., an Arizona limited liability company

That portion of Section 3, Township 5 North, Range 4 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, more particularly described as follows:

COMMENCING at the Southeast corner of said Section 3;

thence South 89 degrees 49 minutes 00 seconds West along the South line of said Section 3, a distance of 667.16 feet to the TRUE POINT OF BEGINNING;

thence North 00 degrees 07 minutes 00 seconds East, a distance of 772.63 feet;

thence South 89 degrees 49 minutes 00 seconds West, parallel with the South line of said Section 3, a distance of 677.16 feet;

thence South 00 degrees 07 minutes 00 seconds West parallel to the East line of the within described tract, a distance of 772.63 feet to a point on the South line of said Section 3;

thence North 89 degrees 49 minutes 00 seconds East along the South line of said Section 3 to the TRUE POINT OF BEGINNING.

APN: 216-32-008J / Maricopa

When recorded return to:

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

2712395-1-4-3--  
Floresc

**COMMERCIAL**

CHICAGO TITLE INSURANCE COMPANY  
270829-4  
314  
**ASSIGNMENT OF BENEFICIAL INTEREST  
UNDER DEED OF TRUST**

Loan No.

860206

Effective Date: July 18, 2007

"Assignor" (individually and collectively):

Scott M. Coles or Christopher J. Olson, CPA, Trustees of the Mortgages Ltd. 401(k) Plan as to an undivided 56.044% interest

"Assignee" (individually and collectively):

Mortgages Ltd., an Arizona corporation as to an undivided 41.874% interest  
Mortgages Ltd. Opportunity Fund MP15 L.L.C., an Arizona limited liability company as to an undivided 1.099% interest  
Christo Panagiotakopoulos and Constance Panagiotakopoulos, Husband and Wife, as Joint Tenants With Right of Survivorship as to an undivided 4.000% interest  
Christo Panagiotakopoulos and Constance Panagiotakopoulos, Husband and Wife, and Athanasios Panagiotakopoulos, together as Joint Tenants With Right of Survivorship as to an undivided 7.467% interest  
Athanasios Panagiotakopoulos and Athanasia Panagiotakopoulos, husband and wife as Joint Tenants with Right of Survivorship as to an undivided 1.604% interest

For good and valuable consideration, Assignor hereby assigns to Assignee so much of Assignor's rights and interests as to the percentage set forth above, as beneficiary under that certain Deed of Trust, Assignment of Rents and Leases, Security Agreement and Fixture Filing (the "Deed of Trust"). Such assigned part to be equal to the interest indorsed to Assignee by the certain Promissory Note Indorsement between the parties hereto. Said Deed of Trust is dated July 18, 2007, executed by GP Properties Carefree Cave Creek, L.L.C., an Arizona limited liability company, as Trustor, to Scott Martin Coles, a licensed real estate broker, as Trustee, and recorded concurrently herewith, or in Docket or Book \_\_\_\_\_, Page \_\_\_\_\_ in the records of Maricopa County, Arizona.

**RECORDED CONCURRENTLY HEREWITH**

Pursuant to Section 33-404 A.R.S., the names and addresses of the beneficiaries are available through Mortgages Ltd., 55 E. Thomas Rd., Phoenix, AZ 85012.

IN WITNESS WHEREOF, this Assignment is effective on the date set forth above.

ASSIGNOR:

*Scott M. Coles*

Scott M. Coles, Trustee

STATE OF ARIZONA )

)ss

COUNTY OF MARICOPA )



Date of acknowledgement 07/18/07

Acknowledgement of Scott M. Coles

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

*Nechelle Wimmer*  
Notary Public

My commission expires 07/30/08



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**Exhibit C**

Guaranty

**MORTGAGES LTD.  
LOAN GUARANTY**

LOAN #860206

July 18, 2007

**PARTIES: Guarantor:**

**Name:** Michael J. Peloquin and Kay M. Peloquin, husband and wife  
**Address:** 4805 E. Valley Vista Lane  
Paradise Valley, AZ 85253

called "Guarantor", guaranteeing payment and performance by

**Borrower:**

**Name:** GP PROPERTIES CAREFREE CAVE CREEK, L.L.C., AN ARIZONA LIMITED  
LIABILITY COMPANY  
**Address:** P. O. Box 15195  
Phoenix, AZ 85060

called "Debtor" to

**Lender:**

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

called "Lender";

