

## SETTLEMENT AGREEMENT

This Settlement Agreement (this "Agreement") dated as of \_\_\_\_\_, 20\_\_ (the "Effective Date") is executed by and among \_\_\_\_\_, a \_\_\_\_\_ ("Borrower"), \_\_\_\_\_, as trustees of \_\_\_\_\_ (each a "Guarantor," and, collectively, the "Guarantors"), and \_\_\_\_\_, as Trustee for the registered holders of \_\_\_\_\_ ("Noteholder") (Borrower and Guarantors may sometimes be collectively referred to herein as the "Obligors").

### RECITALS

A. On or about \_\_\_\_\_, 20\_\_, \_\_\_\_\_, a \_\_\_\_\_ (the "Original Noteholder") made a loan (the "Loan") to Borrower in the original principal amount of \_\_\_\_\_ and \_\_\_/100 Dollars (\$\_\_\_\_\_).

B. The Loan is evidenced by, among other things, that certain Promissory Note dated \_\_\_\_\_, 20\_\_ (the "Note") in favor of the Original Noteholder in the original principal sum of \_\_\_\_\_ and \_\_\_/100 Dollars (\$\_\_\_\_\_).

C. Concurrently with the execution of the Note, Borrower, as grantor, executed that certain Deed of Trust, Security Agreement and Assignment of Leases and Rents dated \_\_\_\_\_, 20\_\_ (the "Deed of Trust") in favor of \_\_\_\_\_, as trustee, for the benefit of Original Noteholder, as beneficiary, encumbering, among other things, that certain property more particularly described

in the Deed of Trust (the "Property"). The Deed of Trust was recorded on \_\_\_\_\_, 20\_\_ in Docket \_\_\_\_\_, Page \_\_\_\_\_ in the Real Property Records of \_\_\_\_\_, Arizona (the "Official Records"). In addition, Borrower executed that certain Assignment of Leases and Rents dated as of \_\_\_\_\_, 20\_\_ (the "ALR"), recorded in Docket \_\_\_\_\_, Page \_\_\_\_\_ of the Official Records on \_\_\_\_\_, 20\_\_.

D. The Deed of Trust and ALR were assigned to \_\_\_\_\_, as trustee for the registered holders of \_\_\_\_\_ pursuant to that certain Assignment of Deed of Trust, Security Agreement and Assignment of Assignment of Leases and Rents, which was recorded in Docket \_\_\_\_\_, Page \_\_\_\_\_ of the Official Records on \_\_\_\_\_, 20\_\_, and pursuant to that certain Assignment of Assignment of Leases and Rents, which was recorded in Docket \_\_\_\_\_, Page \_\_\_\_\_ in the Official Records on \_\_\_\_\_, 20\_\_. The Deed of Trust and ALR were subsequently assigned by \_\_\_\_\_, as Trustee for the registered holders of \_\_\_\_\_ pursuant to that certain Assignment of Deed of Trust, Security Agreement and Assignment of Leases and Rents and Assignment of Assignment of Leases and Rents, which was recorded in Docket \_\_\_\_\_, Page \_\_\_\_\_ of the Official Records on \_\_\_\_\_, 20\_\_.

E. Also concurrently with the execution of the Note, each of the Guarantors executed that certain Indemnity and Guaranty Agreement dated \_\_\_\_\_, 20\_\_ (the "Guaranty") in favor of the Original Noteholder, and Borrower and each of

Guarantors executed that certain Hazardous Substances Indemnity Agreement dated \_\_\_\_\_, 20\_\_ (the "Environmental Indemnity") in favor of the Original Noteholder.

F. The Note, the Deed of Trust, the ALR, the Guaranty, the Environmental Indemnity and all other documents which evidence, secure, or relate to the Loan may be hereinafter collectively referred to as the "Loan Documents." Noteholder is now the holder of the Loan, the payee under the Note, the beneficiary of the Deed of Trust and the holder of the other Loan Documents pursuant to that certain \_\_\_\_\_. \_\_\_\_\_ ("ABC-III") is the special servicer for Noteholder for the Loan.

G. Borrower is in default under the Loan Documents due to Borrower's failure to make certain payments due and owing under the Loan Documents.

H. Noteholder and the Obligor have agreed to a discounted payoff of the Loan, but only upon the terms and conditions set forth herein.

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Noteholder and Obligor hereby agree as follows:

1. **Affirmation of Recitals.** The Obligor and Noteholder acknowledge and agree that the recitals set forth above are true and correct. Said recitals are incorporated herein by this reference.

2. **Amounts Owed/Reserves.** The Obligor acknowledge and agree that, as of the Effective Date, there is \_\_\_\_\_ and No/100 Dollars

(\$\_\_\_\_\_) in principal due and owing pursuant to the Loan Documents, in addition to interest, default interest, late charges, attorneys' fees, and other costs and expenses due and owing pursuant to the Loan Documents (collectively, the "Indebtedness"). The Obligors also acknowledge and agree that the Noteholder is holding the following amounts (such amounts less any amounts applied in accordance with Section 6 below shall hereinafter be referred to as the "Reserves"): (a) \_\_\_\_\_ (WORDS) \_\_\_\_\_ and \_\_\_/100 Dollars (\$\_\_\_\_\_) (after payment of the first half of taxes for 20\_\_ by Noteholder) in the Impound Account (as defined in the Deed of Trust) for the payment of taxes; (b) \_\_\_\_\_ (WORDS) \_\_\_\_\_ and \_\_\_/100 Dollars (\$\_\_\_\_\_) in the Impound Account for the payment of insurance premiums; (c) \_\_\_\_\_ (WORDS) \_\_\_\_\_ and \_\_\_/100 Dollars (\$\_\_\_\_\_) in the Repair and Remediation Reserve (as defined in the Deed of Trust); and (d) \_\_\_\_\_ (WORDS) \_\_\_\_\_ and \_\_\_/100 Dollars (\$\_\_\_\_\_) in the Replacement Reserve (as defined in the Deed of Trust). For the avoidance of doubt, the Reserves shall not include any amounts held in suspense by Noteholder in connection with the Loan. All amounts due and payable in respect of taxes and insurance as of the date hereof and through the date of Closing shall be paid from the applicable Impound Accounts. [Comment: please provide current impound account information with confirmation that the Pima County property taxes delinquent after November 1 have been paid.]

