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2 Joel F. Newell – 025296
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5 Phoenix, Arizona 85016
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10 Attorneys for Compass Bank

11 **IN THE UNITED STATES BANKRUPTCY COURT**
12 **FOR THE DISTRICT OF ARIZONA**

13 In re:

(Chapter 11 Case)

14 POWER EQUIPMENT, LLC,

No. 2:17-bk-02136-PS

15 Debtor.

**SECURED CREDITOR'S (i) NOTICE OF
NON-CONSENT OF DEBTOR'S USE OF
CASH COLLATERAL; AND (ii)
MOTION FOR TURNOVER OR
SEQUESTRATION OF CASH
COLLATERAL**

16 Compass Bank ("**Secured Creditor**"), by and through its attorneys undersigned, respectfully
17 submits its *Notice of Non-Consent of Debtor's Use of Cash Collateral* ("**Notice**") and *Motion for*
18 *Turnover or Sequestration of Cash Collateral* ("**Motion**"). In support of its Notice and Motion, Secured
19 Creditor submits the following:

20 **I. INTRODUCTION.**

21 A. Secured Creditor does not consent to the use by Power Equipment, LLC, an Arizona
22 limited liability company ("**Debtor**") of any cash collateral ("**Cash Collateral**") which secures
23 indebtedness owing to Secured Creditor;

24 B. Secured Creditor requests that the Court issue an Order requiring the sequestration or
25 turnover of all cash collateral which secures indebtedness owing to Secured Creditor; and

26 C. Secured Creditor requests that the Court order the Debtor to account for all cash
27 collateral it has received since the commencement of the bankruptcy case and continue to account on a
28 weekly basis.

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1 **II. BACKGROUND.**

2 This Notice and Motion is based on the following:

3 1. This case was commenced by voluntary petition filed by the Debtor under Chapter 11 of
4 the United States Bankruptcy Code on March 8, 2017 (“**Petition Date**”).

5 2. Upon information and belief, the Debtor is operating and managing its businesses,
6 pursuant to 11 U.S.C. §§ 1107 and 1108.

7 3. As of the date of this Notice, the Debtor has not filed its Schedules of Assets and
8 Liabilities or Statement of Financial Affairs. *See* DE No. 1.

9 4. Secured Creditor is the holder in due course of a Promissory Note¹ (“**Note**”) made,
10 executed, and delivered by Gerald F. Booden, Jr., in his capacity as Manager and James A. Booden, in
11 his capacity as Manager of Debtor, dated on or about November 6, 2007 in the original principal
12 amount of \$1,739,500.00. A copy of the Note is attached hereto as **Exhibit “A”** and incorporated
13 herein.

14 5. The Note is secured by a Deed of Trust With Security Agreement and Assignment of
15 Rents executed by the Debtor, dated as of November 6, 2007, and recorded on November 8, 2007, in
16 the Office of the Maricopa County Recorder, in document no. 2007-1205256 (“**Deed of Trust**”). The
17 Deed of Trust encumbers certain real property, parcel number 115-08-098A, commonly known as 2305
18 E. Jefferson Street, Phoenix, AZ 85034 (the “**Deed of Trust Property**”) which is more fully described
19 in the Deed of Trust. A copy of the Deed of Trust is attached hereto as **Exhibit “B”** and incorporated
20 herein.

21 6. The Note is further secured by a Security Agreement executed by the Debtor, dated
22 November 6, 2007, granting a valid and perfected security interest in the equipment of the Debtor,
23 which was filed with the Arizona Secretary of State at File No. 2007-15076007. A copy of the Security
24 Agreement and the UCC-1 Financing Statement are attached hereto as **Exhibit “C”** and incorporated
25 herein.

26 7. The Note is further secured by the Absolute Assignment of Leases and Rents executed
27

28 ¹ Fajon Machining, L.L.C., an Arizona limited liability company (“**Fajon LLC**”), now known as Fajon
Machining, Inc., an Arizona corporation (“**Fajon**”) is a co-borrower pursuant to the terms of the Note.

1 by the Debtor, dated November 6, 2007 and recorded with the Office of the Maricopa County
2 Recorder on November 8, 2007 at document no. 2007-1205257 (“Assignment”). A copy of the
3 Assignment is attached hereto as **Exhibit “D”** and incorporated herein.

4 8. Secured Creditor is owed the principal amount of \$1,464,120.82 plus interest and fees
5 and costs.

6 **III. LEGAL AUTHORITY.**

7 9. Pursuant to 11 U.S.C. §363, cash, negotiable instruments, documents or other cash
8 equivalents whenever acquired in which the estate and an entity other than the estate have an interest
9 constitutes cash collateral for the entire indebtedness owing to Secured Creditor.

10 10. Secured Creditor objects to Debtor’s use of the Cash Collateral secured by the Compass
11 lien and seeks to sequester or turn over of all of the Cash Collateral as being due Secured Creditor.

12 11. Unless and until there is a specific order issued by this Court authorizing the Debtor to use
13 this cash collateral, the use of the cash collateral by the Debtor is in violation of 11 U.S.C § 363.

14 **WHEREFORE**, Secured Creditor requests that the Court enter an order providing as follows:

- 15 A. Debtor shall account for any and all cash collateral they have received from the
16 commencement of the Chapter 11 bankruptcy case and on a weekly basis;
17 B. Debtor shall turn over to Secured Creditor all cash collateral which it is receiving; and,
18 C. For such other and further relief as the Court may deem just and appropriate.

19 RESPECTFULLY SUBMITTED this 10th day of March, 2017.

20 **LANE & NACH, P.C.**

21
22 By/s Adam B. Nach – 013622

23 Adam B. Nach

24 Joel F. Newell

25 *Attorneys for Compass Bank*
26
27
28

1 **CERTIFICATE OF MAILING**

2 COPY of the foregoing mailed via first class mail as follows:

3 Power Equipment, LLC
4 2305 E. Jefferson Street
5 Phoenix, AZ 85034
6 Debtor

Southwestern Business Financing Corporation
3200 North Central Avenue, Suite 1550
Phoenix Arizona 85012

6 COPY of the foregoing mailed via electronic mail as follows:

7 Bert L. Roos, Esq.
8 Bert L. Roos, PC
9 5045 N. 12th St., Suite B
10 Phoenix, AZ 85014
11 Email: blrpc85015@msn.com

Office of U.S. Trustee
230 North First Avenue
Phoenix, AZ 85003
Email: ustpreion14.px.ecf@usdoj.gov

12 By /s/ Karen Graves

EXHIBIT A

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PROMISSORY NOTE

\$1,739,500.00

November 6, 2007

FOR VALUE RECEIVED, Power Equipment, LLC, an Arizona limited liability company and Fajon Machining, L.L.C., an Arizona limited liability company (hereinafter referred to as "Maker", whether one or more), hereby unconditionally promises to pay to the order of Compass Bank ("Payee") at P.O. Box 797808, Dallas, Texas 75379-7808, or at such other address given to Maker by Payee, the principal sum of One Million Seven Hundred Thirty-Nine Thousand Five Hundred and No/100 Dollars (\$1,739,500.00), in lawful money of the United States of America, together with interest (calculated on the basis of a 360-day year) on the unpaid principal balance from day-to-day remaining, computed from the date of advance until maturity at the rate equal to the lesser of (a) the Maximum Rate (as hereinafter defined) or (b) 8.50%. Principal and interest under this note (the "Note") are due and payable as follows:

Effective as of the date of this Note, interest hereon shall be due and payable monthly as it accrues, with the first such monthly installment due and payable beginning on January 1, 2008, and continuing on the same date of each succeeding calendar month thereafter through November 1, 2008. Thereafter, monthly payments of principal and interest shall be paid, in an amount equal to Fourteen Thousand Seven and No/100 Dollars (\$14,007.00) each, with the first such installment due on December 1, 2008, and shall continue to be due and payable on the same day of each calendar month thereafter until November 6, 2033 (the "Maturity Date"), when all unpaid principal and accrued but unpaid interest shall be due and payable in full.

The term "Maximum Rate," as used herein, shall mean, with respect to each holder hereof, the maximum nonusurious interest rate, if any, that at any time, or from time to time, may under applicable law be contracted for, taken, reserved, charged or received on the indebtedness evidenced by this Note under the laws which are presently in effect of the United States and the State of Arizona applicable to such holder and such indebtedness or, to the extent allowed by law under such applicable laws of the United States of America and the State of Arizona which may hereafter be in effect, which allow a higher maximum non-usurious interest rate than applicable laws now allow; provided, that in determining the Maximum Rate, due regard shall be given, to the extent required by applicable law, to any and all relevant payments, fees, charges, deposits, balances, agreements and calculations which may constitute or be deemed to constitute interest, or be deducted from principal to calculate the interest rate or otherwise affect interest rate determinations, so that in no event shall the Payee contract for, charge, receive, take, collect, reserve or apply, on the Note, any amount in excess of the maximum non-usurious rate of interest permitted by applicable law.

Maker and Payee intend to comply with the applicable law governing the Maximum Rate. Interest contracted for, charged, or received shall not exceed the Maximum Rate, and, if in any contingency whatsoever, Payee shall receive anything of value deemed interest under applicable law which would cause the interest contracted for, charged, or received by the holder thereof to exceed the maximum amount of interest permissible under applicable law, the excessive interest shall be applied to the reduction of the unpaid principal balance hereof and not to the payment of interest, or if such excessive interest exceeds the unpaid principal balance hereof such excess shall be refunded to Maker, and the provisions of this Note and any demand on Maker shall immediately be deemed reformed and the amounts thereafter collectible hereunder shall be reduced, without the necessity of the execution of any new documents, so as to comply with the applicable law, but so as to permit the recovery of the fullest amount otherwise called for hereunder. All interest paid or agreed to be paid to the holder hereof shall, to the extent permitted by applicable law, shall be amortized, prorated, allocated, and spread throughout the full term of such indebtedness until payment in full (including the period of any renewal or extension hereof) so that the rate or amount of interest on account of such indebtedness does not exceed the Maximum Rate.

Payee may adjust the payment amount from time to time as needed to amortize principal over the remaining term of the loan.

Maker agrees to pay a late charge of five percent (5%) of the payment amount if such payment is not received within ten (10) days of the due date. Payments, when made, shall be applied in a manner and order according to the sole discretion of the holder of this Note.

All past-due principal and, to the extent permitted by applicable law, past-due interest upon this Note shall bear interest at the Maximum Rate.

This Note is secured in part by a Deed of Trust (with Security Agreement and Assignment of Rents), which together with all other documents evidencing, securing or pertaining to the transaction in which the indebtedness evidenced hereby is incurred are collectively referred to as the "Loan Documents".

Maker and each surety, endorser, guarantor and other party ever liable for payment of any sums of money payable on this Note, jointly and severally waive presentment, protest, notice of protest and nonpayment, notice of default and notice of acceleration and intention to accelerate, and agree that their liability under this Note shall not be affected by any renewal or extension in the time of payment hereof, or in any indulgences, or by any release or change in any security for the payment of this Note, and hereby consent to any and all renewals, extensions, indulgences, releases or changes, regardless of the number of such renewals, extensions, indulgences, releases or changes. Maker's liability under this Note shall be joint and several.

If this Note or any Loan Documents are given by Payee to an attorney for collection or enforcement, or if suit is brought for collection or enforcement, or if it is collected or enforced through probate, bankruptcy, or other judicial proceeding, then Maker shall pay Payee all costs of collection and enforcement, including reasonable attorney's fees and court costs, in addition to other amounts due.

No waiver by Payee of any of its rights or remedies under this Note or any Loan Documents, shall be considered a waiver of any other right or remedy of Payee; no delay or omission in the exercise or enforcement by Payee of any rights or remedies shall ever be construed as a waiver of any right or remedy of Payee; and no exercise or enforcement of any such rights or remedies shall ever be held to exhaust any right or remedy of Payee.

Maker agrees that in the event any portion of this Note is paid in whole or in part prior to the Maturity Date, so as to constitute a "Prepayment", consideration will be tendered with the prepayment to the Payee ("Prepayment Consideration") based upon the following schedule:

Five percent (5.0%) of the outstanding loan principal balance prepaid if prepaid during the first Loan Year.

Four percent (4.0%) of the outstanding loan principal balance prepaid if prepaid during the second Loan Year.

Three percent (3.0%) of the outstanding loan principal balance prepaid if prepaid during the third Loan Year.

Two percent (2.0%) of the outstanding loan principal balance prepaid if prepaid during the fourth Loan Year.

One percent (1.0%) of the outstanding loan principal balance prepaid if prepaid during the fifth Loan Year.

It is understood and agreed that a "Prepayment" shall be any principal payment on the Note which is greater than 20% of the outstanding current principal balance. A "Loan Year" is defined as the twelve (12) month period commencing on the date of this Note or any consecutive twelve (12) month period during the term hereof. No Prepayment Consideration will be due for involuntary prepayments resulting from the proceeds of any casualty loss or condemnation.

Maker acknowledges that the Prepayment Consideration is consideration to Payee for the privilege of prepaying the indebtedness evidenced by this Note prior to maturity, and Maker recognizes that Payee would incur substantial additional costs and expenses in the event of a prepayment of the indebtedness evidenced by this Note and that the Prepayment Consideration compensates Payee for such costs and expenses (including without limitation, the loss of Payee's investment opportunity during the period from the date of prepayment until the Maturity Date).

Maker agrees that Payee shall not, as a condition to receiving the Prepayment Consideration, be obligated to actually reinvest the amount prepaid in any manner whatsoever.

"Default" shall mean any one or more of the following: (i) the failure by Maker to pay any installment of principal or interest under this Note when due, (ii) the failure by Maker to pay all sums owed to Payee under this Note and every Loan Document on or before the Maturity Date, or (iii) the occurrence of any Default under the Loan Documents.

Upon the occurrence of a Default, Payee may, at its option, without notice or demand, declare the unpaid principal balance of, and the accrued but unpaid interest on this Promissory Note immediately due and payable and exercise and pursue any and all other rights and remedies as provided herein or in any of the Loan Documents.


Upon the occurrence of a Default, Payee is hereby authorized at any time and from time to time, without notice to Maker (any such notice being expressly waived by each such Maker), to set off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held, and other indebtedness at any time owing, by the Payee to or for the credit or the account of Maker, against any and all obligations of such Maker now or hereafter existing under this Note, irrespective of whether or not Payee shall have made demand under this Note and although such obligations may be contingent and unmatured. The rights of the Payee under this section are in addition to all other rights and remedies (including, without limitation, other rights of offset) which Payee may have hereunder or under any applicable law.

All obligations, covenants, and terms of payment are expressly performable solely in Dallas County, Texas. The substantive laws of the State of Arizona shall govern the validity, construction, enforcement and interpretation of this Note. In the event of a dispute involving this Note or any of the Loan Documents, the undersigned irrevocably agrees that venue for such dispute shall lie in any court of competent jurisdiction in Dallas County, Texas.