**GUARANTY:**

1. Guarantor unconditionally guarantees and promises to pay and to perform to Lender, or order, on demand, the debt and other related obligations owed Lender by Borrower described as follows:
  - (a) Payment, performance and observance by Borrower of each agreement, term, provision and condition contained in the Promissory Note dated of even date herewith executed and delivered to Lender (the "Promissory Note").
  - (b) Payment, performance and observance by Borrower of each agreement, term, provision and condition contained in the Deed of Trust, Assignment of Rents and Leases, Security Agreement and Fixture Filing, dated of even date herewith (the "Deed of Trust") which secures the Promissory Note.
  - (c) Payment, performance and observance by Borrower of each agreement, term, provision and condition contained in any other documents, security or otherwise executed by Borrower given in connection with the loan evidenced by the Promissory Note and secured by the Deed of Trust (collectively, the "Loan Documents"), except for the independent obligations contained in a separate Environmental Certification and Indemnity Agreement executed by Guarantor, if any.
  - (d) Payment and performance of any and all other indebtedness, obligations and liabilities of Borrower to Lender of every kind and character, direct or indirect, absolute or contingent, due or to become due, now existing or hereafter incurred, whether such indebtedness is from time to time reduced and thereafter increased or entirely extinguished and thereafter reincurred.

and all of the above are collectively referred to as the "Debt."



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*[Handwritten initials]*  
initials

**GUARANTY  
IRREVOCABLE:**

2. This Loan Guaranty (this "Guaranty") is irrevocable. Guarantor guarantees the full payment and performance of the Debt without limitation of any kind.

**CONSIDERATION:**

3. Guarantor acknowledges that this Guaranty is given for good and valuable consideration to the Guarantor, whether or not given directly to Guarantor. This Guaranty is given as an inducement to Lender to lend or extend credit to Borrower which, but for this Guaranty, Lender would not have lent or extended.

**GUARANTY  
COMPREHENSIVE:**

4. This Guaranty applies to the Debt in the most comprehensive sense, including continuations or extensions of the Debt, increases or decreases in the amount of the Debt, renewals of the Debt and changes in any of the terms and conditions of the Debt.

**GUARANTY  
INDEPENDENT:**

5. This Guaranty is the absolute and unconditional obligation of Guarantor and is in addition to and independent of the obligations of the Borrower to the Lender.

**WAIVERS:**

6. Guarantor waives each of the following:
- a). Any right to require Lender to make presentments or demands or to give notices of any kind, including demand for performance, notice of non-performance, protest, notice of protest, notice of dishonor, notice of acceptance of this Guaranty, notice of the existence, creation or incurrence of existing or new debt, notice of modification, payment, default or change or action of any kind relating to the Debt guaranteed.
  - b). Any defense to liability on this Guaranty based on any disability or other defense of the Debtor or based upon any cessation of the liability of Borrower to Lender for any reason other than the payment of the Debt in full.
  - c). Any right to require Lender to proceed against Borrower.
  - d). Any right to require Lender to proceed against any security held from Borrower or from Guarantor.
  - e). To the extent permitted by applicable law, the benefit of any statute of limitations pertaining to the Debt or this Guaranty or affecting Guarantor's liability on this Guaranty or its enforcement.
  - f). Any defense based upon an election of remedies by Lender, including any election to proceed against any collateral by judicial or nonjudicial foreclosure, whether real property or personal property, or by deed in lieu thereof, and whether or not every aspect of any foreclosure sale is commercially reasonable, and whether or not any such election of remedies destroys or otherwise impairs the subrogation rights of Guarantor or the rights of Guarantor to proceed against Borrower or other guarantor for reimbursement, or both.
  - g). The benefits of any statutory provision limiting the liability of a surety, including without limitation, the provisions of A.R.S. Sections 12-1641 through 12-644, A.R.S. Section 12-1566, A.R.S. Section 33-814, A.R.S. Section 44-142, A. R. S. Section 47-3605 and Rule 17(f) of the Arizona Rules of Civil Procedure.
  - h). Any defense based upon the application by Borrower of the proceeds of the Loan for purposes other than the purposes represented by Borrower to Lender or intended or understood by Lender or Guarantor.