3. **Discounted Payoff Amount.** Borrower shall deliver to \_\_\_\_\_ (the "Escrow Agent") whose address is \_\_\_\_\_, Attention: \_\_\_\_\_, on or before \_\_\_\_\_, 20\_\_, following Borrower's execution of this Agreement (the "Payoff Date") by wire transfer in immediately available funds pursuant to the

instructions contained in Exhibit "A" attached hereto the amount of \_\_\_\_\_ and No/100 Dollars (\$\_\_\_\_\_) (the "Payoff Amount") less, to the extent previously paid pursuant to Section 4 below, the Initial Payment (as defined below). Within one (1) Business Day (as defined below) following Escrow Agent's receipt of the Payoff Amount (less, to the extent previously paid, the Initial Payment), Escrow Agent shall deliver the Payoff Amount (less, to the extent previously paid, the Initial Payment) to Noteholder by wire transfer without any additional instructions or authorizations from Borrower or Noteholder, with the exception of wire transfer instructions to be delivered to Escrow Agent by Noteholder. In the event the Payoff Amount shall be received by Escrow Agent on or before the Payoff Date and the Obligor is not otherwise in default under this Agreement, Noteholder agrees to accept the Payoff Amount and the Cash Flow (as defined below) in full and complete accord and satisfaction of all Indebtedness (except for the Surviving Obligations (as defined below)) due under or related to the Note as a discounted payoff of the Loan and the Loan Documents. The Payoff Amount and the Cash Flow shall be allocated toward the amounts due and owing under the Loan Documents in the sole and absolute discretion of Noteholder but in full satisfaction of the Indebtedness (with all prepayment premium or penalties being waived). [Comment: please advise as to the likely allocation as this may have tax implications to the Borrower.] If the Payoff Amount is not delivered to Escrow Agent on or before the Payoff Date, then Noteholder shall not be obligated to accept any discounted payoff of the Loan, including, without limitation, the Payoff Amount and the Cash Flow, Noteholder shall be free to exercise its rights and remedies under the Loan Documents, at law, and in equity, and Noteholder shall retain the Initial Payment as set forth in Section 4 below. "Business Day" means any day other than a Saturday, Sunday or national holiday. Notwithstanding the foregoing, so long as Obligor is not in default under the terms of this Agreement, Noteholder agrees to forbear from enforcement

actions available under the Loan Documents, at law or in equity prior to the Payoff Date. “Surviving Obligations” means those obligations not released under the Release (as defined below). Escrow Agent shall act as an independent agent for the parties under the terms set forth in this Agreement not an affiliate of Noteholder or ABC-III.

4. **Initial Payment.** Within one (1) Business Day following Borrower’s execution of this Agreement, Borrower shall deposit with Escrow Agent by wire transfer in immediately available funds pursuant to the instructions contained in Exhibit “A” attached hereto the amount of \_\_\_\_\_ and No/100 Dollars (\$\_\_\_\_\_) (the “Initial Payment”). Borrower may elect to extend the Payoff Date to not later than \_\_\_\_\_ with written notice to Noteholder and ABC-III by not later than \_\_\_\_\_, with delivery of an additional \_\_\_\_\_ (\$\_\_\_\_\_) which shall be added to and become part of the Initial Payment for all purposes under this Agreement. Within one (1) Business Day following Escrow Agent’s receipt of the Initial Payment, Escrow Agent shall deliver the Initial Payment to Noteholder by wire transfer without any additional instructions or authorizations from Borrower or Noteholder, with the exception of wire transfer instructions to be delivered to Escrow Agent by Noteholder. In the event the Payoff Amount is received by Escrow Agent on or before the Payoff Date and Borrower has not otherwise defaulted under this Agreement, the Initial Payment, to the extent previously received by Escrow Agent, shall be credited against the Payoff Amount. The Initial Payment shall be non-refundable, and, in the event the Payoff Amount is not received on or before the Payoff Date or Obligors are otherwise in default under this Agreement, Noteholder may apply the Initial Payment to amounts due under the Loan Documents in its sole and absolute discretion; provided, however, that the Obligors

acknowledge and agree that such application of the Initial Payment to the amounts due and owing under the Loan Documents shall not cure any existing defaults under the Loan Documents or prejudice or affect the rights and remedies of Noteholder due to any existing defaults under the Loan Documents.

5. **Net Cash Flow.**

a. On or before the fifth (5th) calendar day following the Payoff Date, Obligors shall provide the following to Noteholder: (i) monthly operating statements in form and substance reasonably acceptable to Noteholder showing all income and expenses from the Property for the period commencing on \_\_\_\_\_ and ending on the Payoff Date (the “Operating Statements”); and (ii) payment of all Net Cash Flow (as defined below) as shown in the Operating Statements. Any payments made pursuant to this Section 5.a. shall be non-refundable and shall be accepted without waiver of Noteholder’s rights and remedies with regard to those matters excepted from the Release (as defined below) and except as otherwise set forth herein. Any payments made pursuant to this Section 5.a. shall not apply to, or be credited against, the Payoff Amount. Noteholder expressly retains all of its rights to apply any Net Cash Flow pursuant to the Loan Documents or otherwise.

b. “Net Cash Flow” is defined as (1) the sum of rental income, common area maintenance recoveries, real estate tax recoveries and any other recoveries or income for the Property for the period commencing on \_\_\_\_\_ and ending on the Payoff Date, less (2) actual operating and capital expenses for the Property, including, without limitation, approved management fees, for the period commencing on \_\_\_\_\_ and ending on the Payoff Date, and less (3) payments

made to Noteholder under the Loan from \_\_\_\_\_ to the Payoff Date. For the avoidance of doubt, the calculation of the Net Cash Flow of the Property for the purpose of this Section 5.b. shall not include any expenses Obligor may have incurred for legal fees and expenses, including, without limitation, any legal fees and expenses incurred as a result of negotiations among the Obligors, ABC-III and Noteholder in connection with the Loan or this Agreement.

c. Upon Noteholder's receipt of the Net Cash Flow and Operating Statements, Noteholder shall have ten (10) calendar days to review the Operating Statements and the calculation of Net Cash Flow thereunder. To the extent that Noteholder believes that the calculation of Net Cash Flow is correct, Noteholder shall transfer to Borrower any and all amounts in the Reserves for the Loan on or prior to the tenth (10th) calendar day following Noteholder's receipt of the Net Cash Flow and Operating Statements. To the extent that Noteholder believes that the calculation of Net Cash Flow is not correct, Noteholder shall notify Obligors of same on or prior to the tenth (10th) calendar day following Noteholder's receipt of the Net Cash Flow and Operating Statements, Obligors shall have ten (10) calendar days following such finding to transfer to Noteholder the difference between the Noteholder's calculation of Net Cash Flow and the Net Cash Flow previously received by Noteholder, and Noteholder shall have ten (10) calendar days after receipt of same to transfer to Obligors any and all amounts in the Reserves for the Loan.