Maker:

Power Equipment, LLC,
an Arizona limited liability company

By: 
Gerald F. Booden, Jr., Manager

By: 
James A. Booden, Manager

Fajon Machining, L.L.C.,
an Arizona limited liability company

By: 
Gerald F. Booden, Jr., Manager

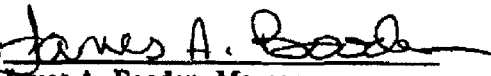
By: 
James A. Booden, Manager

EXHIBIT B

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FIRST AMERICAN TITLE

When recorded mail to:

Compass Bank
P.O. Box 797808
Dallas, Texas 75379-7808
NCS-313625-PHX3

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Ga

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**DEED OF TRUST WITH SECURITY AGREEMENT
AND
ASSIGNMENT OF RENTS**

THIS DEED OF TRUST is made this 10 day of November, 2007, by and between **Power Equipment, LLC, an Arizona limited liability company** ("Trustor") whose mailing address is **2305 E. Jefferson Street, Phoenix, Arizona 85034**, and **First American Title Insurance Company, a California corporation** ("Trustee"), whose mailing address is **P.O. Box 2922, Phoenix, Arizona 85062** and **Compass Bank** ("Beneficiary"), whose mailing address is **P.O. Box 797808, Dallas, Texas 75379-7808**.

WITNESSETH:

ARTICLE I

DEFINITIONS

1.1 Definitions: The terms used herein shall have the following meanings:

(a) **Beneficiary**: The above defined Beneficiary, and the subsequent holder or holders, from time to time, of the Note.

(b) **Buildings**: Any and all buildings, open parking areas and other improvements, and any and all additions, alterations, or appurtenances thereto, now or at any time hereafter situated, placed or constructed upon the Real Property or any part thereof.

(c) **Environmental Laws**: Any one or all of the following: the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §9601 et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. §6901 et seq.; the Toxic Substances Control Act, 15 U.S.C. §2601 et seq.; the Safe Drinking Water Act, 42 U.S.C. 00011 et seq.; the Clean Water Act, 33 U.S.C. § 1251 et seq.; the Clean Air Act, 42 U.S.C. §7401 et seq.; the Arizona Hazardous Waste Management Act, A.R.S. §49-921 et seq.; the Arizona Environmental Quality Act, Laws 1986, Ch. 368; Laws 1987, Ch. 317; A.R.S. §49-101 et seq.; and any amendments thereto and regulations

thereunder and any other laws and regulations now in effect or hereinafter enacted that regulate or protect public health, public welfare or the environment (including the ambient air, groundwater, aquifers, surface water, drinking water supplies and land surface or subsurface strata).

(d) Event of Default: Any happening or occurrence described in Article 6 herein below.

(e) Fixtures: All materials, supplies, equipment, apparatus and other items now or hereafter attached to, installed in or used in connection with (temporarily or permanently) any of the Buildings or the Real Property, including but not limited to any and all partitions, window screens and shades, drapes, rugs and other floor coverings, awnings, motors, engines, boilers, furnaces, pipes, plumbing, cleaning, call and sprinkler systems, fire extinguishing apparatus and equipment, communication equipment, computers and computerized equipment, water tanks, swimming pools, heating, ventilating, plumbing, laundry, incinerating, air conditioning and air cooling equipment and systems, gas and electric machinery, appurtenances and equipment, disposals, dishwashers, refrigerators and ranges, built-in sinks and other kitchen equipment and recreational equipment and facilities of all kinds.

(f) Governmental Authority: Any and all courts, boards, agencies, commissions, offices or authorities of any nature whatsoever of any governmental unit (federal, state, county, district, municipal, city or otherwise) whether now or hereafter in existence.

(g) Guarantor: (individually or collectively, or both, as the context may require) Those persons or entities, if any, now or hereafter guaranteeing repayment of the Indebtedness and satisfaction of, or continued compliance with the Obligations.

(h) Guaranty: (individually or collectively, or both, as the context may require) That or those instrument(s) of Guaranty of even date herewith, if any, from the Guarantor to the Beneficiary guaranteeing the repayment of the Indebtedness, or any portion thereof, or the satisfaction of, or continued compliance with, the Obligations, or any of them, or both.

(i) Hazardous Substance: Any substance designated as such under Section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. §9601(14), and any substance designated as such under A.R.S. §49-201.18 and all applicable regulations adopted pursuant to those laws, and all amendments of each such law and regulation as may from time to time be enacted or adopted, as applicable, following the date of execution hereof.

(j) Hazardous Waste: Any waste designated as such under Section 1004(5) of the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. §6903(5) and A.R.S. §49-921.5 and all applicable regulations adopted pursuant to those laws, as they, and each of them, may be hereafter amended from time to time.

(k) Impositions: All real estate and personal property taxes, water, gas, sewer, electricity and other utility rates and charges, charges for any easement, license or agreement maintained for the benefit of the Trust Property, and all other taxes, charges and assessments and any interest, costs or penalties with respect thereto, of any kind and nature whatsoever which at any time prior to or after the execution hereof may be assessed, levied or imposed, any other matter of record, or otherwise, related to the Trust Property and affecting the occupancy or enjoyment thereof or the lien of this Deed of Trust on the Trust Property or the debt secured thereby.

(l) Indebtedness: The principal of, interest on and all other amounts, payments, penalties and premiums due under or secured by the Note and the other Security Documents, and all Impositions paid by Beneficiary.

(m) Leases: Any and all leases, subleases, licenses, concessions or other agreements (written or oral), now or hereinafter in effect which grant a possessory interest in and to, or the right to use, the Trust Property, or any portion thereof for any period of time, whether nightly, weekly, monthly or any more extended period.

Unofficial Document

(n) Legal Requirements: (i) Any and all present and future judicial decisions, statutes, rulings, rules, regulations, permits, certificates or ordinances of any Governmental Authority in any way applicable to the Trustor, any Guarantor or the Trust Property, including, the ownership, use, occupancy, operations, maintenance, repair or reconstruction of the Trust Property, (ii) if applicable, the Trustor's or any Guarantor's presently or subsequently effective bylaws and articles of incorporation, partnership agreement, limited partnership agreement, joint venture agreement, trust agreement or documentation representing any other form of business association (if either, both or all be any of same), (iii) any and all Leases, and (iv) any and all leases and other contracts (written or oral) of any nature by which the Trustor or any Guarantor may be bound.

(o) Loan Agreement: That certain construction loan agreement dated of even date herewith by and between Beneficiary as "Lender" and Trustor and Fajon Machining, L.L.C., an Arizona limited liability company as "Borrower".

(p) Note: The indebtedness(es) evidenced by that certain promissory note of even date herewith in the principal amount of One Million Seven Hundred Thirty-Nine Thousand Five Hundred and No/100 Dollars (\$1,739,500.00) executed by Trustor and Fajon Machining, L.L.C., an Arizona limited liability company, payable to the order of

Beneficiary, and bearing interest at a rate as therein specified, containing an attorney's fee clause, interest and principal being payable as therein specified, and finally maturing 26 years from the date of the Note. This Deed of Trust secures advances on the Note made the date of this Deed of Trust or advanced in the future from time to time.

(q) **Obligations:** Any and all of the covenants, warranties, representations and other obligations (other than to repay the Indebtedness) made or undertaken by the Trustor, or Guarantor or other to the Beneficiary, the Trustee or others as set forth in the Security Documents or any lease, sublease or other agreement respecting the Trust Property.

(r) **Personalty:** All of the right, title and interest of Trustor in and to all furniture, furnishings, equipment, machinery, goods, goodwill, general intangibles, money, accounts, accounts receivable, contract rights, claims, instruments, chattel paper, choses in action, partner and shareholder interests, services and other operating income, including inventory and all other personal property (other than the Fixtures) of any kind or character as defined in and subject to the provisions of Title 47, Article 9 of the Arizona Revised Statutes, as amended, now or hereafter located upon, within or about the Real Property and the Buildings, together with all accessories, replacements and substitutions thereto or therefor and the proceeds thereof.

(s) **Real Property:** The real estate or interest therein described in Exhibit "A" attached hereto, all Buildings and ~~Fixtures~~ Unofficial Document and all rights, titles and interests appurtenant thereto.

(t) **Rents:** All of the accounts, rents, revenues, income, proceeds, profits and other benefits paid or payable by parties to the Leases other than the Trustor for using, leasing, licensing, possessing, operating from, residing in, or otherwise enjoying the Trust Property or any portion thereof. The foregoing shall be deemed to be the proceeds, products, offspring, rents or profits of the Trust Property within the meaning of 11 U.S.C. §552(b), as that section of the United States Bankruptcy Code may be amended from time to time.

(u) **Security Documents:** The Loan Agreement, Deed of Trust, Assignment of Rents and Security Agreement, Financing Statements, the Guaranty(ies), and any and all other documents, now or hereafter executed by the Trustor, the Guarantor(s), or any other person or party to evidence or secure the payment of the Indebtedness or the performance and discharge of the Obligations.

(v) **Trust Property:** The Real Property, Buildings, Fixtures, Personalty and Rents together with:

(i) all rights including water rights, privileges, tenements, hereditaments, rights-of-way easements, appendages and appurtenances in any manner appertaining thereto, and all right, title and interest of Trustor in and to any streets, ways, alleys or strips of land adjoining the Real Property or any part thereof; and

(ii) all additions, appurtenances, substitutions, replacements and revisions thereof and thereto and all reversions and remainders therein; and

(iii) all of the Trustor's right, title and interest in and to any award, awards, remuneration, settlements or compensation heretofore made or hereafter to be made by any Governmental Authority to the present or any subsequent owner of the Real Property, Buildings, Fixtures or Personalty, including those for any vacation of, or change of grade in, any streets affecting the Real Property or Buildings; and

(iv) any and all other security and collateral of any nature whatsoever, now or hereafter given for the repayment of the Indebtedness or the performance and discharge of the Obligations; and

(v) the proceeds from sale, assignment, conveyance or transfer of all or any portion of the Real Property, Buildings, Fixtures, Personalty and Rents. Nothing contained herein shall be deemed a consent by Beneficiary to such sale, assignment, conveyance or transfer. Unofficial Document

As used in this Deed of Trust the term "Trust Property" shall be expressly defined as meaning all or, where the context permits or requires, any portion of the above and all or, where the context permits or requires, any interest therein.

ARTICLE 2

GRANTING CLAUSE

2.1 Grant: To secure the full and timely payment of the Indebtedness and the full and timely performance and discharge of the Obligations, the Trustor has GRANTED, BARGAINED, ASSIGNED, TRANSFERRED, SOLD AND CONVEYED, and by these presents does GRANT, BARGAIN, SELL, ASSIGN, TRANSFER AND CONVEY, unto the Trustee for the benefit of the Beneficiary the Trust Property, TO HAVE AND TO HOLD the Trust Property unto the Trustee, as trustee, with power of sale, forever, and the Trustor does hereby bind itself, its successors and assigns to warrant and forever defend the title to the Trust Property unto the Trustee against every person whomsoever lawfully claiming or to claim the same or any part thereof; provided, however, that if the Trustor shall pay (or cause to be paid) the Indebtedness as and when the same shall become due and payable and shall perform and

discharge (or cause to be performed and discharged) the Obligations on or before the date same are to be performed and discharged, then the liens, security interest, estates and rights granted by the Security Documents shall terminate, otherwise, same shall remain in full force and effect. The trust created hereby is irrevocable by Trustor.

ARTICLE 3

WARRANTIES AND REPRESENTATIONS

The Trustor hereby unconditionally warrants and represents to the Beneficiary as follows:

3.1 Validity of Loan Instruments: The execution, delivery and performance by the Trustor of the Security Documents (other than any Guaranty) and the borrowing evidenced by the Note, (a) are within the Trustor's powers and have been duly authorized by the Trustor, (b) have received all (if any) requisite prior governmental approval in order to be legally binding, and enforceable in accordance with the terms thereof, and (c) will not violate, be in conflict with, result in a breach of or constitute (with due notice or lapse of time, or both, as may be required pursuant to the Note and the Security Documents) a default under any Legal Requirement or result in the creation or imposition of any Lien, charge or encumbrance of any nature whatsoever upon any of the Trustor's or the Guarantor's property or assets, except as contemplated by the provisions of the Security Documents. The Security Documents constitute legal, valid and binding obligations of the Trustor
Unofficial Document any Guarantor and others obligated under the terms of the Security Documents in accordance with their respective terms.

3.2 Title to Trust Property and Lien of this Instrument: The Trustor has good and marketable title to the Real Property (in fee simple) and Buildings, if any, and good and marketable title to the Fixtures and Personalty, free and clear of any liens, charges, encumbrances, security interests and adverse claims whatsoever unless otherwise identified below. This Deed of Trust constitutes a valid, subsisting deed of trust having a first lien position on the Real Property, the Buildings and the Fixtures.

ARTICLE 4

AFFIRMATIVE COVENANTS

The Trustor hereby unconditionally covenants and agrees with the Beneficiary as follows:

4.1 Payment and Performance: The Trustor will pay the Indebtedness, as and when called for in the Security Documents and on or before the due dates thereof, and will perform all of the Obligations in full and on or before the dates same are to be performed.

4.2 Compliance with Legal Requirements: The Trustor will promptly and faithfully comply with, conform to and obey all present and future Legal Requirements.

4.3 Payment of Impositions: The Trustor will duly pay and discharge, or cause to be paid and discharged, the Impositions not later than the due date thereof. Trustor will deposit with Beneficiary, at such place as Beneficiary may designate, receipts showing payment of all Impositions. Trustor may contest, in good faith, the validity or amount of any Imposition by appropriate proceedings provided by law, including payment thereof under protest, if required; provided that upon a final determination with respect to any such contested Imposition, or earlier if required so to do, Trustor will promptly pay any sums found to be due thereon. Unless Trustor shall make payment thereof under protest, prior to any such contest, Trustor shall furnish Beneficiary a bond, a cash deposit or other security in an amount and form reasonably satisfactory to Beneficiary to indemnify Beneficiary against sale or forfeiture of, or creation of a lien against, the Trust Property. Such bond, deposit or other security shall be returned to Trustor upon resolution of such contest in favor of Trustor resulting in no imposition of lien against the Trust Property. Trustor shall protect Beneficiary in so far as it may be lawful so to do, against any and all loss from any Imposition, direct or indirect, that may be or might be imposed, by any applicable law, rule, regulation or levy of any state or federal government, or any political subdivision thereof, by the payment by Trustor of any such Imposition. Should Trustor fail, neglect or refuse to pay before the same becomes delinquent any such Imposition, Beneficiary may, at its option, pay the same, and the amount or amounts thereof shall be secured by this Deed of Trust, shall be due and payable on demand, and shall bear interest from the date of payment by Beneficiary until paid. In the event the burden of any such taxation or indebtedness cannot lawfully be shifted from Beneficiary to Trustor, Beneficiary may, at its option, declare the whole unpaid principal balance of the Note, together with accrued interest, due and payable upon notice to Trustor.

4.4 Repair: The Trustor shall neither commit nor suffer to occur any waste of or upon the Trust Property and will keep the Trust Property in first class order and condition and will make all repairs, replacements, additions, improvements and alterations thereof and thereto, interior and exterior, structural and nonstructural, which are necessary or reasonably appropriate to keep same in such order and condition.