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CONSENTS:

7. Guarantor acknowledges and agrees that Lender, without affecting Guarantor's liability, may take any one or more of the following actions, at any one or more times:
- a). Renew, compromise, extend, accelerate or otherwise change the time for payment of, or the terms of, all or any part of the Debt.
  - b). Take security for the payment of this Guaranty or for payment of the Debt, or both, and exchange, enforce, alter or release all or any part of any security.
  - c). Add, release or substitute any one or other Guarantors.
  - d). Assign the Debt in whole or part. This Guaranty shall automatically and proportionately follow any assignment of the Debt.

REMEDIES OF  
LENDER:

8. Upon i) failure of Borrower to pay any part of the Debt when due, or ii) failure of Borrower to meet any obligation to Lender relating to the Debt, or iii) the initiation of any bankruptcy or insolvency proceedings by Borrower or by Guarantor, or iv) the institution of any bankruptcy or insolvency proceedings against Borrower or Guarantor, or the seizure or retention of any of the property of Borrower or of Guarantor under claim of lien or by legal action, or v) any stated intention by Borrower or by Guarantor to default in payment or in performance of the Debt or upon this Guaranty, or any other circumstance reasonably indicating to Lender the inability or unwillingness of the Borrower or of Guarantor to pay the Debt or to perform under this Guaranty, the Lender, at its option, may do any one or more of the following, separately or concurrently and at any one or more times:
- a). Declare the entire amount of the Debt immediately due and payable.
  - b). Reinstate the Debt in good standing upon payment of all delinquent payments, including accrued interest on delinquent payments, and performance of any other obligations of Borrower in default.
  - c). Proceed against Borrower in accordance with the Loan Documents.
  - d). Proceed against any security held from Borrower or from Guarantor.
  - e). Recover from Guarantor the payment of all or any part of Debt, or the performance of any other obligation of Guarantor hereunder, or both.
  - f). Maintain a lien upon, and right of setoff against, all money or other property of Guarantor which may be in or come into the possession or control of Lender, however held. Lender may exercise this lien or setoff without demand upon or notice to Guarantor. No act by Lender, or neglect or delay in acting, will waive Lender's rights of lien and setoff, except a specific written waiver by Lender.
  - g). Take any other action permitted by law or in equity.
  - h). Lender may exercise any of its remedies either by suit or without. Lender may proceed against Borrower, Guarantor or any other guarantors, or each of Borrower, Guarantor or any other guarantor, in any combination, at one or more times, and in one or more ways or suits. In all cases, and in addition to the Debt guaranteed, Guarantor is liable to Lender for the Lender's costs of enforcement of this Guaranty, including reasonable attorney's fees, whether or not suit is brought.

DEATH:

9. The death of Guarantor will not terminate this Guaranty. This Guaranty is binding upon Guarantor, its heirs, personal representatives, successors, assigns, beneficiaries and trustees until payment is made in full of the Debt.



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SUBORDINATION:

10. Guarantor subordinates to the Debt of Borrower to Lender any and all present or future debt of Borrower owed to Lender. Any payment of debt by Borrower to Guarantor, on demand by Lender to the Guarantor, shall be held by Guarantor as trustee for Lender and paid over to the Lender on account of the Debt of Borrower to the Lender, but without reducing the liability of Guarantor to Lender under this Guaranty except to the extent of such payment.