6. **Reserves.** Obligors hereby acknowledge and agree that prior to the Payoff Date Noteholder may apply amounts in the Reserves to the payment of taxes and insurance premiums in accordance with the Loan Documents or otherwise for the purposes for which the Reserves are intended. In addition, Obligors hereby acknowledge and agree that prior to the Payoff Date,



Noteholder may apply any amounts that Noteholder receives or has previously received from Obligors (other than amounts in the Reserves) to outstanding principal and interest payments or other amounts due and owing under the Loan Documents and, after Borrower's initial default under the Loan Documents, has had no obligation to deposit any such amounts into the Reserves. If the Payoff Amount is not received by Escrow Agent on or before the Payoff Date or if Obligors are otherwise in default under this Agreement, then Noteholder shall continue to hold the Reserves pursuant to the Loan Documents, and Noteholder expressly retains all of its rights to apply the Reserves pursuant to the Loan Documents. Lender has provided to Borrower prior to execution of this Agreement an itemized statement reflecting the application and payment of amounts from the foregoing accounts from and after \_\_\_\_\_ (the "Reserves Statement").

7. **No Defenses.** As of the date of this Agreement, Obligors acknowledge and agree that Borrower has no defense, offset, or counterclaim to any of Borrower's obligations under the Note, the Deed of Trust, or under any of the other Loan Documents, and that each Guarantor has no defense, offset, or counterclaim to such Guarantor's obligations under the Guaranty or the Environmental Indemnity. To the extent that any such defenses, claims, or offsets of Borrower or any Guarantor exist as of the date hereof, they are hereby waived and released in consideration of Noteholder's execution of this Agreement. Obligors represent and warrant that this Agreement and the Loan Documents are valid, binding and enforceable obligations against Obligors in accordance with their terms.

8. **General Release of Known and Unknown Claims.** Except for the obligations set forth in this Agreement, for valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Obligors, on behalf of themselves and their members, partners,

predecessors, successors, assigns, agents, beneficiaries, and spouses (collectively, “Releasors”), hereby irrevocably and unconditionally release and forever discharge Noteholder, ABC-III, Original Noteholder and each of their beneficiaries, trustees, owners, predecessors, successors, assigns, agents, officers, employees, servicers, representatives, attorneys, and affiliates, and all persons acting by, through, under, or in concert with any of the aforesaid persons or entities (collectively, “Releasees”), or any of them, for, from and against any and all causes of action, suits, debts, liens, obligations, liabilities, claims, demands, damages, judgments, losses, orders, penalties, costs and expenses, including, without limitation, attorneys’ fees, of any kind or nature whatsoever, known or unknown, suspected or unsuspected, fixed or contingent, liquidated or unliquidated, which any of the Releasors now has, owns, holds, or claims to have, own, or hold, or at any time heretofore have had, owned, held or claimed to have had, owned, or held against any of the Releasees arising from, based upon, or related to, whether directly or indirectly (collectively, “Claims”): (i) the Loan; (ii) the Loan Documents; (iii) the Property; (iv) any and all other agreements, documents or instruments referenced herein or in the Loan Documents or related hereto or thereto; (v) any defenses as to the enforcement of the Loan Documents; (vi) any act, omission, negligence or breach of duty by Noteholder or any previous beneficiary of the Deed of Trust; or (vii) any theory of lender liability.

9. **Unknown Claims.** Releasors acknowledge that there is a risk that subsequent to the execution of this Agreement, Releasors may discover, incur, or suffer from Claims which were unknown or unanticipated at the time this Agreement is executed, including, without limitation, unknown or unanticipated Claims which, if known by Releasors on the date this Agreement is being executed, may have materially affected Releasors’ decision to execute this Agreement. Releasors acknowledge that Releasors are assuming the risk of such unknown and

unanticipated Claims and agree that this Agreement applies thereto. Releasors expressly waive the benefits of any applicable law, including any limitation on such a release with respect to the claims released hereunder or which otherwise substantially provides as follows:

“A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.”

10. **Ownership of Claims.** Releasors represent and warrant to the Releasees that Releasors have not assigned or transferred or purported to assign or transfer any Claim or Claims or any portion thereof or any interest therein, and agree to indemnify, defend (with counsel selected by Releasees), and hold Releasees harmless from and against any Claim or Claims based on, or arising out of, whether directly or indirectly, any such assignment or transfer, or purported assignment or transfer.

11. **Reconveyance of the Deed of Trust; Release; Indemnity; Escrow Fees.** On or before the Payoff Date, Noteholder shall deliver to [Escrow Agent] an original Deed of Release and Reconveyance (the “Reconveyance”) executed and acknowledged by Noteholder and in recordable form, which releases the Deed of Trust, and an original Release in the form attached hereto as Exhibit “B” and incorporated herein by this reference (the “Release”) executed by Noteholder. Upon Escrow Agent’s timely receipt of the Payoff Amount on or before the Payoff Date pursuant to Section 3, above, and so long as Obligors are not in default under this Agreement, (i) Noteholder shall consider the Note and Guaranty and all other Loan Documents fully satisfied and paid in full; (ii) Escrow Agent shall record the Reconveyance; (iii) Escrow

Agent shall deliver to the Obligors the original Release executed by Noteholder; (iv) Noteholder shall cause the original Note to be cancelled and returned to Borrower marked "CANCELLED" and (v) Noteholder shall provide other documents reasonably required to evidence the payment in full of the Loan including all required UCC-3 financing statement terminations. The Obligors acknowledge and agree that Noteholder may file a 1099 form with the Internal Revenue Service following the discounted payoff of the Loan pursuant to this Agreement. Notwithstanding anything to the contrary in this Agreement, (x) the terms of any and all indemnity obligations of the Obligors pertaining to or relating to environmental matters under the Loan Documents, including, without limitation, under the Environmental Indemnity arising prior to the Payoff Date, and (y) the indemnity obligations of Guarantors set forth in the following sentence shall remain in full force and effect and shall survive the payoff of the Loan and the release of the Deed of Trust. Guarantors hereby expressly agree to protect, defend (with counsel to be selected by Noteholder), and indemnify Noteholder against, and hold Noteholder harmless for, from and against, any claims, suits, losses, damages, or causes of action to the extent they arise out of or are in any way related to the Payoff Amount being deemed a preferential payment or transfer in a bankruptcy proceeding. All escrow fees and recording fees of closing the transaction contemplated by this Agreement shall be paid one-half by Obligors and one-half by Noteholder.