4.5 Insurance: Trustor shall provide and maintain such policies of insurance as required by Beneficiary from time to time. All such policies shall be with companies or associations of companies from time to time approved by Beneficiary and shall have standard trust deed beneficiary clauses endorsed thereon making losses payable to Beneficiary, and shall otherwise be in form and substance satisfactory to Beneficiary. Trustor will also, when requested by Beneficiary, provide insurance against flood damage in such amounts and on such policies as may be required under any regulation or law applicable to loans made by Beneficiary, and against any other risk commonly insured against by persons operating like properties in the locality of the Trust Property. Trustor shall assign and deliver any and all policies of insurance to Beneficiary or shall provide Beneficiary with certificates of such

insurance coverage that shall be irrevocable without thirty (30) days prior notice to Beneficiary and not subject to modification without Beneficiary's prior written approval. At least fifteen (15) days before expiration of such policies, Trustor shall deliver renewals thereof, or renewal certificates therefor and evidence of payment of current premiums. In the event of loss, Trustor shall give immediate notice by mail to Beneficiary, and Beneficiary may make proof of loss if not made promptly by Trustor. Each insurance company concerned is hereby authorized and directed to make payment for such loss directly to Beneficiary instead of to Trustor or to Trustor and Beneficiary jointly, and such insurance proceeds, or any part thereof, may be applied by Beneficiary at its option to the payment of any other obligation hereby secured, or the restoration or the repair of the Trust Property. Beneficiary shall not be responsible for such insurance or for the collection of any insurance monies, or for the insolvency of any insurer or other insurance writer. Application of insurance proceeds by Beneficiary shall not cure or waive any default, then existing with respect to the Obligations, or invalidate any act done hereunder because of any such default. In the event of sale of the Trust Property under the power of sale herein granted to Trustee, or foreclosure of this Deed of Trust as a mortgage, or in the event Beneficiary or a receiver appointed by the court shall take possession of the Trust Property without sale, all right, title and interest of Trustor in and to all insurance policies then in force shall inure to the benefit of and pass to Beneficiary in possession, receiver or purchaser at such sale, as the case may be, and Beneficiary is hereby appointed attorney-in-fact for Trustor to assign and transfer said policies. Trustor shall not take out separate policies of insurance (or permit the same to be taken out) with respect to the Trust Property concurrent in form or contributing, in the event of loss, with that insurance coverage required by this Deed of Trust unless losses thereunder shall be navable Unofficial Document to Beneficiary pursuant to a Beneficiary Endorsement.

4.6 Insurance Proceeds: In the event of a loss to the Trust Property and if Beneficiary elects in its sole discretion to restore or repair the damaged Trust Property, the insurance proceeds will be applied to the restoration and repair of the Trust Property. If the Beneficiary elects to repair or restore the damaged Trust Property, the insurance proceeds received in connection with such loss shall be held in an interest-bearing account by Beneficiary. Trustor shall, with due diligence and as an expense of the restoration project, prepare all plans and specifications necessary for the restoration or repair of the damaged Trust Property (which plans and specifications shall be subject to Beneficiary's approval) and submit the same to Beneficiary, together with evidence acceptable to Beneficiary setting forth the total expenditure needed for such restoration or repair based upon a fixed price contract with a reputable contractor and covered by completion and labor and material payment bonds. In the event the insurance proceeds received are insufficient to complete such repair or restoration, Trustor shall deposit with Beneficiary an amount equal to the difference between the insurance proceeds deposited with Beneficiary and the total contract price for such restoration or repair of the damaged Trust Property, and disbursements shall be made first against funds deposited into said account by Trustor, and second, after such funds are exhausted, against the insurance proceeds deposited therein. In the event the insurance proceeds received by Beneficiary, together with any amounts deposited by Trustor, exceed the cost of such restoration or repair of

the damaged Trust Property, such excess funds shall be disbursed to Trustor. No sums applied to restoration or repair of the Trust Property or disbursed to Trustor shall be deemed a payment in reduction of any indebtedness or obligation hereby.

In the event that Beneficiary shall elect, in its sole discretion, not to apply the insurance proceeds to the restoration or repair of the Trust Property, then Beneficiary shall apply such proceeds in accordance with the provisions of paragraph 7.7, below.

4.7 **Restoration Following Casualty:** If any act or occurrence of any kind or nature (including any casualty for which insurance was not obtained or obtainable) shall result in damage to or loss or destruction of the Trust Property, the Trustor will give notice thereof to the Beneficiary and, if so instructed by the Beneficiary, will promptly, at the Trustor's sole cost and expense and regardless of whether the insurance proceeds (if any) shall be sufficient for the purpose, commence and continue diligently to completion to restore, repair, replace and rebuild the Trust Property as nearly as possible to its value, condition and character immediately prior to such damage, loss or destruction. Except as noted below, Trustor shall pay when due all claims for work performed and materials furnished, on or in connection with the Trust Property or any part thereof, and shall pay, discharge, or cause to be removed all mechanics', laborers' and materialsmen's charges, liens, claims of lien and encumbrances upon the Trust Property. Notwithstanding the foregoing, Trustor shall have the right to contest, in good faith, any and all such charges, liens, claims of liens or encumbrances if (a) Trustor shall provide Beneficiary with written notice of its intent to contest any such matter and (b) Trustor shall provide Beneficiary with such security, in the form of a letter of credit, bond or other collateral in such form and from such issuing institution as shall be acceptable to Beneficiary, in its sole discretion, as Beneficiary shall require in order to protect its interest in the Trust Property from the consequences of each and all such charges, liens and encumbrances. Trustor shall comply with all laws, ordinances, regulations, and restrictive covenants now or hereafter enacted affecting the Trust Property. Trustor shall not remove, substantially alter, or demolish any Building or Fixture on or in the Trust Property without Beneficiary's prior written consent, except as required by law.

4.8 **Assignment of Leases and Rents:**

(a) Trustor hereby grants, transfers and assigns to Beneficiary all of its right, title and interest in and to all existing and future Leases, whether written or oral and whether for a definite term or month to month, week to week, or day to day, pertaining to the Premises, or any part thereof, and all Rents, issues and profits thereunder. The foregoing assignment shall extend to and cover any and all extensions and renewals of existing and future Leases and to any and all present and future rights against any guarantors of any such obligations and to any and all Rents, issues and profits collected under the Leases. The foregoing assignment is given to facilitate payment and performance of the Note, this Deed of Trust and the Security Documents. Beneficiary shall not be obligated to

perform or discharge any obligation, duty or liability under any of the Leases, or under or by reason of the foregoing assignment, and Trustor shall and does hereby agree to indemnify and to hold Beneficiary harmless from any liability, loss or damage which it might incur under any Lease or under or by reason of the foregoing assignment and from any claims and demands whatsoever which may be asserted against it by reason of any alleged obligation or undertaking on Beneficiary's part to perform or discharge any of the terms, covenants or agreements contained in the Leases. In pursuance of the foregoing assignment, and not in lieu thereof, Trustor shall, on demand, give Beneficiary separate specific assignments of Rents and Leases covering some or all of the Leases, the terms of such assignments being incorporated herein by reference. In the event of any default under the Note, the Deed of Trust or the Security Documents, all future Leases for the use or occupancy of all or any part of the Premises shall be subject to the written approval of Beneficiary.

(b) Beneficiary is hereby authorized to notify all lessees and tenants of the Premises of the existence of the assignment of Leases herein above made and any and all other assignments made pursuant to the foregoing. Trustor hereby authorizes and directs the lessees and tenants of the Premises that, upon written notice from Beneficiary, all payments required under the Leases, or in any way respecting same shall be made directly to Beneficiary as they become due. Trustor hereby relieves such lessees and tenants from any liability to Trustor by reason of such payments Unofficial Document being made to Beneficiary. Nevertheless, until Beneficiary notifies in writing such lessees and tenants to make such payments to Beneficiary, Trustor shall be entitled to collect all such Rents and/or payments. Beneficiary is hereby authorized to give such notification in the event of any breach or default by Trustor under Article 6 hereof, and such notification may be given thereafter at any time during which such default remains uncured. All Rents collected by Beneficiary pursuant to the foregoing may be applied to the amounts secured hereby in any manner and in any order of priority that Beneficiary deems advisable. Receipt by Beneficiary of such Rents, issues, and profits shall not constitute a waiver of any right that Beneficiary may have under this Deed of Trust or under the laws of the State of Arizona to enforce or foreclose this Deed of Trust, nor shall the receipt and application thereof cure any default hereunder nor affect any foreclosure proceeding or any sale authorized by this Deed of Trust and such laws.

(c) Trustor shall not, without the prior written consent of Beneficiary, further assign the Rents, issues or profits from the Trust Property, except to Beneficiary by separate instrument securing additional obligations owed by Trustor to Beneficiary, and any such assignment without the express written consent of Beneficiary shall be void as against Beneficiary.

4.9 Inspection: The Trustor will permit the Trustee and the Beneficiary, and their agents, representatives and employees, to inspect the Trust Property at all reasonable times.

4.10 Hold Harmless: Trustor agrees that, upon written request by Beneficiary, it will appear in and prosecute or defend any action or proceeding that may affect the priority of the Security Documents or the security of Beneficiary hereunder, and that it will pay all costs, expenses, including but not limited to the cost of searching title, and attorneys' fees incurred in such action or proceeding. Beneficiary may, at its option, appear in and defend any action or proceeding purporting to affect the priority of the Secured Documents or the security of Beneficiary hereunder or the rights or powers of Beneficiary. At its option, but without obligation so to do, Beneficiary may pay, purchase, contest or compromise any adverse claim, encumbrance, charges or lien, that in the judgment of Beneficiary appears to be prior to or superior to the lien of this Deed of Trust. All amounts paid, suffered or incurred by Beneficiary in exercising the authority herein granted, including reasonable attorneys' fees, shall be added to the indebtedness, shall be a lien on the Trust Property, shall be due and payable by Trustor to Beneficiary immediately without demand, and shall bear interest at the rate of interest equivalent to that charged under the terms of the Note until paid.

4.11 Books and Records: The Trustor will maintain full and accurate books of account and other records, reflecting the results of its operations, and will furnish or cause to be furnished to the Beneficiary, on or before ninety (90) days after the end of the Trustor's fiscal year: (a) a complete executed copy of a report of an examination of the Trustor's financial affairs prepared by a certified public accountant Unofficial Document selected by the Trustor, but acceptable to the Beneficiary; such report shall include a balance sheet and statement of profit and loss of the Trustor's immediately preceding fiscal year, and (b) an operating statement, in such detail as the Beneficiary may reasonably require, which accurately, fairly and separately presents the Trustor's operation of the Trust Property for the fiscal year then ended, showing income received from each tenant or gross income from operation and total expense. At any time and from time to time the Trustor shall deliver to the Beneficiary such other financial data as the Beneficiary shall reasonably request with respect to the ownership, maintenance, use and operation of the Trust Property, and the Beneficiary shall have the right, at reasonable times and upon reasonable notice, to audit the Trustor's books of account and records relating to the Trust Property, all of which shall be maintained and made available to the Beneficiary and the Beneficiary's representative for such purpose at the Trust Property or at such other location as the Beneficiary may approve.

4.12 Construction: Trustor will promptly, in good and workmanlike manner, and in conformity with the plans and specifications for development of the Trust Property described and approved in accordance with the provisions of the Loan Agreement, repair and restore any portions of the Trust Property that may be damaged or destroyed.

4.13 Loan Agreement: Trustor acknowledges that this Deed of Trust and Note secured hereby are executed and delivered to secure funds advanced or to be advanced in accordance with the Loan Agreement. Any default by Trustor under the Loan Agreement shall constitute a default under this Deed of Trust and Beneficiary may, at its option, cause the entire indebtedness to become immediately due and payable.

4.14 Impound: While Beneficiary has no present intention to impound any amount to be disbursed to Trustor under the Loan Agreement, in the event that Beneficiary, acting at all times reasonably and in good faith, determines that in order to insure the payment of Impositions or other obligations which may create a lien upon the Trust Property, and to pay the premiums upon policies of insurance as herein required, Trustor shall, when so requested by Beneficiary, pay to Beneficiary, in addition to any other payments required hereunder: (a) a monthly installment of Impositions levied or to be levied against the Trust Property; and (b) a monthly installment of the premium or premiums that will become due and payable to renew the insurance on the Trust Property. Such installments are to be equal to the estimated Impositions and premium or premiums for such insurance next due (as reasonably estimated by Beneficiary), less all installments already paid therefor, divided by the number of months that are to elapse before one (1) month prior to the date when such Impositions or premium or premiums shall become delinquent. If amounts paid to Beneficiary under provisions of this paragraph are insufficient to discharge the obligation of Trustor for such Impositions and premium or premiums as the same become due, Trustor shall pay to Beneficiary upon demand such additional sums as may be required to pay fully and discharge these items. Nothing in this paragraph shall release Trustor of its obligation to pay said Impositions and insurance premiums as the same become due and payable to the extent provision is not made for such payment pursuant to the terms of this paragraph. Deposits made under this paragraph may be commingled with Beneficiary's general funds, and Beneficiary shall have no liability to Trustor for any interest on such deposits. The benefit, if any, derived by Beneficiary as a result of holding such deposits has been taken into consideration in determining the interest payable with respect to the Indebtedness.

4.15 Security Agreement: Trustor, in order to further secure the payment of the Indebtedness, hereby grants, bargains, sells, assigns, transfers and conveys to Beneficiary a security interest in Trustor's rights and interest in all Personalty and Fixtures. Trustor covenants and agrees that it will cause Beneficiary to acquire valid and effective security interests in all Personalty and Fixtures, or all of Trustor's right, title and interest therein. Trustor agrees that all property of every nature and description, whether real or personal, covered by this Deed of Trust, together with all Personalty and Fixtures covered by such security interests, are encumbered as one unit, and that upon default by Trustor under the Indebtedness secured hereby, this Deed of Trust, the Loan Agreement, or any other instrument securing repayment of the Indebtedness, this Deed of Trust and such security interests, at Beneficiary's option, may be foreclosed or the Trust Property sold in the same proceeding, and all of the Trust Property, both real and personal, may, at Beneficiary's option, be sold as such in one unit, subject to the provisions of Arizona Revised Statutes, both as they exist and as they

may be amended from time to time. The filing of any financing statement relating to any of the Personalty or rights or interests generally or specifically described herein shall not be construed to diminish or alter any of Beneficiary's rights or priorities hereunder. This Deed of Trust covers Fixtures and is intended to suffice as a fixture filing under the Uniform Commercial Code. The Trustor is the record owner of the Trust Property.

ARTICLE 5

NEGATIVE COVENANTS

The Trustor hereby covenants and agrees with the Beneficiary that, until the entire Indebtedness shall have been paid in full and all of the Obligations shall have been fully performed and discharged:

5.1 Use Violation: The Trustor will not use, maintain, operate or occupy, or allow the use, maintenance, operation or occupancy of, the Trust Property in any manner which (a) violates any Legal Requirement, (b) may create a dangerous condition unless safeguarded as required by law, (c) constitutes a public or private nuisance or (d) makes void, voidable or cancelable, or increases the premiums of, any insurance then in force with respect thereto.

5.2 Alterations: The Trustor will not commit or permit any waste of the Trust Property and will not (subject to the provisions of paragraphs 4.4, 4.6, 4.7 and 4.12 herein above and as provided in the Loan Agreement^{Unofficial Document}) without the prior written consent of the Beneficiary make or permit to be made any alterations or additions to the Trust Property of a material nature.

5.3 Replacement of Fixtures and Personalty: The Trustor will not, without the prior written consent of the Beneficiary, permit any of the Fixtures or Personalty to be removed at any time from the Real Property or Buildings unless the removed item is removed temporarily for maintenance and repair or, if removed permanently, is replaced by an article of equal suitability and value, owned by the Trustor, free and clear of any lien or security interest except such as may be first approved in writing by the Beneficiary.

5.4 No Further Encumbrances: The Trustor will not, without the prior written consent of the Beneficiary, create, place or permit to be created or placed, or through any act or failure to act, acquiesce in the placing of, or allow to remain, any mortgage, pledge, lien (statutory, constitutional or contractual), security interest, encumbrance or charge, or conditional sale or other title retention agreement, regardless of whether same are expressly subordinate to the liens of the Security Documents, with respect to the Trust Property or the Leases, except those liens, if any specifically described and allowed herein.