MISCELLANEOUS:

11. a). Lender need not inquire into the power of Borrower or of its officers, directors, or agents purporting to act on behalf of Borrower and the Debt created in reliance upon the professed exercise of such powers is guaranteed by Guarantor.
- b) Notices and demands to Guarantor may be given to Guarantor at the address of the Guarantor shown on the first page. Payments, notices and demands are to be made or given to Lender at the address of the Lender shown on the first page. Either party may change its address for these purposes by giving prior written notice to the other party. Notices and demands given by registered or certified mail are effective when mailed; but if given otherwise are effective when received.
- c) Guarantor shall furnish in form and substance satisfactory to Lender; (a) within 90 days after the end of each calendar year, financial statements for such year from Guarantor; (b) upon the request of Lender, all filed Federal and State income tax returns for Guarantor; and (c) such other financial information concerning Guarantor as Lender may reasonably require from time to time.
- d) The word "Guarantor" refers to the above-named Guarantor and to any additional persons who may hereafter be added as Guarantors of the Debt, in which case this Guaranty will bind all Guarantors jointly and severally. As used in this Guaranty, the word "include(s)" means "include(s), without limitation," and the work "including" means "including, without limitation."
- e) Guarantor, and Lender by its acceptance of this Guaranty, hereby waive their respective right to a trial by jury in any action or proceeding based upon, or related to, the subject matter of this Guaranty and the business relationship that is being established. This waiver is knowingly, intentionally and voluntarily made by Guarantor and by Lender, and Guarantor acknowledges that neither Lender nor any person acting on behalf of Lender has made any representations of fact to include this waiver of trial by jury or has taken any actions which in any way modify or nullify its effect. Guarantor and Lender acknowledge that this waiver is a material inducement to enter into a business relationship, that Guarantor and Lender have already relied on this waiver in entering into this Guaranty and that each of them will continue to rely on this waiver in their related future dealings.

GOVERNING LAW:

12. This Guaranty shall be construed in accordance with and governed by the laws of the State of Arizona, without regard to the choice of law rules of the State of Arizona.

JURISDICTION AND VENUE:

13. Guarantor hereby expressly agrees that in the event any actions or other legal proceedings are initiated by or against Guarantor or Lender involving any alleged breach or failure by any party to pay, perform or observe any sums, obligations or covenants to be paid, performed or observed by it under this Guaranty, or involving any other claims or allegations arising out of the transactions evidenced or contemplated by this Guaranty, regardless of whether such actions or proceeding shall be for damages, specific performance or declaratory relief or otherwise, such actions, in the sole and absolute discretion of Lender, may be required to be brought in Maricopa County, Arizona; and Guarantor hereby submits to the jurisdiction of the State of Arizona for such purposes and agrees that the venue for such actions or proceedings shall properly lie in Maricopa County, Arizona; and Guarantor hereby waives any and all defenses to such jurisdiction and venue.

SEE ATTACHED SIGNATURE AND NOTARY PAGE



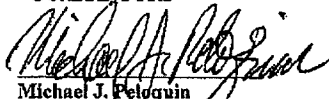
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*[Handwritten Signature]*  
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Mortgages LTD. Loan Guaranty  
Loan No. 860206  
07/18/2007  
Page 5

MORTGAGES LTD. LOAN GUARANTY SIGNATURE AND NOTARY PAGE

"GUARANTORS"

  
Michael J. Peloquin

STATE OF AZ                    )  
  )ss  
COUNTY OF MARICOPA        )

The foregoing instrument was acknowledged before me \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ by  
**Michael J. Peloquin**

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

My Commission Expires:

SEE ATTACHED COUNTERPART SIGNATURE AND NOTARY PAGE



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Mortgages LTD. Loan Guaranty  
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MORTGAGES LTD. LOAN GUARANTY COUNTERPART SIGNATURE AND NOTARY PAGE

"GUARANTORS"

  
Kay M. Peloquin

STATE OF AZ                    )  
  )ss  
COUNTY OF MARICOPA )

The foregoing instrument was acknowledged before me \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ by Kay M. Peloquin

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

My Commission Expires:



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