12. **Executed Agreement; Solvency Certificates.** Within one (1) Business Day following Obligors' execution of this Agreement, Obligors shall deliver to Escrow Agent (a) original counterparts of this Agreement fully executed by Obligors, and (b) original solvency certificates in the forms of Exhibit "C-1" and Exhibit "C-2" attached hereto fully executed by Guarantors. Within one (1) Business Day following Escrow Agent's receipt of the foregoing original documents, Escrow Agent shall deliver same to Noteholder.

13. **Representations and Warranties of Obligors.** Obligors hereby make the following representations and warranties:

- a. Borrower has all requisite power and authority to enter into this Agreement and to carry out the provisions hereof. The person executing this Agreement on behalf of Borrower has the power and authority to bind Borrower to the terms and conditions of this Agreement and to execute this Agreement on behalf of Borrower.
- b. Neither Borrower nor any Guarantor has made an assignment for the benefit of creditors.
- c. To the best of Borrower and Guarantor's actual knowledge, no appointment or petition has been filed for the appointment of a custodian, trustee, receiver or agent to take possession of any property of Borrower or any Guarantor.
- d. The Obligors have reviewed this Agreement with their independent legal advisors as to the advisability of making the agreements, waivers, and releases provided for herein, and with respect to the advisability of executing this Agreement, and with respect to the meaning and operation of every waiver contained herein.
- e. Except for the Reserve Statement and any other statements expressly set forth in this Agreement, neither Noteholder, nor any officer, agent, servicer, employee, representative, or attorney of or for Noteholder (including, without limitation, ABC-III), has made any statement or

representation to the Obligors regarding any fact relied upon in entering into this Agreement (including, without limitation, with respect to any tax ramifications to Borrower), and the Obligors acknowledge and agree that they have not relied upon any statement, representation or promise of any other party or of any officer, agent, employee, representative, or attorney for Noteholder, in executing this Agreement, or in making the agreements, amendments and releases provided for herein.

- f. The Obligors have made such investigation of the facts pertaining to this Agreement and of all the matters pertaining hereto as the Obligors deem necessary.
- g. In entering into this Agreement and the agreements and releases provided for herein, the Obligors hereby assume the risk of any mistake of fact or law. If the Obligors should subsequently discover that any fact relied upon by them in entering into this Agreement was untrue, or that their understanding of the facts or of the law was incorrect, such party shall not be entitled to any relief in connection therewith, including, without limiting the generality of the foregoing, any alleged right or claim to set aside or rescind this Agreement or the waivers or releases contained or referenced herein or the transactions contemplated herein. This Agreement is intended to be and is final and binding upon the Obligors regardless of any claims, mistake of fact or law, or of any other circumstance whatsoever.

- h. No representation, warranty or statement of the Obligor in this Agreement contains or will contain any materially untrue statement.

The Obligor's covenants, agreements, representations and warranties made in this Agreement shall be continuing and shall be true and correct as of the date hereof and shall survive the termination of this Agreement and shall survive any reconveyance of the Deed of Trust or any foreclosure sale of the Property by Noteholder or the exercise by Noteholder of any or all of its rights and remedies under the Loan Documents, or at law or in equity.

14. **Representations and Warranties of Noteholder.** Noteholder hereby makes the following representations and warranties:

- a. Noteholder is the sole holder of the Note and owner of the Loan free and clear of all liens, security interests and encumbrances in favor of any third party and Noteholder and has not transferred, assigned, sold, conveyed or participated the Note or any portion thereof or any interest therein to any other party and the Loan is not subject to any agreement to assign, sell, convey, transfer or participate the Loan, in whole or in part and
- b. Noteholder has all requisite right, power and authority to enter into this Agreement and to carry out the provisions hereof. The person executing this Agreement on behalf of Noteholder has the power and authority to bind Noteholder to the terms and conditions of this Agreement and to execute this Agreement on behalf of Noteholder.
- c. The Reserve Statement is true and correct in all material respects.

The Noteholder's covenants, agreements, representations and warranties made in this Agreement shall be continuing and shall be true and correct as of the date hereof and shall survive the termination of this Agreement and shall survive any reconveyance of the Deed of Trust.

15. **Notices.** Any notices or other communications required or permitted hereunder shall be in writing and shall be deemed to have been given when received when given personally or by facsimile, or three (3) days after being placed in the United States mail, registered or certified, return receipt requested, postage prepaid, addressed as follows:

"Noteholder:"

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Attn:  
Fax No.

With a copy to:

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Attn:  
Fax No.

"Borrower:"

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Attn:  
Fax No.

With a copy to:

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Attn:  
Fax No.

"Guarantors:"

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Attn:  
Fax No.

Each of the foregoing shall be entitled to specify a different address by giving written notice of the aforesaid to the others. Legal counsel for a party may give notice on behalf of such party.

16. **Foreclosure and Receiver.** In the event that Obligors fail to pay the Payoff Amount on or before the Payoff Date or Obligors are otherwise in default under this Agreement, and so long as the Loan is in default, Obligors hereby agree to (i) not delay, oppose, enjoin or otherwise disrupt the holding of any foreclosure sale pursuant to the Deed of Trust, and (ii) stipulate to the appointment of a receiver for the Property.

17. **Miscellaneous.** The Obligors and Noteholder waive any claim contesting the existence and the adequacy of the consideration given with respect to this Agreement. The Obligors agree, acknowledge, represent and warrant that the Loan Documents remain in full force and effect, and all the terms and provisions of the Loan Documents are hereby ratified and affirmed. The Obligors agree, acknowledge, represent and warrant that all of Borrower's interest in the Property and all other property secured by the Loan Documents shall remain in all respects subject to the lien, charge and encumbrance of the Deed of Trust, and nothing herein contained and nothing done pursuant hereto shall affect the lien, charge, encumbrance or priority of the Deed of Trust except as otherwise provided in Section 9 above. This Agreement shall be interpreted and construed in accordance with the law of the State of Arizona. The parties hereto specifically agree that time is of the essence of this Agreement. This Agreement shall be binding upon and inure to the benefit of the heirs, executors, administrators, and successors of the parties hereto, but nothing contained in this Agreement shall be construed as consent by Noteholder to