5.5 No Changes in Trustor Entity: Trustor acknowledges that Beneficiary is relying on the experience, financial condition and development expertise of Trustor in creating and funding the indebtedness secured hereby. In the event that Trustor, or any successor in interest of Trustor, shall sell, convey, transfer, contract to sell, lease or lease with option to purchase the Trust Property or, if any of said parties shall be divested of any part thereof or interest therein, either voluntarily or involuntarily, or violate the provisions of paragraph 5.4, above, or 5.6, below, by operation of law or otherwise, or if any of said parties shall change or permit the character or use of any Trust Property to be changed, or allow digging or drilling for gas, oil or other minerals, or if any of the corporate stock of the Trustor is sold, transferred or assigned without the prior written consent of Beneficiary, or if effective control of Trustor is in any way transferred, regardless of the percentage of ownership involved, all Indebtedness secured by this Deed of Trust, irrespective of the maturity date of said Indebtedness, and without regard to the adequacy or inadequacy of the security, or solvency or insolvency of the Trustor, shall, at the option of the Beneficiary, become immediately due and payable without demand or notice. Trustor agrees to notify Beneficiary promptly of any transaction or event which may give rise to a right of acceleration hereunder. Beneficiary's consent to one such transaction shall not constitute a waiver of Beneficiary's right to require its consent to any future or successive transactions.

5.6 No Lease Assignments or Modifications: Without Beneficiary's prior written consent, Trustor will not: (a) assign the Rents or any part thereof, (b) consent to the cancellation or surrender of any Lease of the Trust Property, unless such action is taken in order to enforce Trustor's rights under such Lease due to default thereunder, or (c) modify any Lease.

5.7 Community Facilities District. Without obtaining the prior written consent of Beneficiary, Trustor shall not consent to, or vote in favor of, the inclusion of all or any part of the Trust Property in an Community Facilities District formed pursuant to the Community Facilities District Act, A.R.S. §48-701 et seq., as amended from time to time. Trustor shall immediately give notice to Beneficiary of any notification or advice that Trustor may receive from any municipality or other third party of any intent or proposal to include all or any part of the Trust Property in a Community Facilities District. Beneficiary shall have the right to file a written objection to the inclusion of all or any part of the Trust Property in a Community Facilities District, either in its own name or in the name of Trustor, and to appear at, and participate in, any hearing with respect to the formation of any such district.

5.8 Environmental Issues: Trustor warrants and represents as follows:

(a) To the best of its current actual knowledge, Trustor has all permits, licenses and other authorizations which are required as of the date hereof with respect to the ownership and/or operation of the Trust Property under the Environmental Laws and all other applicable laws relating to emissions, discharges, releases or threatened releases of pollutants, contaminants,

Hazardous Substances or Hazardous Wastes (collectively "Pollutants") into the environment (including, without limitation, ambient air, surface water, groundwater, aquifers, drinking water supplies, land surface or subsurface strata) or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of Pollutants or any regulation, order, decree or judgment issued, entered, promulgated or approved under the Environmental Laws.

(b) To the best of its current actual knowledge, with respect to the ownership and/or operation of the Trust Property that Trustor is in compliance with all terms and conditions of all such permits, licenses and authorizations, and is also in compliance with all other limitations, restrictions, conditions, standards, prohibitions, requirements, obligations, schedules and timetables contained in the Environmental Laws in effect as of the date hereof.

(c) To the best of its current actual knowledge, there is no pending civil or criminal litigation, notice of violation or administrative proceeding relating in any way to the Environmental Laws (including notices, demand letters or claims thereunder) involving Trustor with respect to the ownership and operation of the Trust Property (other than general agency rulemaking proceedings).

(d) Trustor does not suspect or believe that any civil or criminal litigation, notice of violation Unofficial Document or administrative action relating in any way to the Environmental Laws involving Trustor with respect to the ownership or operation of the Trust Property (other than general agency rulemaking proceedings) is threatened.

(e) To the best of its current actual knowledge, there have not been and there are not any past or present events, conditions, circumstances, activities, practices, incidents or actions which could reasonably be expected to interfere with or prevent continued compliance with the Environmental Laws in effect on the date hereof by Trustor with, respect to the ownership or operation of the Trust Property or which may give rise to any legal liability, or otherwise form the basis of any claim, action, suit, proceeding, hearing or investigation against or involving Trustor with respect to the ownership or operation of the Trust Property based on any violation or alleged violation of the Environmental Laws.

(f) Trustor further warrants and represents that: (i) that to the best of Trustor's current actual knowledge, there are no Pollutants except those that have been previously disclosed to Beneficiary in writing, have been or will be used, generated, stored, treated, released or disposed of on, under, from, or about the Trust Property, either by Trustor, a tenant or other third party, except such amounts as are lawfully present and lawfully used in connection with the

Trust Property, provided such use is consistent with the use contemplated and the terms and conditions in the Loan Documents; and (ii) except as previously disclosed to Beneficiary in writing, to the best of Trustor's current actual knowledge, there are no underground storage tanks located below or polychlorinated biphenols transformers present at the Trust Property.

(g) Trustor agrees to notify Beneficiary immediately and in writing, (i) upon becoming aware of any use, storage, presence, disposal or release of any Hazardous Substances or Hazardous Wastes under, from or about the Trust Property; (ii) of any proceeding, inquiry or notice from any federal, state or local governmental authority (including but not limited to the United States Environmental Protection Agency) with respect to the use or presence of any Hazardous Substances or Hazardous Wastes under, from or about the Trust Property or the migration thereof to or from other property; (iii) of all claims made or threatened by any third party against Trustor or the Trust Property relating to loss or injury to persons or natural resources from any Hazardous Substance or Hazardous Waste; (iv) upon discovery of any occurrence or condition on any property adjoining or in the immediate vicinity of the Trust Property that could cause the Trust Property to be subject to restrictions on ownership, occupancy, transferability or use under the Environmental Laws; and (v) upon obtaining knowledge of any incurrence of expense by a governmental authority (including but not limited to the United States Environmental Protection Agency) or other persons in connection with any health effects study or health risk assessment or in connection with the identification, assessment, containment, removal or cleanup of any Hazardous Substances or Hazardous Wastes located on, under, from or about the Trust Property or any property adjoining or in the immediate vicinity of the Trust Property. During the term of the Note or extensions thereof, Beneficiary shall have the right to inspect the Trust Property for the presence of Hazardous Substances or Hazardous Wastes and shall have the right, but not the obligation, to join in and participate in any legal proceedings or actions initiated in connection therewith.

(h) If, during the term of the Note or extensions thereof, Hazardous Substances or Hazardous Wastes are discovered on or at the Trust Property in violation of the Environmental Laws, Trustor shall at its sole expense remove, remediate or cleanup the same from the Trust Property and/or the environment in accordance with the requirements of the appropriate governmental authority. If the Hazardous Substances or Hazardous Wastes are not removed by Trustor within ninety days of discovery, or such earlier time as required by a governmental agency, then Beneficiary shall have the right, but not the obligation, to do so or to declare a default hereunder.

ARTICLE 6

EVENTS OF DEFAULT

The term "Event of Default", as used herein, shall mean the occurrence or happening, at any time and from time to time, of any one or more of the following:

6.1 Payment of Indebtedness: If the Trustor shall fail, refuse or neglect to pay, in full, any installment or portion of the Indebtedness as and when the same shall become due and payable, whether at the due date thereof stipulated in the Note or the Security Documents, or at a date fixed for prepayment, or otherwise.

6.2 Performance of Obligations: If the Trustor shall fail, refuse or neglect to perform and discharge fully and timely any of the Obligations, including those imposed upon Trustor under the documents related to the Permitted Encumbrances, as and when called for, or shall engage in any activity that is prohibited under any provision of this Deed of Trust.

6.3 False Representation: If any representation or warranty made by the Trustor, the Guarantor, or others in, under or pursuant to the Note or the Security Documents shall be false or misleading in any material respect.

6.4 Voluntary Bankruptcy: If the Trustor or any Guarantor shall (a) voluntarily be adjudicated as bankrupt or insolvent, (b) Unofficial Document seek consent to or not contest the appointment of a receiver or trustee for itself or himself or for all or any part of its or his property, (c) file a petition seeking relief under the bankruptcy, arrangement, reorganization or other debtor relief laws of the United States or any state or any other competent jurisdiction, (d) make a general assignment for the benefit of its or his creditors, or (e) admit in writing its or his inability to pay its or his debts as they mature.

6.5 Involuntary Bankruptcy: If (a) a petition is filed against the Trustor or any Guarantor seeking relief under the bankruptcy, arrangement, reorganization or other debtor relief laws of the United States or any state or other competent jurisdiction, or (b) a court of competent jurisdiction enters an order, judgment or decree appointing, without the consent of the Trustor or any Guarantor, a receiver or trustee for it or him, or for all or any part of its or his property, and such petition, order, judgment or decree shall not be and remain discharged or stayed within a period of sixty (60) days after its entry.

6.6 Dissolution or Change of Ownership: If the Trustor shall dissolve or liquidate, merge, consolidate with or into any other entity, or shall attempt to do any of the same.

6.7 Destruction of Improvements: If the Trust Property is so demolished, destroyed or substantially damaged so that (in the Beneficiary's judgment) it cannot be restored or rebuilt with available funds to a profitable condition within a reasonable period of time.

6.8 Foreclosure of Other Liens: If the holder of any lien or security interest on the Trust Property (without hereby implying the Beneficiary's consent to the existence, placing, creating or permitting of any such lien or security interest) institutes foreclosure or other proceedings for the enforcement of its remedies thereunder.

ARTICLE 7

DEFAULT AND FORECLOSURE

7.1 Remedies: If an Event of Default shall occur, the Beneficiary may, at the Beneficiary's election and by or through the Trustee or otherwise, exercise any or all of the following rights, remedies and recourses:

(a) Acceleration: Declare the Principal Balance (defined hereby as meaning the then unpaid principal balance on the Note), the accrued interest and any other accrued but unpaid portion of the Indebtedness to be immediately due and payable, without further notice, presentment, protest, demand or action of any nature whatsoever (each of which hereby is expressly waived by the Trustor), whereupon the same shall become immediately due and payable.

(b) Entry on Trust Property: Enter upon the Trust Property and take exclusive possession thereof and of all books, records and accounts relating thereto. If the Trustor ~~remains in possession~~ ^{Unofficial Document} of all or any part of the Trust Property after an Event of Default and without the Beneficiary's prior written consent thereto, the Beneficiary may invoke any and all legal remedies to dispossess the Trustor, including specifically one or more actions for forcible entry and detainer, trespass to try title and writ of restitution. Nothing contained in the foregoing sentence shall, however, be construed to impose any greater obligation or any prerequisites to acquiring possession of the Trust Property than would exist in the absence of such sentence.

(c) Operation of Trust Property: Hold, lease, manage, operate or otherwise use or permit the use of the Trust Property, either itself or by other persons, firms or entities, in such manner, for such time and upon such other terms as the Beneficiary may deem to be prudent and reasonable under the circumstances (making such repairs, alterations, additions, and improvements thereto, from time to time, as the Beneficiary shall deem necessary or desirable), and apply all Rents and other amounts collected by the Trustee in connection therewith in accordance with the provisions of paragraph 7.7. In dealing with the Trust Property as a beneficiary in possession, Beneficiary shall be without any liability, charge, or obligation therefor to Trustor other than for willful misconduct, and shall be entitled to operate any business then being conducted or which could be conducted thereon or therewith at the expense of and for the

account of Trustor, and all net losses, costs and expenses thereby incurred shall be included in the Indebtedness owed to Beneficiary by Trustor. Beneficiary may apply the Rents, issues and profits, first to the payment of its expenses, if any, for management of the Trust Property, and then in the manner provided in paragraph 7.7.

(d) Foreclosure and Sale: Record and give notice of Trustee's sale in the manner required by law, and after the lapse of such time as may then be required by law, sell, in the manner required by law, the Trust Property at public auction at the time and place fixed by it in said notice of Trustee's sale to the highest bidder for cash in lawful money of the United States, payable at time of sale. The Trustee may postpone or continue the sale by giving notice of postponement or continuance by public declaration at the time and place last appointed for the sale. The Trustee shall deliver to such purchaser its deed conveying the property so sold, but without any covenant or warranty, express or implied. Any persons, including the Trustor, the Trustee, or the Beneficiary, may purchase at such sale. The Trustee may foreclose this Deed of Trust in the manner provided by law for the foreclosure of mortgages on real property without right of reinstatement by the mortgagor.

(e) Trustee or Receiver: Upon, or at any time after, commencement of foreclosure of the lien and security interest provided for herein or any legal proceedings hereunder, make Unofficial Document application to a court of competent jurisdiction as a matter of strict right and without notice to the Trustor or regard to the adequacy of the Trust Property as security for the repayment of the Indebtedness, for appointment of a receiver of the Trust Property and the Trustor does hereby irrevocably consent to such appointment. Any such receiver shall have all the usual powers and duties of receivers in similar cases, including the full power to rent, maintain and otherwise operate the Trust Property upon such terms as may be approved by the court, and shall apply such Rents in accordance with the provisions of paragraph 7.7.

(f) Use of Impounds: Any funds in the possession of Beneficiary under the provisions of paragraph 4.14 may, at the option of Beneficiary, be applied to the payment of principal or interest upon the Indebtedness, or both, in lieu of being applied to any of the purposes for which said fund is established under paragraph 4.14.

(g) Partial Payment: Acceptance by Beneficiary of any payment which is less than payment in full of all amounts due and payable at the time of such payment shall not constitute a waiver of Beneficiary's right to exercise its option to declare the whole of the principal sum then remaining unpaid, together with all accrued interest thereon, immediately due and payable without notice, or any

other rights of Beneficiary at that time or at any subsequent time, or nullify any prior exercise of such option or such rights of Beneficiary without the express consent of Beneficiary, except and as to the extent otherwise provided by law. Beneficiary shall have the right at any time or from time to time to sue for any sums, whether interest, principal or any installment of either or both, taxes, penalties, or any other sums required to be paid under the terms of this Deed of Trust, as the same become due, or to exercise the power of sale herein contained without regard to whether or not all of the secured indebtedness shall be declared due and without prejudice to the right of Beneficiary thereafter to enforce any appropriate remedy against Trustor, including an action of foreclosure, or any other action, for a default or defaults by Trustor existing at the time such earlier action or proceeding was commenced.

(h) Other: Exercise any and all other rights, remedies and recourses granted under the Note, the Security Documents, now or hereafter existing in equity, at law, by virtue of statute or otherwise.

7.2 Separate Sales: To determine the highest bidder for the Trust Property, the Trustor or the Beneficiary present at the sale may suggest the known lots, parcels or divisions of the property in which it may be sold. The Trustee shall ascertain all such suggestions, shall conditionally sell the Trust Property under each suggestion, and in addition thereto, shall sell the Trust Property as a whole. The Trustee shall determine which of the conditional sales shall result in the highest total price bid for the Trust Property and shall accept such sale or sales.

7.3 Remedies Cumulative, Concurrent and Non-Exclusive: The Beneficiary shall have all rights, remedies and recourses granted in the Security Documents and available at law or in equity (including specifically those granted by the Uniform Commercial Code in effect and applicable to the Trust Property, or any portion thereof), and the same (a) shall be cumulative and concurrent, (b) may be pursued separately, successively or concurrently at the sole discretion of the Beneficiary, (c) may be exercised as often as occasion therefor shall arise, it being agreed by the Trustor that the exercise or failure to exercise any of same shall in no event be construed as a waiver or release thereof or of any other right, remedy or recourse, and (d) are intended to be and shall be, non-exclusive.

7.4 Release of and Resort to Collateral: The Beneficiary may, in its discretion, release, regardless of consideration, any part of the Trust Property, without, as to the remainder, in any way impairing, affecting, subordinating or releasing the lien or security interest created in or evidenced by the Security Documents or their stature as a first and prior lien and security interest created in or evidenced by the Security Documents or their stature as a first and prior lien and security interest in and to the Trust Property. For payment of the Indebtedness, the Beneficiary may resort to any other security therefor held by the Trustee in such order and manner as the Beneficiary may elect.

All matters to the contrary herein notwithstanding, any sums paid to and received by Beneficiary in exchange for the execution of releases, as set forth in the immediately preceding paragraph, shall not, if paid following the institution of foreclosure proceedings as permitted hereby, waive any right of Beneficiary to continue such proceedings. Provided, however, that in the event that Beneficiary shall elect, in its sole discretion, to accept any such sum tendered during the pendency of such proceedings, the person or entity effecting such payment shall thereby be entitled to the release of the portion of the Trust Property for which such amount was paid, as aforesaid, and such payment shall constitute a credit against such amounts due and owing from Trustor hereunder.

7.5 Waiver of Redemption. and Notice and Marshalling of Assets: To the fullest extent permitted by law, the Trustor hereby irrevocably and unconditionally waives and releases (a) all benefits that might accrue to the Trustor by virtue of any present or future law exempting the Trust Property from attachment, levy or sale on execution, or providing for any appraisal, valuation, stay of execution, exemption from civil process, redemption or extension of time for payment, (b) all notices of any Event of Default (except as may be provided for in paragraph 6.2, above) or of the Trustee's election to exercise or its actual exercise of any right, remedy or recourse provided for under the Security Documents, (c) any right to a marshalling of assets or a sale in inverse order of alienation and (d) all benefits that might accrue to the Trustor by virtue of §33-814 of the Arizona Revised Statutes, including any provision purporting to limit the time within which Beneficiary must bring an action for a deficiency judgment and provisions purporting to require that, in establishing a deficiency, Beneficiary must first give Trustor credit Unofficial Document for the fair market value of the Trust Property, and (e) requirements of presentment, demands for payment, notices of nonpayment or late payment, protest, notices of protest, notices of dishonor, and all other formalities. Trustor agrees that in the event of default, Trustee or Beneficiary may, after expiration of any applicable grace period following notice, proceed against any or all of the assets encumbered hereby or by any other Security Documents in such order and manner as Beneficiary in its sole discretion may determine. Any representative of the Trustor who has signed this Deed of Trust as a surety or accommodation party, or who has subjected his or her property to this Deed of Trust to secure the indebtedness of another, hereby expressly waives the benefits of the provisions of Arizona Revised Statutes, §12-1641 and §12-1642, waives any defense arising by reason of any disability or other defense of Trustor or by reason of the cessation from any cause whatsoever of the liability of Trustor, and waives the benefit of any statutes of limitation affecting the enforcement hereof.

7.6 Discontinuance of Proceedings: In case the Beneficiary or Trustee shall have proceeded to invoke any right, remedy or recourse permitted under the Security Documents and shall thereafter elect to discontinue or abandon same for any reason or the same shall have resulted in an adverse determination to the Trustee or Beneficiary, the Beneficiary and the Trustee shall have the unqualified right so to do and, in such event, the Trustor, the Beneficiary and the Trustee shall be restored to their former positions with respect to the Indebtedness, the Obligations, the Security documents, the Trust Property and otherwise, and the rights,

remedies, recourses and powers of the Beneficiary shall continue as if same had never been invoked.

7.7 Application of Proceeds: The proceeds of any sale of, and the Rents and other amounts generated by the holding, leasing, operation or other use of, the Trust Property shall be applied by the Beneficiary (or the receiver, if one is appointed) to the extent that funds are so available therefrom in the following order of priority:

(a) First, to the payment of the costs and expenses of taking possession of the Trust Property and of holding, using, leasing, repairing, improving and selling the same, including, without limitation, (i) trustees' and receivers' fees based on a reasonable hourly rate, (ii) court costs, (iii) attorneys' and accountants' fees based on a reasonable hourly rate, (iv) costs of advertisement, and (v) the payment of any and all Impositions, liens, security interests or other rights, titles or interests equal or superior to the lien and security interest of this Deed of Trust (except those which the Trust Property has been sold subject to and without in any way implying the Beneficiary's prior consent to the creation thereof);

(b) Second, to the payment of all amounts, other than the Principal Balance and accrued but unpaid interest, which may be due to the Beneficiary under the Security Documents, together with interest thereon as provided therein;

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(c) Third, to the payment of all accrued but unpaid interest due on the Note;

(d) Fourth, to the payment of the Principal Balance;

(e) Fifth, to the extent funds are available therefor out of the sale proceeds or the Rents and, to the extent known by the Beneficiary, to the payment of any indebtedness or obligation secured by any subordinate deed of trust on, or security interest in, the Trust Property, including, by way of example and not limitation, any indebtedness owed to the Beneficiary in connection with the construction of any additional improvements on the Trust Property, or any portion thereof, and which indebtedness shall be secured by a deed of trust whose recording date shall be after the date on which this Deed of Trust shall have been recorded in the Office of the Recorder for Maricopa County, Arizona; and

(f) Sixth, to the Trustor, or to such other person or persons legally entitled thereto.

ARTICLE 8

CONDEMNATION

8.1 General: Immediately upon its obtaining knowledge of the institution of any proceeding for the condemnation of the Trust Property, the Trustor shall notify the Trustee and the Beneficiary of such fact. The Trustor shall then, if requested by the Beneficiary, file or defend its claim thereunder and prosecute same with due diligence to its final disposition and shall cause any awards or settlements to be paid over to the Beneficiary for disposition pursuant to the terms of this Deed of Trust. The Trustor may be the nominal party in such proceeding, but the Beneficiary shall be entitled to participate in and to control same and to be represented therein by counsel of its own choice, and the Trustor will deliver or cause to be delivered to the Beneficiary such instruments as may be requested by it from time to time to permit such participation. If the Trust Property is taken or diminished in value, or if a consent settlement is entered (which shall not be entered absent the consent of the Beneficiary), by or under threat of such proceeding, the award or settlement payable to the Trustor by virtue of its interest in the Trust Property shall be, and by these presents is, assigned, transferred and set over unto the Beneficiary to be held by it, in trust, subject to the lien and security interest of this Deed of Trust, and disbursed as follows:

(a) if (i) all of the Trust Property is taken, (ii) so much of the Trust Property is taken, or the Trust Property is so diminished in value, that the remainder thereof cannot (in ^{the Beneficiary's} ~~in the Beneficiary's~~ judgment) continue to be operated profitably for the purpose for which it was being used immediately prior to such taking or diminution, (iii) an Event of Default shall have occurred or (iv) the Trust Property is partially taken or diminished in value and (in the Beneficiary's judgment) should not be rebuilt, restored or repaired in any manner, then in any such event the entirety of the sums so paid to the Beneficiary shall be applied by it in the order recited in paragraph 8.2 herein above; or

(b) if only a portion of the Trust Property is taken and the portion remaining can (in the Beneficiary's judgment), with rebuilding, restoration or repair, be profitably operated for the purpose referred to in paragraph 8.1(a)(ii) hereinabove and none of the other facts recited in paragraph 8.1(a) hereinabove exists, then the Trustor shall deliver to the Beneficiary plans and specifications for such rebuilding, restoration or repair acceptable to the Beneficiary, and the Trustor shall immediately thereafter commence the rebuilding, restoration or repair and complete same, all in accordance with the plans and specifications. Such sums shall be paid to the Trustor to reimburse the Trustor for money expended in the rebuilding, restoration or repair, if Trustor fails to perform in accordance with this paragraph 8. 1 (b), sums so paid to Beneficiary shall be applied by the Beneficiary in the order recited in paragraph 8.2 herein below.

8.2 Application of Proceeds: All proceeds received by the Beneficiary with respect to a taking or a diminution in value of the Trust Property shall be applied in the following order of priority:

(a) first, to reimburse the Trustee or the Beneficiary for all costs and expenses, including reasonable attorneys' fees, incurred in connection with collection of the said proceeds;

(b) thereafter, if there shall be any balance to the order of priority recited in paragraph 7.7(b) through (f) herein above; subject, however, to the provisions of paragraph 8 herein above requiring (under the circumstances therein specified) that such proceeds to be applied to the rebuilding, restoration or repair of the Trust Property.

ARTICLE 9

THE TRUSTEE

9.1 No Liability: The Trustee shall not be liable for any error of judgment or act done by the Trustee in good faith, or be otherwise responsible or accountable under any circumstances whatsoever, except for the Trustee's gross negligence or bad faith. The Trustee shall not be personally liable in case of entry by it, or anyone entering by virtue of the powers herein granted it, upon the Trust Property ^{for debts} Unofficial Document contracted or liability or damages incurred in the management or operation of the Trust Property. The Trustee shall have the right to rely on any instrument, document or signature authorizing or supporting any action taken or proposed to be taken by him hereunder, believed by him in good faith to be genuine. The Trustee shall be entitled to reimbursement for expenses incurred by him in the performance of his duties hereunder and to reasonable compensation for such of his services hereunder as shall be rendered. The Trustor will, from time to time, pay the compensation due to the Trustee hereunder and reimburse the Trustee for, and save him harmless against, any and all liability and expenses which may be incurred by him in the performance of his duties.

9.2 Retention of Monies: All monies received by the Trustee shall, until used or applied as herein provided, be held in trust for the purposes for which they were received, but need not be segregated in any manner from any other monies (except to the extent required by law), and the Trustee shall be under no liability for interest on any monies received by him hereunder.

9.3 Right of Entry and Advances: Upon default by Trustor hereunder, Trustee, at the written request of Beneficiary, after due notice to Trustor may enter upon the Trust Property, may employ watchmen to protect the Property from theft or injury, may continue all outstanding contracts for the construction and completion of the Property may enter into any further contracts and obligations whenever necessary. either in its own name as Trustee hereunder or in the name of Trustor, and may pay all debts, obligations and liabilities incurred thereby. All sums so advanced by Trustee or by Beneficiary and all sums advanced under the

Loan Agreement shall be secured by this Deed of Trust and, to the extent they shall not be included in the principal amount of the Indebtedness, shall be due and payable on demand with interest at the rate of interest equivalent to that charged under the terms of the Note. Nothing herein shall provide Beneficiary with any greater right than that provided elsewhere in this Deed of Trust or in any of the other Security Documents.

9.4 Successor Trustee: The Trustee may resign by the giving of notice of such resignation in writing to the Beneficiary. If the Trustee shall resign or become disqualified from acting in the execution of this trust or shall fail or refuse to execute the same when requested by the Beneficiary so to do, or if, for any reason, the Beneficiary shall prefer to appoint a substitute trustee to act instead of the aforementioned Trustee, the Beneficiary shall have full power to appoint a substitute trustee and, if preferred, several substitute trustees in succession who shall succeed to all the estate, rights, powers and duties of the aforementioned Trustee, said substitution to be made in the manner provided in §33-804, Arizona Revised Statutes, as the same may be from time to time amended and supplemented.

9.5 Succession Instruments: Any new Trustee appointed pursuant to any of the provisions hereof shall, without any further act, deed or conveyance, become vested with all the estates, properties, rights, powers and trusts of its or his predecessor in the rights hereunder with like effect as if originally named as Trustee herein, but nevertheless, upon the written request of the Beneficiary or of the successor Trustee, the Trustee ceasing to act shall execute and deliver an instrument transferring to such successor Trustee, upon the trusts herein expressed, all the estates, properties, rights, powers, and trusts of the Trustee so ceasing to act, and shall duly assign, transfer and deliver any of the property and monies held by such Trustee to the successor Trustee so appointed in its or his place.

ARTICLE 10

MISCELLANEOUS

10.1 Survival of Obligations: Each and all of the Obligations shall survive the execution and delivery of the Security Documents, and the consummation of the loan called for therein, and shall continue in full force and effect until the Indebtedness shall have been paid in full.

10.2 Further Assurances: The Trustor, upon the request of the Trustee or the Beneficiary, will execute, acknowledge, deliver and record and/or file such further instruments and do such further acts as may be necessary, desirable or proper to carry out more effectively the purposes of the Security Documents and to subject to the liens and security interests thereof any property intended by the terms thereof to be covered thereby, including specifically, but without limitation, any renewals, additions, substitutions, replacements, or appurtenances to the then Trust Property.

10.3 Recording and Filing: The Trustor will cause the Security Documents and all amendments and supplements thereto and substitutions therefor to be recorded, filed, re-

recorded and refilled in such manner and in such places as the Trustee or the Beneficiary shall reasonably request, and will pay all such recording, filing, re-recording and refilling taxes, fees and other charges.

10.4 Notices: Any and all notices or demands by or from the parties hereunder or under any of the Loan Documents shall be in writing. Except for notices required under applicable law to be given in another manner, notices shall be given either Personally, by certified mail, or by telegraphic method. If given Personally, notice shall be conclusively deemed given at the time of service. If given by certified mail, notice shall be conclusively deemed given seventy-two (72) hours after deposit thereof in the United States mail, postage prepaid, addressed to the party to whom such notice or demand is to be given. If given by telegraphic method, notice shall be conclusively deemed given at the time the telegraphic agency shall confirm to the sender delivery thereof to the addressee. For purposes of notice, the addresses of the parties shall be set forth in the opening recital herein above; provided, however, that either party shall have the right to change its address for notice hereunder to any other location within the continental United States by the giving of thirty (30) days' notice to the other party in the manner set forth herein above.

10.5 No Waiver: Any failure by the Trustee or the Beneficiary to insist, or any election by the Trustee or the Beneficiary not to insist, upon strict performance by the Trustor of any of the terms, provisions or conditions of the Security Documents shall not be deemed to be a waiver of same or of any other term, provision or condition thereof, and the Trustee or the Beneficiary shall have the right at any time ^{or times} thereafter to insist upon strict performance by the Trustor of any and all such terms, provisions and conditions. Unofficial Document

10.6 Beneficiary's Right to Perform the Obligation: If the Trustor shall fail, refuse or neglect to make any payment or perform any act required by the Security Documents, then at any time thereafter and without notice to or demand upon the Trustor and without waiving or releasing any other right, remedy or recourse the Beneficiary may have because of the same, the Beneficiary may (but shall not be obligated to) make such payment or perform such act for the account of and at the expense of the Trustor, and shall have the right to enter the Real Property and Buildings for such purpose and to take all such action thereon and with respect to the Trust Property as it may deem necessary or appropriate. The Trustor shall indemnify the Beneficiary for all losses, expenses, damages, claims and causes of action, including reasonable attorneys' fees, incurred or accruing by reason of any acts performed by the Beneficiary pursuant to the provisions of this paragraph 10.6 or by reason of any other provision in the Security Documents. All sums paid by the Beneficiary pursuant to this paragraph 10.6 and all other sums expended by the Beneficiary to which it shall be entitled to be indemnified, together with interest thereon at the interest rate stated in the Note from the date of such payment or expenditure, shall constitute additions to the Indebtedness, shall be secured by the Security Documents and shall be paid by the Trustor to the Beneficiary upon demand.