any assignment by the Obligors. The Obligors and Noteholder acknowledge that there are no other agreements or representations, either oral or written, express or implied, not embodied in this Agreement or in the Loan Documents. The Loan Documents and this Agreement, together, represent a complete integration of all prior and contemporaneous agreements and understandings of the parties hereto. The Obligors and Noteholder acknowledge and agree that they have thoroughly read and reviewed the terms and provisions of this Agreement and are familiar with the same, that the terms and provisions contained herein are clearly understood by them and have been fully and unconditionally consented to by them and that they have had full benefit and advice of counsel and accountants of their own selection in regard to understanding the terms, meaning and effect of this Agreement (including, without limitation, any tax ramifications to Borrower) and that this Agreement has been entered into by the Obligors and Noteholder freely, voluntarily, with full knowledge, and without duress. In the event of any ambiguity and/or dispute regarding interpretation of this Agreement, the interpretation of this Agreement shall not be resolved by any rule of interpretation providing for interpretation against the party who causes the uncertainty to exist or against the draftsman. The terms and provisions of this Agreement may be modified or amended only by a writing executed by the Obligors and Noteholder. No waiver or termination of this Agreement shall be binding unless executed in writing by the party who, pursuant to the terms of this Agreement, has the right to waive any rights, conditions, or obligations hereunder, or has the right to terminate this Agreement. The headings contained in this Agreement have been inserted for convenience only and in no way define or limit the interpretation of this Agreement. It is understood and agreed that this Agreement may be executed in several counterparts, each of which shall, for all purposes, be deemed an original and all of such counterparts, when taken together, shall constitute one and the same Agreement, even though all of the parties hereto may not have executed the same

counterpart of this Agreement. Any condition, covenant, representation or warranty of the Obligors hereunder shall be deemed to be unsatisfied or breached, as the case may be, if any of the Obligors does not fulfill such condition or breaches such covenant, representation or warranty. Facsimile or portable document format (.pdf) signatures will be given the same force and effect as originals. The Obligors hereby agree, acknowledge, represent and warrant that this Agreement, any transactions contemplated herein or any rights or actions granted pursuant hereto shall not be deemed to make Noteholder a mortgagee-in-possession, and the Obligors hereby waive any such claim. If any provision of this Agreement is held to be invalid or unenforceable, the remaining provisions hereof shall remain in full force and effect to the maximum extent permitted by applicable law. No other person or party shall have any rights whatsoever hereunder or shall be deemed a third party beneficiary hereof, except for the Releasees. Whenever required by the context of this Agreement, the singular shall include the plural and the masculine shall include the feminine or neuter, as the case may be, and vice versa. All covenants, obligations, agreements, representations, warranties, and waivers of the Obligors and Noteholder hereunder shall fully survive any reconveyance of the Deed of Trust or the consummation of a foreclosure sale of the Property. Each party acknowledges and agrees that but for the agreements by the Obligors and Noteholders, respectively, to each and every provision in this Agreement, such party would not have entered into this Agreement. If the final day of any period of time in any provision of this Agreement falls upon a Saturday, Sunday or national holiday, then, the time of such period shall be extended to the next day which is not a Saturday, Sunday or holiday. Unless otherwise specified, in computing any period of time described in this Agreement, the day of the act or event after which the designated period of time begins to run is not to be included in the last day of the period is to be included unless such last day is a Saturday, Sunday or holiday, in which event the period shall run until the end of the next day which is neither a

Saturday, Sunday or holiday. The parties hereto agree to cooperate and use commercially reasonable efforts to obtain from third parties and to execute and deliver, if appropriate, such additional documents, agreements and instruments as may be necessary or appropriate in order to effectuate and carry out the provisions of this Agreement.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY BLANK.]

Signature page for Settlement Agreement between \_\_\_\_\_, a  
\_\_\_\_\_, \_\_\_\_\_, individually  
and as trustees of the \_\_\_\_\_ dated  
\_\_\_\_\_, and \_\_\_\_\_, as Trustee  
for the registered holders of \_\_\_\_\_ dated  
\_\_\_\_\_.

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto as of  
the day and year first above written.

“BORROWER”

\_\_\_\_\_, a  
\_\_\_\_\_

By: \_\_\_\_\_, a  
\_\_\_\_\_  
Its Non-Member Manager

By: \_\_\_\_\_  
\_\_\_\_\_

Date: \_\_\_\_\_

“GUARANTOR”

\_\_\_\_\_  
\_\_\_\_\_

Date: \_\_\_\_\_

“GUARANTOR”

\_\_\_\_\_  
\_\_\_\_\_

Date: \_\_\_\_\_

Signature                      page                      for                      Settlement                      Agreement                      between  
\_\_\_\_\_, a \_\_\_\_\_,  
\_\_\_\_\_, individually and as trustees of the  
\_\_\_\_\_, dated \_\_\_\_\_, and  
\_\_\_\_\_, as Trustee for the registered holders of  
\_\_\_\_\_ dated \_\_\_\_\_.

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto as of  
the day and year first above written.

“GUARANTOR”

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Dated \_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Dated \_\_\_\_\_

Date: \_\_\_\_\_

Signature page for Settlement Agreement between \_\_\_\_\_, a  
\_\_\_\_\_, \_\_\_\_\_, individually  
and as trustees of the \_\_\_\_\_ dated  
\_\_\_\_\_, and \_\_\_\_\_, as Trustee  
for the registered holders of \_\_\_\_\_ dated  
\_\_\_\_\_.

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto as of  
the day and year first above written.

“NOTEHOLDER”

\_\_\_\_\_

By: \_\_\_\_\_, a  
\_\_\_\_\_

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: Servicing Officer  
Date: \_\_\_\_\_

ESCROW AGENT ACKNOWLEDGEMENT:

Escrow Agent acknowledges receipt of a fully-executed copy of this Agreement on \_\_\_\_\_, and agrees to act as Escrow Agent, including disbursement of the Initial Payment and the Payoff Amount, subject to the terms and conditions of this Agreement and without any additional instructions or authorizations.

\_\_\_\_\_

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



Exhibit “A”

[wiring instructions to be provided]

Exhibit "B"

**RELEASE**

This Release ("Release") dated as of \_\_\_\_\_ is executed by \_\_\_\_\_, as Trustee, for the registered holders of \_\_\_\_\_ ("Noteholder") in favor of \_\_\_\_\_, a \_\_\_\_\_ ("Borrower") and \_\_\_\_\_, individually, and as trustees of the \_\_\_\_\_ dated \_\_\_\_\_ (each, a "Guarantor" and, collectively, the "Guarantors") (Borrower and Guarantors may sometimes be collectively referred to as the "Obligors").

**RECITALS**

A. On or about \_\_\_\_\_, \_\_\_\_\_, a \_\_\_\_\_ (the "Original Noteholder") made a loan (the "Loan") to Borrower in the original principal amount of \_\_\_\_\_ and No/100 Dollars (\$\_\_\_\_\_).

B. The Loan is evidenced by, among other things, that certain Promissory Note dated \_\_\_\_\_ (the "Note") in favor of the Original Noteholder in the original principal sum of \_\_\_\_\_ and No/100 Dollars (\$\_\_\_\_\_).

C. Concurrently with the execution of the Note, Borrower, as grantor, executed that certain Deed of Trust, Security Agreement and Assignment of Leases and Rents dated \_\_\_\_\_

\_\_\_\_\_ (the “Deed of Trust”) in favor of \_\_\_\_\_, as trustee, for the benefit of Original Noteholder, as beneficiary, encumbering, among other things, that certain property more particularly described in the Deed of Trust (the “Property”). The Deed of Trust was recorded on \_\_\_\_\_ in Docket \_\_\_\_\_, Page \_\_\_\_\_ in the Real Property Records of \_\_\_\_\_, Arizona (the “Official Records”). In addition, Borrower executed that certain Assignment of Leases and Rents dated as of \_\_\_\_\_ (the “ALR”), recorded in Docket \_\_\_\_\_, Page \_\_\_\_\_ of the Official Records on \_\_\_\_\_.

D. The Deed of Trust and ALR were assigned to \_\_\_\_\_, as trustee for the registered holders of \_\_\_\_\_ pursuant to that certain Assignment of Deed of Trust, Security Agreement and Assignment of Assignment of Leases and Rents, which was recorded in Docket \_\_\_\_\_, Page \_\_\_\_\_ of the Official Records on \_\_\_\_\_, and pursuant to that certain Assignment of Assignment of Leases and Rents, which was recorded in Docket \_\_\_\_\_, Page \_\_\_\_\_ in the Official Records on \_\_\_\_\_. The Deed of Trust and ALR were subsequently assigned to Noteholder by \_\_\_\_\_, as Trustee for the registered holders of \_\_\_\_\_ pursuant to that certain Assignment of Deed of Trust, Security Agreement and Assignment of Leases and Rents and Assignment of Assignment of Leases and Rents, which was recorded in Docket \_\_\_\_\_, Page \_\_\_\_\_ of the Official Records on \_\_\_\_\_.

E. Also concurrently with the execution of the Note, each of the Guarantors executed that certain Indemnity and Guaranty Agreement dated \_\_\_\_\_ in favor of the Original Noteholder (the “Guaranty”) and Borrower and each of Guarantors executed that certain Hazardous Substances Indemnity Agreement dated \_\_\_\_\_ in favor of the Original Noteholder (the “Environmental Indemnity”).

F. The Note, the Deed of Trust, the ALR, the Guaranty, the Environmental Indemnity and all other documents which evidence, secure, or relate to the Loan may be hereinafter collectively referred to as the “Loan Documents.” Noteholder is now the holder of the Loan, the payee under the Note, the beneficiary of the Deed of Trust and the holder of the other Loan Documents pursuant to that certain \_\_\_\_\_. ABC-III Asset Management LLC (“ABC-III”) is the special servicer for Noteholder for the Loan.

G. Borrower is in default under the Loan Documents due to Borrower’s failure to make certain payments due and owing under the Loan Documents.

H. Borrower, Guarantors, and Noteholder entered into that certain Settlement Agreement dated \_\_\_\_\_ (the “Agreement”) pursuant to which, among other things: (i) Noteholder agreed under certain conditions to accept a discounted payoff of the Loan which has been consummated; and (ii) upon the timely payment of the Payoff Amount (as defined in the Agreement), Noteholder agreed to execute this Release.

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Noteholder agrees as follows:

1. Release of Known and Unknown Claims. For valuable consideration, the receipt and adequacy of which are hereby acknowledged, Noteholder hereby irrevocably and unconditionally releases and forever discharges Borrower and Guarantors and each of their owners, members, managers, investment advisors, predecessors, successors, assigns, agents, officers, employees, representatives, attorneys, and affiliates, and all persons acting by, through, under, or in concert with any of the aforesaid persons or entities (collectively, the “Releasees”), or any of them, for, from and against any and all causes of action, suits, debts, liens, obligations, liabilities, claims, demands, damages, judgments, losses, orders, penalties, costs and expenses, including, without limitation, attorneys’ fees, of any kind or nature whatsoever, known or unknown, suspected or unsuspected, fixed or contingent, liquidated or unliquidated, which Noteholder now owns, holds, or claims to have, own, or hold, or at any time heretofore has had, owned, held or claimed to have had, owned, or held against any of the Releasees arising from, based upon, or related to (collectively, “Claims”): (a) the Loan; (b) the Note; (c) the Guaranty; (d) the other Loan Documents; (e) the Property; (f) any and all other agreements, documents or instruments referenced herein or in the Loan Documents or related hereto or thereto; or (g) any act, omission, negligence or breach of duty by Obligors (collectively, the “Released Claims”). Notwithstanding anything to the contrary in this Release (i) the terms of any and all indemnity obligations of the Obligors pertaining or relating to environmental matters under the Loan Documents, including, without limitation, under the Environmental Indemnity, shall survive the execution of this Release, shall remain in full force and effect, and shall not be included as a Released Claim; (ii) the indemnity obligations of Guarantors set forth in Section 9 of the Agreement shall survive the execution of this Release, shall remain in full force and effect, and shall not be included as a Released Claim; and (iii) the Obligors’ obligations under the

Agreement shall survive the execution of this Release, shall remain in full force and effect, and shall not be included as a Released Claim. Noteholder covenants and agrees not to bring any action, claim, suit or proceeding against Releasees, directly or indirectly, regarding or relating to any of the Released Claims, and further covenants and agrees that this Agreement is a bar to any such claim, action, suit or proceeding, except as expressly provided herein.

2. Unknown Claims. Noteholder acknowledges that there is a risk that subsequent to the execution of this Release, Noteholder may discover, incur, or suffer from Claims related to the Released Claims which were unknown or unanticipated at the time this Release is executed, including, without limitation, unknown or unanticipated Claims which, if known by Noteholder on the date this Release is being executed, may have materially affected Noteholder's decision to execute this Release. Noteholder acknowledges that Noteholder is assuming the risk of such unknown and unanticipated Claims related to the Released Claims and agrees that this Release applies thereto. Noteholder expressly waives the benefits of any applicable law, including any limitation on such a release with respect to the claims released hereunder or which otherwise substantially provides as follows:

“A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.”