10.7 Covenants Running with the Land: All Obligations contained in the Security Documents are intended by the parties to be, and shall be construed as, covenant running with the Trust Property.

10.8 Successors and Assigns: All of the terms of the Security Documents shall apply to, be binding upon and inure to the benefit of, all the parties thereto, their respective successors, assigns, heirs and legal representatives and all other persons claiming by, through or under them.

10.9 Severability: The Security Documents are intended to be performed in accordance with, and only to the extent permitted by, all applicable Legal Requirements. If any provision of any of the Security Documents or the application thereof to any person or circumstance shall, for any reason and to any extent, be invalid or unenforceable, neither the remainder of the instrument in which such provision is contained nor the application of such provision to other persons or circumstances nor the other instruments referred to herein above shall be affected thereby, but rather shall be enforced to the greatest extent permitted by law. It is hereby expressly stipulated and agreed to be the intent of the Trustor and the Beneficiary at all times to comply with any applicable usury laws and all other laws relating to the Security Documents. If, at any time, the applicable Legal Requirements render usurious any amount called for in any Security Document, then it is the Trustor's, the Trustee's and the Beneficiary's express intent that such document be immediately deemed reformed and the amounts collectible reduced, without the necessity of the execution of any new document, so as to comply with the then applicable law, but so as to permit the recovery of the fullest amount otherwise called for in such Security Documents.

10.10 Entire Agreement and Modification: The Security Documents contain the entire agreements between the parties relating to the subject matter hereof and thereof and all prior agreements relative thereto which are not contained herein or therein are terminated. The Security Documents may be amended, revised, waived, discharged, released or terminated only by a written instrument or instruments executed by the party against which enforcement of the amendment, revision, waiver, discharge, release or termination is asserted. Any alleged amendment, revision, waiver, discharge, release or termination which is not so documented shall not be effective as to any party.

10.11 Counterparts: This Deed of Trust may be executed in any number of counterparts, each of which shall be an original but all of which together shall constitute but one instrument.

10.12 Applicable Law: Except where preempted by the laws and regulations of the United States of America, this Deed of Trust and the Security Documents shall in all respects be governed by the laws of the State of Arizona. Trustor hereby agrees that all actions and proceedings relating directly or indirectly to the Security Documents may at the option of Beneficiary, be litigated in any state or federal court located within the State of Arizona and Trustor hereby consents to the jurisdiction of any such court and to venue therein and consents to the service of process in any such action or proceeding by certified or registered mailing of the summons and complaint therein directed to the Trustor at the address set forth above.

10.13 Headings: The Article, Paragraph and Subparagraph entitlements hereof are inserted for convenience of reference only and shall in no way alter, modify or define, or be used in construing the text of such Articles, Paragraphs or Subparagraphs.

10.14 Time of the Essence: Time is of the essence of this Deed of Trust and each and every provision hereof.

10.15 No Offsets: No offset or claim that Trustor now or may in the future have against Beneficiary shall relieve Trustor from paying the Indebtedness or performing the Obligations.

10.16 Attorneys' Fees: In the event that it becomes necessary for Beneficiary to employ legal counsel or to take legal action to collect the indebtedness secured hereby, whether by legal proceeding or otherwise, to enforce any provision hereof, or to protect any of Beneficiary's rights hereunder, Trustor agrees to pay to Beneficiary, in addition to taxable costs of any legal proceeding or action, reasonable attorney's fees actually incurred by Beneficiary, and all costs of preparation and conduct of such proceedings, including costs of title searches and title policy commitments, all of which shall be a lien upon the Trust Property, secured by this Deed of Trust and shall bear interest from the date of expenditure by Beneficiary until paid at the rate of interest equivalent to that charged under the terms of the Note.

10.17 Power of Attorney: Any power of attorney given herein is a power coupled with an interest and shall be irrevocable so long as any portion of the Indebtedness and Obligations of Trustor to Beneficiary, secured hereunder, remains unpaid and unperformed.

10.18 Cross-Default Provision: It is expressly understood and agreed that, should Trustor default or commit an event of default under or pursuant to any agreement which is secured by a lien or liens on any portion of the Trust Property, the obligation(s) hereby secured, at the option of the Beneficiary, shall become due and payable.

10.19 Construction Deed of Trust: This Deed of Trust secures an obligation incurred for the construction of improvement on land. This Deed of Trust is a construction mortgage and is entitled to the benefits of Section 47-9334 of the Uniform Commercial Code of Arizona.

10.20 Right to Accelerate Upon Transfer: If Trustor shall sell, convey, assign, or transfer all or any part of the Trust Property or any interest therein, including any beneficial interest, Beneficiary may at Beneficiary's option, declare the Indebtedness to be immediately due and payable, which option may be exercised at any time following such sale, conveyance, assignment, or transfer. Beneficiary may in its sole discretion and at Trustor's request decide not to exercise said option in which event Beneficiary's forbearance may be predicated on such terms and conditions as Beneficiary may in its sole discretion require, including but not limited to Beneficiary's approval of the transferee's credit worthiness and management ability, and the execution and delivery to Beneficiary by transferee, prior to the sale, transfer, assignment, or conveyance of a written assumption agreement containing such terms as Beneficiary may require, including but not limited to, a payment of a part of the principal amount of the

Indebtedness, the payment of an assumption fee, a modification of the term of the Indebtedness, and such other terms as Beneficiary may require. Should the Trust Property be sold, traded, transferred, assigned, exchanged, or otherwise disposed of without the prior written consent of Beneficiary and payment of any portion of the Indebtedness is thereafter accepted by the Beneficiary such acceptance shall not be deemed a waiver of the requirement of Beneficiary's consent in writing thereto or with respect to any other sale, trade, transfer, assignment, exchange, or other disposition.

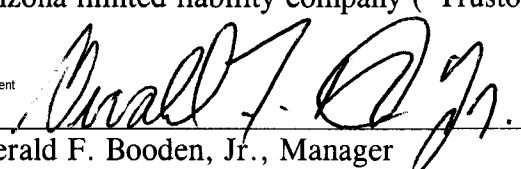
10.21 Waiver of Right to Trial by Jury: TRUSTOR HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, SUIT, PROCEEDING, OR COUNTERCLAIM THAT RELATES TO OR ARISES OUT OF ANY OF THE LOAN DOCUMENTS OR THE ACTS OR FAILURE TO ACT OF OR BY BENEFICIARY IN THE ENFORCEMENT OF ANY OF THE TERMS OR PROVISIONS OF THIS DEED OF TRUST OR THE OTHER LOAN DOCUMENTS.

IN WITNESS WHEREOF, the parties hereto have caused this Deed of Trust to be duly executed as of the date and year first written above.

Power Equipment, LLC,
an Arizona limited liability company ("Trustor")

Unofficial Document

By:


Gerald F. Booden, Jr., Manager


By:


James A. Booden, Manager

STATE OF ARIZONA §
 §
COUNTY OF MARICOPA §

BEFORE ME, the undersigned, a Notary Public in and for the said County and State, on this day personally appeared **Gerald F. Booden, Jr. and James A. Booden, Managers of Power Equipment, LLC, an Arizona limited liability company**, known to me to be the persons whose names are subscribed to the foregoing document and acknowledged to me that they executed the same in the capacity therein stated and for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the 6th day of November, 2007.



NOTARY PUBLIC, State of Arizona



Unofficial Document

EXHIBIT "A"

LOT 1, OF INTERSTATE MECHANICAL CORPORATION, ACCORDING TO THE PLAT OF RECORD IN THE OFFICE OF THE COUNTY RECORDER OF MARICOPA COUNTY, ARIZONA, RECORDED AS BOOK 578 OF MAPS, PAGE 43.

EXCEPT THE FOLLOWING DESCRIBED PORTION:

A PART OF LOT 1 OF INTERSTATE MECHANICAL CORPORATION SUBDIVISION AS RECORDED AS BOOK 578 OF MAPS, PAGE 43 AND IS LOCATED IN THE NORTHWEST QUARTER (NE 1/4) OF SECTION 10, TOWNSHIP 1 NORTH, RANGE 3 EAST OF THE GILA AND SALT RIVER BASE MERIDIAN, MARICOPA COUNTY, ARIZONA. MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE INTERSECTION OF 24TH STREET AND JEFFERSON STREET;

THENCE NORTH 88 DEGREES 41 MINUTES 12 SECONDS WEST, ALONG THE CENTERLINE OF JEFFERSON STREET, A DISTANCE OF 336.30 FEET;

THENCE SOUTH 00 DEGREES 17 MINUTES 22 SECONDS WEST, A DISTANCE OF 40.01 FEET TO THE POINT OF BEGINNING;

THENCE CONTINUING SOUTH 00 DEGREES 17 MINUTES 22 SECONDS WEST, A DISTANCE OF 18.26 FEET;

THENCE NORTH 88 DEGREES 41 MINUTES 55 SECONDS WEST, A DISTANCE OF 163.62 FEET;

THENCE NORTH 86 DEGREES 47 MINUTES 22 SECONDS WEST, A DISTANCE OF 126.59 FEET;

THENCE SOUTH 46 DEGREES 49 MINUTES 18 SECONDS WEST, A DISTANCE OF 18.41 FEET;

THENCE NORTH 00 DEGREES 08 MINUTES 13 SECONDS EAST, A DISTANCE OF 14.75 FEET TO THE BEGINNING OF TANGENT CURVE, HAVING A 12.00 FOOT RADIUS AND IS CONCAVE SOUTHEASTERLY;

THENCE NORTHEASTERLY, ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 91 DEGREES 10 MINUTES 35 SECONDS, A DISTANCE OF 19.10 FEET;

THENCE SOUTH 88 DEGREES 41 MINUTES 12 SECONDS EAST, A DISTANCE OF 291.26 FEET TO THE POINT OF BEGINNING.

EXHIBIT C

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SECURITY AGREEMENT

Security Agreement dated November 6, 2007 of Power Equipment, LLC, an Arizona limited liability company (hereinafter referred to as the "Debtor") in favor of Compass Bank ("Lender").

In consideration of advances, loans, extensions of credit or other financial accommodations, now existing or hereafter made, to or for the account or benefit of the Debtor by Lender, and as an inducement therefor, the Debtor hereby represents, warrants, and agrees as follows:

**Section 1
General Information**

DEBTOR'S EXACT LEGAL NAME:	Power Equipment, LLC
STATE OF DEBTOR'S ORGANIZATION:	Arizona
TYPE OF DEBTOR'S ORGANIZATIONAL ENTITY:	Limited Liability Company
DEBTOR'S ORGANIZATIONAL ID NUMBER:	
DEBTOR'S TAXPAYER ID NUMBER:	4334
ADDRESS OF DEBTOR'S PLACE OF BUSINESS:	2305 E. Jefferson Street Phoenix, Arizona 85034
LENDER'S ADDRESS:	P.O. Box 797808 Dallas, Texas 75379-7808

**Section 2
Definitions**

Any capitalized term referring to the Collateral herein shall have the meaning accorded thereto in the Uniform Commercial Code (the "Code"), as now enacted and hereinafter amended in the State of Arizona.

"Agreement" shall mean this Security Agreement as the same may be amended, modified, and supplemented from time to time.

"Collateral" shall mean the following personal property of Debtor, wherever located, and now owned, or hereafter acquired or arising, including Proceeds and Supporting Obligations: Equipment

"Default" shall mean any event referred to in Section 6 of this Agreement.

"Loan" shall mean the loan evidenced by the Note.

"Loan Documents" shall mean the Note and all other documents evidencing, securing or pertaining to the indebtedness evidenced by the Loan.

"Obligations" shall mean the indebtedness evidenced by that certain promissory note of even date herewith executed by Debtor and Fajon Machining, L.L.C., an Arizona limited liability company (the "Note") payable to the order of Lender in the principal amount of One Million Seven Hundred Thirty-Nine Thousand Five Hundred and No/100 Dollars (\$1,739,500.00), together with any and all present or future indebtedness, liabilities, and obligations of the Debtor to Lender of any kind and however evidenced, originally contracted with Lender or with another or others, or in which Lender may have or hereafter acquire a participating interest, direct or indirect, matured or not matured, absolute or contingent, and in any and all amendments, extensions, modifications, and renewals of any of the same. The term "Obligations" shall also include, and Debtor hereby agrees to pay, any and all attorneys' fees, costs, and expenses incurred by Lender in the collection or enforcement of any of the Obligations and the perfection, preservation, and enforcement of its rights and remedies hereunder and its security interest in the Collateral.

Section 3 Security Interest

As collateral security for the prompt and unconditional payment and performance of the Obligations, the Debtor does hereby grant to Lender a security interest in all of the Debtor's right, title, and interest in and to the Collateral. The Debtor does further grant to Lender a continuing lien upon all of the Debtor's money and any other property and the proceeds thereof, now or hereafter actually or constructively held or received by Lender for any purpose, including but not limited to, collection, custody, pledge, and transmission.

Section 4 Representations and Warranties

A. The information relating to the Debtor set forth in Section 1 of this Agreement is accurate and complete. The Debtor is duly organized, validly existing, and in good standing under the laws of each jurisdiction in which it transacts business and has the power, authority, and legal right to enter into this Agreement and to grant to Lender the security interest in the Collateral. The execution, delivery, and performance of this Agreement and any instruments or documents executed and delivered by the Debtor herewith, and the grant of the security interest in the Collateral to Lender pursuant to the terms hereof, are not in contravention of law or the terms of the Debtor's organizational and governing documents, including but without limitation, Articles

of Incorporation, Articles of Association, Partnership Agreement, Articles of Organization, By-Laws, Operating Agreement, Regulations or any indenture, contract, or agreement to which the Debtor is a party or by which it is bound. This Agreement, when executed and delivered, will constitute a legal, authorized, valid, and binding obligation of the Debtor enforceable in accordance with its terms.

B. The Debtor is the sole owner of the Collateral, free of any liens, security interests, claims, or other encumbrances of any kind except as granted herein, and except for a permitted prior lien in favor of Lender to secure that certain promissory note executed by Debtor and Fajon Machining, L.L.C., an Arizona limited liability company, dated of even date herewith in the original principal amount of \$1,391,600.00.

C. All Equipment is in good working order.

D. There are no actions, proceedings, or investigations pending or threatened against the Debtor, and there are no judgments, federal or state tax liens or other liens, security interests (except as disclosed herein) or encumbrances against the Debtor, or any of its assets.

E. All financial statements and other documents provided to Lender by the Debtor, or its representatives are true and correct and fairly and accurately represent the financial condition of the Debtor and if applicable, its shareholders, members, partners, managers, directors, and/or officers.

F. All Collateral is to be used, acquired, and/or held for business purposes. Additionally, the proceeds of the Loan shall be used strictly for business purposes. The lending transaction evidenced by the Note is not a "consumer-goods transaction", as that term is used or defined in the Code.

Section 5 Debtor's Covenants

The Debtor shall:

A. Pay and perform all the Obligations according to their terms;

B. Maintain business records relating to the Collateral satisfactory to Lender and shall note thereon the security interest of Lender;

C. The Debtor shall keep such business records at its chief executive office and will permit Lender access thereto at all reasonable times for the purposes of inspection, audit, examination, verification, extracting, copying, and such other purposes as Lender may require.

Any such inspection, audit, examination, verification, extracting, and copying shall be at the Borrower's expense;

D. Promptly deliver to Lender at its request such lists, schedules, invoices, receipts, original documents, and other information relating to the Collateral;

E. Promptly notify Lender of (i) any material loss or damage to the Collateral, and (ii) the occurrence of any event which could materially and adversely affect the security interest of Lender in the Collateral;

F. Not change its name, trade style, the location of its chief executive office, its state of organization, its organizational ID number, or where any of the Collateral is kept without the prior written consent of Lender;

G. At its own expense keep the Collateral free of all liens (except as disclosed herein) and encumbrances except (i) the security interest of Lender, and (ii) liens arising in connection with taxes or other governmental charges or assessments which are contested in good faith by appropriate proceedings;

H. Maintain the Collateral in compliance with any applicable law, statute, ordinance, regulation or administrative order;

I. Not sell, transfer, or otherwise dispose of the Collateral or any interest therein (except sales of Inventory to buyers in the ordinary course of its business);

J. Insure the Collateral at all times against all hazards, including but not limited to, fire, vandalism, and malicious mischief, and such policies shall be payable to Lender as its interest may appear. The policies of insurance shall be satisfactory to Lender as to form and insurer. The policies of insurance shall be in an amount equal to the full replacement cost of the Collateral. Debtor shall furnish certificates, policies, or endorsements to Lender as proof of such insurance, and if Debtor fails to do so Lender is authorized but not required to obtain such insurance at Debtor's expense. All policies shall provide for at least thirty (30) days prior written notice of cancellation to Lender and shall provide that coverage as to Lender will not be affected by any act or omission of Debtor. Lender may act as attorney-in-fact for Debtor in making, adjusting, and settling any claims under any such insurance policies. Debtor assigns to Lender all of its right, title, and interest in and to any insurance policies insuring the Collateral, including all rights to receive the proceeds of insurance, and directs all insurers to pay all such proceeds directly to Lender and authorizes Lender to endorse Debtor's name on any instrument for such payment. Lender shall be named as "loss payee" on all policies of insurance regarding the Collateral.

K. At its own expense, as Lender may request place notices upon the Collateral or such portion thereof or in or about designated areas where the Collateral may be kept or used indicating the security interest of Lender herein;

L. Be liable to Lender for any expenditures by Lender for the maintenance and preservation of the Collateral, including without limitation, taxes, levies, insurance, and repairs, attorney's fees and expenses, accountant's fees and expenses, and for the collection, repossession, holding, preparation, and sale or other disposition of or realization upon the Collateral. Debtor will also be liable to Lender for all damages for breach of warranty, misrepresentation, or breach of covenant by Debtor. All such liabilities shall be secured by the security interest granted herein, and shall be payable upon demand;

M. Not, without Lender's prior written consent, (i) sell, lease, pledge, encumber (except by purchase money lien on property acquired after the date of the Note), or otherwise dispose of any of Debtor's assets, except in the ordinary course of business (ii) purchase, lease, or otherwise acquire any assets (or commit to do so) other than current assets or assets acquired in the ordinary course of business; or (iii) declare or pay any dividends (except stock dividends), or return any capital to any of its stockholders, or redeem, repurchase, or otherwise acquire any of its outstanding capital stock; or (iv) become a party to any consolidation, merger, liquidation, or dissolution; and

N. Debtor will cooperate with Secured Party in obtaining a control agreement and such other documents required by Secured Party, in form and substance satisfactory to Secured Party, to perfect an interest in deposit accounts, investment property, letter-of-credit rights, electronic chattel paper, or other Collateral.

Section 6 Defaults

Each of the following shall be a default under this Agreement (hereinafter "Default").

A. Any default or event of default in payment of the Obligations, whether or not the Obligations have been accelerated.

B. Breach of any representation or warranty contained in this Agreement or the Loan Documents.

C. Default in the performance of any provision of this Agreement or the Loan Documents.

D. Default under any agreement with or obligation to Lender by any endorser or guarantor of the Obligations or by any other party liable for payment or performance of the Obligations.

E. The entry of a judgment, issuance of an injunction, order of attachment, or any other process against Debtor or the Collateral which in the sole opinion of Lender impairs Debtor's ability to pay or perform the Obligations.

F. If Debtor shall dissolve or otherwise terminate its existence in its form as of the date hereof; become insolvent or suffer a business failure; have a custodian, receiver or agent appointed or authorized to take charge of its assets; make an assignment for the benefit of any creditors; be subject to the commencement of any proceeding in bankruptcy or under other insolvency laws.

G. If there is any material deterioration, impairment, decline in character or value, or material adverse change (whether actual or reasonably anticipated) in the assets, operations or conditions of Debtor or any part of the Collateral or any other property subject to a lien in favor of Lender as security for the Obligations that causes the Collateral or such other property in the judgment of Lender to become unsatisfactory as to character or value.

H. It is expressly understood and agreed that, should Debtor default or commit an event of default under or pursuant to any agreement which is secured by a lien or liens on any portion of the Collateral, the Obligations hereby secured, at the option of the Lender, shall become due and payable.

Section 7 Rights and Remedies of Lender

A. In addition to the rights and remedies granted to Lender herein, Lender shall at all times have the rights and remedies of a secured party under the Code.

B. On and after the occurrence of a Default, Lender may:

1. Declare all or any part of the Obligations due and payable.
2. Enter the premises of the Debtor and take custody of or remove the Collateral, without judicial process or the responsibility to post a bond or other financial undertaking.
3. Require the Debtor to assemble the Collateral, and make it available to Lender at the Debtor's premises or at any other location selected by Lender, where it will remain at the Debtor's expense pending sale or other disposition. Lender may take possession of, remove, or otherwise deal with the Collateral for any purpose including putting the Collateral in saleable form.
4. Dispose of all or any part of the Collateral in such manner and upon such terms as Lender, in its sole discretion, shall determine. If notice of sale or disposition of Collateral is required, ten (10) days notice to the Debtor of any intended sale or other disposition of the Collateral shall be deemed to be reasonable. Lender shall have the right to purchase the Collateral.
5. Endorse any note, draft, check, or other instrument for the payment of money and any other invoice, assignment, verification, notice, or other document with

respect to the Collateral, as the attorney-in-fact for the Debtor with full power of substitution.

6. Accept and receive payment of, receipt for, or settle, compromise, or adjust any claim, suit, action, or proceeding with respect to the Collateral and give discharge, release, or full or partial acquittance therefor.

7. Defend any suit, action, or proceeding against the Debtor concerning the Collateral.

C. The Debtor shall reimburse Lender for any and all costs and expenses, including but not limited to reasonable attorneys' fees, incurred by Lender in preserving the Collateral or the security interest; enforcing, collecting, or realizing upon the Obligations or the Collateral; and performing the Debtor's obligations hereunder, which Lender is hereby authorized to do.

D. Lender shall be under no obligation or liability to any party for the performance or observance of any of the representations, warranties, conditions, or terms of any document relating to the Collateral.

E. Lender shall be under no duty to protect the Collateral from deterioration, waste or loss by fire, theft or otherwise unless such deterioration, waste or loss be caused by the wilful act of the Lender. Debtor expressly waives any duty on the part of the Lender to protect the Collateral from deterioration, waste or loss except for the wilful acts of the Lender.

F. Lender may, without notice, demand, or presentment, which are hereby waived by Debtor and Guarantors and all other parties obligated in any manner whatsoever on the Obligations, declare the entire unpaid balance of the Obligations immediately due and payable, and upon such declaration, the entire unpaid balance of the Obligations shall be immediately due and payable. Debtor hereby waives all notices allowed by law, including without limitation, demand, presentment, notice of dishonor, protest, notice of intent to accelerate maturity and notice of acceleration in connection with this Agreement, any note or other document.

G. Lender may seize all books and records of Debtor pertaining to the Collateral. Lender shall have the authority to enter upon any real property or improvements thereon in order to seize any such books or records, or any Collateral located thereon, and remove the same therefrom without liability.

H. Lender may apply proceeds of the disposition of Collateral to the Obligations in any manner elected by Lender and permitted by the Code. Such application may include, without limitation, the reasonable expenses of retaking, holding, preparing for sale or other disposition, and the reasonable attorneys' fees and legal expenses incurred by Lender.

Section 8
Miscellaneous

A. All representations and warranties made herein or in any of the Loan Documents shall be continuous.

B. Debtor agrees that from time to time, without presentment, notice or demand, and without affecting or impairing in any way the rights of Lender with respect to the Collateral, Debtor's obligations hereunder, or the Obligations, Lender may, but shall not be obligated to, take any action which Debtor is obligated to do and to exercise such rights and powers as Debtor might exercise with respect to the Collateral.

C. Debtor hereby irrevocably appoints Lender as its attorney-in-fact to exercise the following rights and powers: (i) collect by legal proceedings or otherwise and indorse, receive and receipt for all dividends, interest, payments, proceeds, and other sums and property now or hereafter payable on or on account of the Collateral; (ii) enter into any extension, reorganization, deposit, merger, consolidation, or other agreement pertaining to, or deposit, surrender, accept, hold, or apply other property in exchange for the Collateral; (iii) insure, process and preserve the Collateral; make, adjust and settle any claims under any insurance on the Collateral; (iv) transfer the Collateral to its own or its nominees' name; (v) make any compromise or settlement, and take any action it deems advisable, with respect to the Collateral; (vi) notify any account debtor on any Collateral to make payment directly to Lender; and (vii) sign and file a financing statement describing any liens held by Secured Party in any applicable jurisdiction, on behalf of Debtor if required. Lender shall incur no liability to Debtor or any third party for acting hereunder or for failure to act hereunder.

D. No provision hereof may be amended, modified, waived, or supplemented, except by a writing signed by the party to be charged thereby. No waiver by Lender of any Default shall be a waiver of any other Default.

E. All rights and remedies of Lender shall be cumulative and may be exercised at such times and in such order as Lender determines, and no delay or omission in exercising or enforcing any such right or remedy shall be a waiver thereof or preclude the exercise or enforcement thereof at a later time.

F. This Agreement shall remain in full force and effect until terminated in writing by Lender.

G. This Agreement shall be binding upon and shall be for the benefit of the parties hereto and their executors, heirs, successors, and assigns, as the case may be.

H. Except as expressly provided to the contrary herein, each section, part, term, or provision of this Agreement shall be considered severable, and if for any reason any section, part,

term, or provision herein is determined to be invalid and contrary to or in conflict with any existing or future law or regulation by a court or governmental agency having valid jurisdiction, such determination shall not impair the operation of or have any other effect on other sections, parts, terms, or provisions of this Agreement as may remain otherwise intelligible, and the latter shall continue to be given full force and effect and bind the parties hereto, and said invalid sections, parts, terms, or provisions shall not be deemed to be a part of this Agreement.

I. Any notice required hereunder or under applicable law shall be in writing and shall be deemed effective if either (1) hand delivered, (2) sent by certified mail, return receipt requested, postage prepaid, or (3) sent by overnight courier. All notices sent by U.S. mail and addressed as shown in Section 1 of this Agreement shall be deemed received on the earlier of (i) the third day (excluding Sundays and legal holidays when the U.S. mail is not delivered) immediately following date of deposit in the U.S. mail or (ii) the date of actual receipt. All notices which are hand delivered or sent by overnight courier shall be deemed received on the day of delivery to the address shown in Section 1 of this Agreement. The address shown in the first paragraph of this Agreement may be changed by either party by giving notice as provided above.

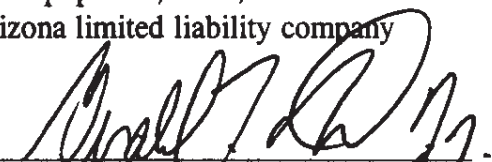
J. This Agreement shall be governed by and construed in accordance with the laws of the State of Arizona, without regard to principles of conflicts of law, and venue for any action hereunder shall be in Dallas County, Texas.

K. DEBTOR HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, SUIT, PROCEEDING, OR COUNTERCLAIM THAT RELATES TO OR ARISES OUT OF ANY OF THE LOAN DOCUMENTS OR THE ACTS OR FAILURE TO ACT OF OR BY LENDER IN THE ENFORCEMENT OF ANY OF THE TERMS OR PROVISIONS OF THIS SECURITY AGREEMENT OR THE OTHER LOAN DOCUMENTS.

IN WITNESS WHEREOF, the Debtor has executed this Agreement as of the date set forth above.

DEBTOR:

Power Equipment, LLC,
an Arizona limited liability company

By: 
Gerald F. Booden, Jr., Manager

By: 
James A. Booden, Manager

STATE OF ARIZONA §
 §
COUNTY OF MARICOPA §

BEFORE ME, the undersigned, a Notary Public in and for the said County and State, on this day personally appeared **Gerald F. Booden, Jr., Manager of Power Equipment, LLC, an Arizona limited liability company**, known to me to be the person whose name is subscribed to the foregoing document and acknowledged to me that he executed the same in the capacity therein stated and for the purposes and consideration therein expressed.

Nanette GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the 6th day of March, 2007.



Nanette DeRUITER

NOTARY PUBLIC, State of Arizona

STATE OF ARIZONA §
 §
COUNTY OF MARICOPA §

BEFORE ME, the undersigned, a Notary Public in and for the said County and State, on this day personally appeared **James A. Booden, Manager of Power Equipment, LLC, a Arizona limited liability company**, known to me to be the person whose name is subscribed to the foregoing document and acknowledged to me that he executed the same in the capacity therein stated and for the purposes and consideration therein expressed.

Nanette GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the 6th day of March, 2007.



Nanette DeRUITER

NOTARY PUBLIC, State of Arizona

200715076007

CONFIDENTIAL

2007 NOV -1 PM 12:21

UCC FINANCING STATEMENT

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

A. NAME & PHONE OF CONTACT AT FILER [optional]
Phone:(800) 331-3282 Fax: (818) 662-4141

B. SEND ACKNOWLEDGEMENT TO: (Name and Address) 5958 COMPASS BANK-SB

UCC Direct Services 12550535
P.O. Box 29071
Glendale, CA 91209-9071 AZAZ

FILED

11/01/2007 11:54 AM C:\301 #6450
FILED
P000230
UCC FINANCING STATEMENT
FEE \$15.00

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1. DEBTOR'S EXACT FULL LEGAL NAME - insert only one debtor name (1a or 1b) - do not abbreviate or combine names

1a. ORGANIZATION'S NAME
Power Equipment, LLC

OR

1b. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

1c. MAILING ADDRESS CITY STATE POSTAL CODE COUNTRY
2305 E. Jefferson Street Phoenix AZ 85034 USA

1d. SEE INSTRUCTIONS ADD'L INFO RE ORGANIZATION DEBTOR 1e. TYPE OF ORGANIZATION LTD. LIAB.CO 1f. JURISDICTION OF ORGANIZATION AZ 1g. ORGANIZATIONAL ID #, if any L-1389022-8 NONE

2. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - insert only one debtor name (2a or 2b) - do not abbreviate or combine names

2a. ORGANIZATION'S NAME
Fajon Machining, L.L.C

OR

2b. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

2c. MAILING ADDRESS CITY STATE POSTAL CODE COUNTRY
2305 E. Jefferson Street Phoenix AZ 85034 USA

2d. SEE INSTRUCTIONS ADD'L INFO RE ORGANIZATION DEBTOR 2e. TYPE OF ORGANIZATION LTD. LIAB.CO 2f. JURISDICTION OF ORGANIZATION AZ 2g. ORGANIZATIONAL ID #, if any L-0826666-8 NONE

3. SECURED PARTY'S NAME (or NAME of TOTAL ASSIGNEE of ASSIGNOR S/P) - insert only one secured party name (3a or 3b)

3a. ORGANIZATION'S NAME
COMPASS BANK SBA LENDING

OR

3b. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

3c. MAILING ADDRESS CITY STATE POSTAL CODE COUNTRY
P.O. BOX 797808 DALLAS TX 75379-7808 USA

4. This FINANCING STATEMENT covers the following collateral:

The following personal property of Debtor, wherever located, and now owned, or hereafter acquired or arising, including proceeds and Supporting Obligations: Equipment. Any capitalized terms used herein shall have the meaning accorded thereto in the Uniform Commercial Code, as now enacted and hereinafter amended in the State of Arizona.