3. Miscellaneous. Noteholder agrees that this Release is the result of a compromise and shall never at any time or for any purpose be considered as an admission of liability or responsibility on the part of any party. This Release shall be construed in accordance with and all

disputes hereunder shall be governed by the internal laws of the State of Arizona. In the event of any controversy or dispute arising out of this Release, the prevailing party or parties shall be entitled to recover from the non-prevailing party or parties, reasonable expenses, including, without limitation, attorneys' fees and costs actually incurred. Should any provision of this Release be declared or determined by any court to be illegal or invalid, the validity of the remaining parts, terms or provisions shall not be affected thereby and said illegal or invalid part, term or provision shall be deemed not to be a part of this Release. In the event of any ambiguity in or dispute regarding the interpretation of this Release, the interpretation of this Release shall not be resolved by any rule of interpretation providing for interpretation against the party who causes the uncertainty to exist or against the draftsman. The headings used in this Release are intended solely for convenience of reference and shall not in any manner amplify, limit, modify or otherwise be used in the interpretation of any of the provisions hereof. This Release may not be modified, amended or otherwise changed in any manner except by a writing executed by Borrower, Guarantors, and Noteholder. Facsimile signatures to this Release shall be deemed and given full force and effect.

IN WITNESS WHEREOF, this Release has been executed as of the date written above.

“NOTEHOLDER”

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By: \_\_\_\_\_

By: \_\_\_\_\_

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

Title: Servicing Officer



Exhibit "C-1"

**SOLVENCY CERTIFICATE**

This certificate is delivered pursuant to that certain Settlement Agreement (the "Agreement"), by and among \_\_\_\_\_, as Trustee for the registered holders of \_\_\_\_\_ ("Noteholder") \_\_\_\_\_, a \_\_\_\_\_ ("Borrower"), \_\_\_\_\_, individually and as trustees of the \_\_\_\_\_ Dated \_\_\_\_\_ (each a "Guarantor," and, collectively, the "Guarantors").

\_\_\_\_\_ ("Smith") hereby represents and warrants to Noteholder as follows:

1. As of the date of the Agreement, Smith is able to pay Smith's Debts (as defined below) as they become due and, at fair valuations, the sum of Smith's debts is not greater than the aggregate of all of Smith's assets and, therefore, Smith is not "insolvent."

2. After the closing of the transactions contemplated by the Agreement, including the payment of all amounts payable thereunder, Smith will continue to be able to pay Smith's Debts (as defined below) as they become due, and, at fair valuations, the sum of Smith's debts is not greater than the aggregate of all of Smith's assets and, therefore, Smith will not be "insolvent." For purposes of Paragraphs 1 and 2, "assets" do not include property that has been transferred, concealed or removed with intent to hinder, delay or defraud creditors or that has

been transferred in a manner making the transfer voidable under applicable law, and “debts” do not include an obligation to the extent it is secured by a valid lien on the property of Smith not included as an asset.

3. As of the date of the Agreement, Smith will not have unreasonably small capital, or be engaged in any business or transaction for which Smith has unreasonably small capital, nor does Smith intend to engage in any businesses or transactions for which Smith has or may have unreasonably small capital.

4. After the closing of the transactions contemplated by the Agreement, including the payment of all amounts payable thereunder, Smith will not have unreasonably small capital, or be engaged in any business or transaction for which Smith will have unreasonably small capital, nor will Smith intend to engage in any businesses or transactions for which Smith will have or may have unreasonably small capital.

5. As of the date of the Agreement, Smith will not have incurred, nor does Smith intend to incur, Debts beyond Smith’s ability to pay such Debts as they mature.

6. After the closing of the transactions contemplated by the Agreement, including the payment of all amounts payable thereunder, Smith will not have incurred, nor will Smith intend to incur, Debts beyond Smith’s ability to pay such Debts as they mature.

7. As of the date of the Agreement, Smith has not made any transfer(s) or incurred and does not intend to incur any obligation (a) with actual intent to hinder, delay or defraud either present or future creditors of Smith, or (b) without receiving a reasonably equivalent value in exchange for the transfer(s) or the obligation.

8. After the closing of the transactions contemplated by the Agreement, including the payment of all amounts payable thereunder, Smith will not have made any transfer(s) or incurred and will not intend to incur any obligation (a) with actual intent to hinder, delay or defraud either present or future creditors of Smith, or (b) without receiving a reasonably equivalent value in exchange for the transfer(s) or the obligation.

9. “Debts” means any liability by Smith to any person on a right to payment, whether or not the right is reduced to judgment, liquidated, unliquidated, fixed contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured.

10. Smith has carefully reviewed the contents of this certificate, and has conferred with counsel for Smith for the purpose of discussing the meaning of its contents.

11. Smith hereby acknowledges that Noteholder has relied and will rely upon the representations and warranties contained herein, and Smith acknowledges that such reliance is reasonable and consents to such reliance.

IN WITNESS WHEREOF, the undersigned has signed this certificate as an instrument under seal this \_\_\_\_ day of \_\_\_\_\_.

GUARANTOR:

---

Smith, an individual

Exhibit "C-2"

**SOLVENCY CERTIFICATE**

This certificate is delivered pursuant to that certain Settlement Agreement (the "Agreement"), by and among \_\_\_\_\_, as Trustee for the registered holders of \_\_\_\_\_ ("Noteholder") \_\_\_\_\_, a \_\_\_\_\_ ("Borrower"), \_\_\_\_\_, individually and as trustees of the \_\_\_\_\_ Dated \_\_\_\_\_ (each a "Guarantor," and, collectively, the "Guarantors").

\_\_\_\_\_ ("Smith") hereby represents and warrants to Noteholder as follows:

1. As of the date of the Agreement, Smith is able to pay Smith's Debts (as defined below) as they become due and, at fair valuations, the sum of Smith's debts is not greater than the aggregate of all of Smith's assets and, therefore, Smith is not "insolvent."

2. After the closing of the transactions contemplated by the Agreement, including the payment of all amounts payable thereunder, Smith will continue to be able to pay Smith's Debts (as defined below) as they become due, and, at fair valuations, the sum of Smith's debts is not greater than the aggregate of all of Smith's assets and, therefore, Smith will not be "insolvent." For purposes of Paragraphs 1 and 2, "assets" do not include property that has been transferred, concealed or removed with intent to hinder, delay or defraud creditors or that has been transferred in a manner making the transfer voidable under applicable law, and "debts" do

not include an obligation to the extent it is secured by a valid lien on the property of Smith not included as an asset.

3. As of the date of the Agreement, Smith will not have unreasonably small capital, or be engaged in any business or transaction for which Smith has unreasonably small capital, nor does Smith intend to engage in any businesses or transactions for which Smith has or may have unreasonably small capital.

4. After the closing of the transactions contemplated by the Agreement, including the payment of all amounts payable thereunder, Smith will not have unreasonably small capital, or be engaged in any business or transaction for which Smith will have unreasonably small capital, nor will Smith intend to engage in any businesses or transactions for which Smith will have or may have unreasonably small capital.

5. As of the date of the Agreement, Smith will not have incurred, nor does Smith intend to incur, Debts beyond Smith's ability to pay such Debts as they mature.

6. After the closing of the transactions contemplated by the Agreement, including the payment of all amounts payable thereunder, Smith will not have incurred, nor will Smith intend to incur, Debts beyond Smith's ability to pay such Debts as they mature.

7. As of the date of the Agreement, Smith has not made any transfer(s) or incurred and does not intend to incur any obligation (a) with actual intent to hinder, delay or defraud either present or future creditors of Smith, or (b) without receiving a reasonably equivalent value in exchange for the transfer(s) or the obligation.

8. After the closing of the transactions contemplated by the Agreement, including the payment of all amounts payable thereunder, Smith will not have made any transfer(s) or incurred and will not intend to incur any obligation (a) with actual intent to hinder, delay or defraud either present or future creditors of Smith, or (b) without receiving a reasonably equivalent value in exchange for the transfer(s) or the obligation.

9. “Debts” means any liability by Smith to any person on a right to payment, whether or not the right is reduced to judgment, liquidated, unliquidated, fixed contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured.

10. Smith has carefully reviewed the contents of this certificate, and has conferred with counsel for Smith for the purpose of discussing the meaning of its contents.

11. Smith hereby acknowledges that Noteholder has relied and will rely upon the representations and warranties contained herein, and Smith acknowledges that such reliance is reasonable and consents to such reliance.

IN WITNESS WHEREOF, the undersigned has signed this certificate as an instrument under seal this \_\_\_\_ day of \_\_\_\_\_.

GUARANTOR:

---

Smith, an individual

Exhibit "C-3"

**SOLVENCY CERTIFICATE**

This certificate is delivered pursuant to that certain Settlement Agreement (the "Agreement"), by and among \_\_\_\_\_, as Trustee for the registered holders of \_\_\_\_\_ ("Noteholder") \_\_\_\_\_, a \_\_\_\_\_ ("Borrower"), Smith and Smith, individually and as trustees of the Smith Family Trust Dated \_\_\_\_\_ (each a "Guarantor," and, collectively, the "Guarantors").

\_\_\_\_\_, as trustees (the "Trustees") of the Smith Family Trust Dated \_\_\_\_\_ (the "Trust") hereby represent and warrant to Noteholder as follows:

1. As of the date of the Agreement, the Trust is able to pay the Trust's Debts (as defined below) as they become due and, at fair valuations, the sum of the Trust's debts is not greater than the aggregate of all of the Trust's assets and, therefore, the Trust is not "insolvent."

2. After the closing of the transactions contemplated by the Agreement, including the payment of all amounts payable thereunder, the Trust will continue to be able to pay the Trust's Debts (as defined below) as they become due, and, at fair valuations, the sum of the Trust's debts is not greater than the aggregate of all of the Trust's assets and, therefore, the Trust will not be "insolvent." For purposes of Paragraphs 1 and 2, "assets" do not include property that has been transferred, concealed or removed with intent to hinder, delay or defraud creditors or that has been transferred in a manner making the transfer voidable under applicable law, and

“debts” do not include an obligation to the extent it is secured by a valid lien on the property of the Trust not included as an asset.

3. As of the date of the Agreement, the Trust will not have unreasonably small capital, or be engaged in any business or transaction for which the Trust has unreasonably small capital, nor does the Trust intend to engage in any businesses or transactions for which the Trust has or may have unreasonably small capital.

4. After the closing of the transactions contemplated by the Agreement, including the payment of all amounts payable thereunder, the Trust will not have unreasonably small capital, or be engaged in any business or transaction for which the Trust will have unreasonably small capital, nor will the Trust intend to engage in any businesses or transactions for which the Trust will have or may have unreasonably small capital.

5. As of the date of the Agreement, the Trust will not have incurred, nor does the Trust intend to incur, Debts beyond the Trust’s ability to pay such Debts as they mature.

6. After the closing of the transactions contemplated by the Agreement, including the payment of all amounts payable thereunder, the Trust will not have incurred, nor will the Trust intend to incur, Debts beyond the Trust’s ability to pay such Debts as they mature.

7. As of the date of the Agreement, the Trust has not made any transfer(s) or incurred and does not intend to incur any obligation (a) with actual intent to hinder, delay or defraud either present or future creditors of the Trust, or (b) without receiving a reasonably equivalent value in exchange for the transfer(s) or the obligation.



8. After the closing of the transactions contemplated by the Agreement, including the payment of all amounts payable thereunder, the Trust will not have made any transfer(s) or incurred and will not intend to incur any obligation (a) with actual intent to hinder, delay or defraud either present or future creditors of the Trust, or (b) without receiving a reasonably equivalent value in exchange for the transfer(s) or the obligation.

9. “Debts” means any liability by the Trust to any person on a right to payment, whether or not the right is reduced to judgment, liquidated, unliquidated, fixed contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured.

10. The Trustees have carefully reviewed the contents of this certificate, and have conferred with counsel for the Trust for the purpose of discussing the meaning of its contents.

11. The Trustees hereby acknowledge that Noteholder has relied and will rely upon the representations and warranties contained herein, and the Trustees acknowledge that such reliance is reasonable and consent to such reliance.

IN WITNESS WHEREOF, the undersigned have signed this certificate as an instrument  
under seal this \_\_\_\_ day of \_\_\_\_\_.

THE TRUST:

Smith Family Trust

Dated \_\_\_\_\_

\_\_\_\_\_  
Smith, Trustee for Smith Family Trust Dated

Date: \_\_\_\_\_

\_\_\_\_\_  
Smith, Trustee for Smith Family Trust Dated

Date: \_\_\_\_\_