5. ALTERNATIVE DESIGNATION (if applicable) LESSEE/LESSOR CONSIGNEE/CONSIGNOR BAILEE/BAILOR SELLER/BUYER AG. LIEN NON-UCC FILING

6. This FINANCING STATEMENT is to be filed [for record] (or recorded) in the REAL ESTATE RECORDS. Attach Addendum if applicable. 7. Check to REQUEST SEARCH REPORT(S) on Debtor(s) [ADDITIONAL FEE] [optional] All Debtors Debtor 1 Debtor 2

8. OPTIONAL FILER REFERENCE DATA

12550535

Power Equipment, LLC

EXHIBIT D

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HELEN PURCELL
20071205257 11/08/2007 03:56
ELECTRONIC RECORDING

FIRST AMERICAN TITLE

When recorded, mail to:

Compass Bank
P.O. Box 797808
Dallas, Texas 75379-7808
NCS-313625-PHX3

313625-10-14-4--
Garcia

3/13

ABSOLUTE ASSIGNMENT OF LEASES AND RENTS

THIS ABSOLUTE ASSIGNMENT OF LEASES AND RENTS ("Assignment") is made this 6 day of November, 2007, by **Power Equipment, LLC**, an Arizona limited liability company (hereinafter called "Assignor") to **Compass Bank** (hereinafter called "Assignee");

WITNESSETH

Assignor, in consideration of the sum of Ten Dollars (\$10.00) cash in hand paid and other good and valuable consideration paid by Assignee, the receipt and sufficiency of which are hereby acknowledged, does hereby absolutely and unconditionally GRANT, CONVEY, ASSIGN, TRANSFER and SET OVER unto Assignee the following:

A. All rights, title, interests, estates, powers, privileges, options and other benefits of Assignor in, to and under the lease agreements which now or in the future, from time to time, cover or affect all or any portion of or interest in the land described in Exhibit "A" attached hereto and made a part hereof and the improvements located thereon (said land and improvements hereinafter called the "Subject Property") together with all renewals, extensions, modifications, amendments, subleases and assignments of such lease agreements (such lease agreements, renewals, extensions, modifications, amendments, subleases and assignments herein called the "Leases"); and

B. All of the rents, income, receipts, revenues, royalties, bonuses, issues, profits, receivables and other sums of money (hereinafter collectively called the "Rents") that are now and/or at any time hereafter become due and payable to Assignor under the terms of the Leases or arising or issuing from or out of the Leases or from or out of the Subject Property or any part thereof, including but not limited to minimum rents, additional rents, percentage rents, deficiency rents and liquidated damages following default, security deposits, advance rents, daily rents or room charges, all proceeds payable under any policy of insurance covering loss of rents resulting from untenability caused by destruction or damage to the Subject Property and all of Assignor's rights to recover monetary amounts from any lessee in bankruptcy including, without limitation, rights of recovery for use and occupancy and damage claims arising out of lease defaults, including rejections, under the Federal Bankruptcy Code, including specifically the immediate and continuing right to collect and receive each and all of the foregoing; and

C. Any and all guaranties of payment of the Rents.

This Assignment is made by Assignor to provide a direct and continuing source of payment (currently and in the future) of the following note, obligations, indebtedness and liabilities: (a) one certain promissory note of even date herewith in the principal amount of **One Million Seven Hundred Thirty-Nine Thousand Five Hundred and No/100 Dollars (\$1,739,500.00)** made by Assignor and Fajon Machining, L.L.C., an Arizona limited liability company and payable to the order of Assignee, with interest at the rate or rates therein provided, both principal and interest being payable as therein provided, and all amounts remaining unpaid thereon being finally due and payable 26 years from the date of the Note, and containing a provision for the payment of a reasonable additional amount as attorney's fees, and all other notes given in substitution therefore or in modification, increase, renewal or extension thereof, in whole or in part, such note and all other notes given in substitution therefore or in modification, increase, renewal or extension thereof, in whole or in part, being hereinafter called the "Note"; and (b) all indebtedness now or hereafter incurred or arising pursuant to the provisions of, or secured by, the Deed of Trust (with Security Agreement and Assignment of Rents) of even date herewith (hereinafter called the "Deed of Trust") made by Assignor to secure the payment of the Note and covering the Subject Property and certain other property described therein; SUBJECT, HOWEVER, to the terms, provisions and conditions set forth in this Assignment.

1. Assignor hereby represents and warrants unto Assignee that Assignor is the sole owner of the entire lessor's interest in the Leases and has good title and good right to assign the Leases and Rents hereby assigned and no other person or entity has any right, title or interest therein, except for a permitted subordinate Assignment of Leases and Rents in favor of Assignee to secure that certain promissory note of even date herewith in the original principal amount of \$1,391,600.00; that Assignor has duly and punctually performed all of the terms, covenants, conditions and warranties of the Leases that were to be kept, observed and performed by it; that Assignor has not at any time prior to the date hereof exercised any right to subordinate any Lease to any deed of trust or mortgage or any other encumbrance of any kind; that Assignor has not executed any prior assignments of the Leases or the Rents thereunder; that no Rents reserved in any Lease have been anticipated and no Rents for any period subsequent to the date of this assignment have been collected in advance of the time when the same became due under the terms of the applicable Lease; that Assignor has performed no act or executed any other instrument which might prevent Assignee from enjoying and exercising any of its rights and privileges evidenced hereby; that each of the Leases is valid and subsisting and in full force and effect and unmodified; that there exists no defense, counterclaim or set-off to the payment of the Rents under the Leases; and that there are no defaults now existing under the Leases and no event has occurred which with the passage of time or the giving of notice, or both, would constitute such a default.

2. Assignor agrees that, so long as the indebtedness evidenced by the Note or any part thereof or any other indebtedness secured by the Deed of Trust shall remain unpaid, Assignor will make no assignment, pledge or disposition of the Leases or the Rents thereunder; nor will Assignor subordinate any of the Leases to any deed of trust or mortgage or any other encumbrance

of any kind or permit, consent or agree to such subordination; nor will Assignor reduce the Rents payable under any of the Leases, modify, alter or amend the Leases or waive, excuse, condone, discount, set off, compromise or in any manner release or discharge any lessee under any Lease of and from any obligations, covenants, conditions and agreements, to be kept, observed and performed by the lessee, including the obligation to pay the Rents thereunder in the manner and at the place and time specified therein; nor will Assignor incur any indebtedness to a lessee under or guarantor of any Lease which may under any circumstance be used as an offset against the Rents or other payments due under said Lease; nor will Assignor exercise any option required or permitted by the terms of any of the Leases without the prior written consent of Assignee; nor will Assignor receive or collect any Rents from any present or future lessee of the Subject Property or any part hereof except in trust for Assignee and then only for such periods not to exceed one month in advance of the date on which such payment is due; nor will Assignor cancel or terminate any of the Leases, accept a surrender thereof, commence an action of ejectment or any summary proceedings for dispossession of a lessee under any of the Leases, or convey or transfer or suffer of permit a conveyance or transfer of the premises demised thereby or of any interest therein so as to effect directly or indirectly, proximately or remotely, a merger of the estates and rights of, or a termination or diminution of the obligations of any lessee thereunder; nor will Assignor consent to an assignment or sublease of the interest and estate of any lessee under any of the Leases, whether or not in accordance with its terms; nor will assignor modify or change the terms of any guaranty of any of the Leases or cancel or terminate such guaranty; nor will Assignor enter into additional leases covering any portion of the Subject Property, or renew or extend the term of any Lease unless an option therefore was originally reserved by the lessee in the Lease for a fixed and definite rental, or relocate or expand the floor space of any lessee under a Lease within the Subject Property, without first having obtained the written consent of Assignee; and any such acts, if done or permitted to be done without the prior written consent of Assignee, shall be null and void.

3. Assignor covenants with Assignee, for so long as the indebtedness evidenced by the Note or any part thereof or any other indebtedness secured by the Deed of Trust shall remain unpaid, to observe and perform duly and punctually all the obligations imposed upon any lessor under the Leases and not to do or permit to be done anything to impair the value thereof; to enforce the performance of each and every term, provision, covenant, agreement and condition in the Leases to be performed by any lessee thereunder; to appear in and defend any action or proceeding arising under, occurring out of or in any manner connected with any of the Leases, or the obligations, liabilities or duties of Assignor or any lessee under the Leases and, upon request by Assignee, to make appearance in the name and on behalf of Assignee, but at the expense of Assignor; to exercise any option or election contained in or relating to any of the Leases which Assignee shall require; at Assignee's request to assign and transfer to Assignee by specific Assignment of Leases and Rents, in the form of this Assignment, any and all subsequent Leases upon all or any part of the Subject Property (it being understood and agreed that no such specific assignment shall be required for such subsequent Leases to be covered by and included within this Assignment as provided herein); to deliver to Assignee executed copies of any and all Leases, renewals and extensions of existing Leases and any and all subsequent Leases upon all or any part

of the Subject Property; and to execute and deliver at the request of Assignee all such further assurances and assignments in the premises covered by the Leases or Rents as Assignee shall from time to time require and to deliver other records and instruments, including but not limited to rent rolls and books of account, that Assignee shall from time to time require.

4. Assignor may collect Rents on behalf of Assignee until the occurrence of a default specified in the Deed of Trust and the issuance by Assignee of a notice of such default ("hereinafter called a "Notice of Default") to the lessees under the Leases. Upon receipt from Assignee of a Notice of Default, each lessee under the Leases is hereby authorized and directed to pay directly to Assignee all Rent thereafter accruing and the receipt of Rent by Assignee as provided herein shall be a release of such lessee to the extent of all amounts so paid. The receipt by a lessee under the Leases of a Notice of Default shall be sufficient authorization for such lessee to make all future payments of Rents directly to Assignee and each such lessee shall be entitled to rely on such Notice of Default and shall have no liability to Assignor for any Rents paid to Assignee after receipt of such Notice of Default. Rents received by Assignee after giving a Notice of Default for any period prior to foreclosure under the Deed of Trust or acceptance of a deed in lieu of such foreclosure shall be applied by Assignee to the Payment (in such order as Assignee shall determine) of: (a) all expenses of managing the Subject Property, including but not limited to the salaries, fees and wages of a managing agent and such other employees as Assignee may deem necessary or desirable; all expenses of operating and maintaining the Subject Property, including but not limited to all taxes, assessments, charges, claims, utility costs and premiums for insurance, and the cost of all alterations, renovations, repairs or replacements; all expenses incident to taking and retaining possession of the Subject Property and/or collecting the Rents due and payable under the Leases; and (b) the Note and other indebtedness secured by the Deed of Trust, principal, interest, attorney's and collection fees and other amounts, in such order as Assignee in its sole discretion may determine. In no event will this Assignment reduce the indebtedness evidenced by the Note or otherwise secured by the Deed of Trust, except to the extent, if any, that Rents are actually received by Assignee and applied upon (after said receipt) to such indebtedness in accordance with the preceding sentence. Without impairing its rights hereunder, Assignee may, at its option, at any time and from time to time, release to Assignor Rents so received by Assignee or any part thereof. As between Assignor and Assignee, and any person claiming by, through or under Assignor, other than any lessee under the Leases who has not received a Notice of Default pursuant to this Paragraph, this Assignment is intended to be absolute, unconditional and presently effective and the provisions of this Paragraph for notification of lessees under the Leases upon the occurrence of a default specified in the Deed of Trust are intended solely for the benefit of each such lessee and shall never inure to the benefit of Assignor or any person claiming by, through or under Assignor (other than a lessee who has not received such notice). It shall never be necessary for Assignee to institute legal proceedings of any kind whatsoever to enforce the provisions of this Paragraph or this Assignment.

5. Assignor covenants that at any time during which Assignor is receiving Rents directly from lessees under the Leases, Assignor shall, upon receipt of written direction from Assignee, make demand and/or sue for all Rents due and payable under one or more Leases, as

directed by Assignee, as it becomes due and payable, including Rents which are past due and unpaid. In the event Assignor fails to take such action, or at any time during which Assignor is not receiving Rents directly from lessees under the Leases, Assignee shall have the right (but shall be under no duty) to demand, collect and sue for, in its own name or in the name of Assignor, all Rents due and payable under the Leases, as it becomes due and payable, including Rents which are past due and unpaid.

6. Assignor agrees that Assignee shall not be liable for any loss sustained by Assignor resulting from Assignee's failure to let the Subject Property, or any part thereof, or from any other act or omission of Assignee under or relating to the Leases, unless such loss is caused by the gross negligence or willful misconduct of Assignee, nor shall Assignee be obligated to perform or discharge any obligation, duty or liability under the Leases by reason of this instrument or the exercise of rights or remedies hereunder. Assignee shall not be liable for its failure to collect, or its failure to exercise diligence in the collection of, Rents under the Leases, but shall be accountable only for Rents that Assignee actually receives. **ASSIGNOR WILL INDEMNIFY AND HOLD HARMLESS ASSIGNEE (FOR PURPOSES OF THIS PARAGRAPH, THE TERM "ASSIGNEE" SHALL INCLUDE THE DIRECTORS, OFFICERS, PARTNERS, EMPLOYEES AND AGENTS OF ASSIGNEE AND ANY PERSONS OR ENTITIES OWNED OR CONTROLLED BY, OWNING OR CONTROLLING, OR UNDER COMMON CONTROL OR AFFILIATED WITH ASSIGNEE) FROM AND AGAINST, AND REIMBURSE ASSIGNEE FOR, ALL CLAIMS, DEMANDS, LIABILITIES, LOSSES, DAMAGES, CAUSES OF ACTION, JUDGMENTS, PENALTIES, COSTS AND EXPENSES (INCLUDING, WITHOUT LIMITATION, REASONABLE ATTORNEYS' FEES AND COSTS OF APPEAL) INCURRED UNDER THE LEASES BY REASON OF THIS INSTRUMENT OR THE EXERCISE OF RIGHTS OR REMEDIES HEREUNDER, OR WHICH MAY BE ASSERTED AGAINST ASSIGNEE BY REASON OF ANY ALLEGED OBLIGATIONS OR UNDERTAKINGS ON ITS PART TO PERFORM OR DISCHARGE ANY OF THE TERMS, COVENANTS OR AGREEMENTS CONTAINED IN THE LEASES, INCLUDING SPECIFICALLY ANY OBLIGATION OR RESPONSIBILITY FOR ANY SECURITY DEPOSITS OR OTHER DEPOSITS DELIVERED TO ASSIGNOR BY ANY LESSEE UNDER ANY LEASE AND NOT ACTUALLY DELIVERED TO ASSIGNEE. THE INDEMNITIES CONTAINED IN THIS PARAGRAPH SHALL INCLUDE CLAIMS, DEMANDS, LIABILITIES, LOSSES, DAMAGES, CAUSES OF ACTION, JUDGMENTS, PENALTIES, COSTS AND EXPENSES (INCLUDING WITHOUT LIMITATION, REASONABLE ATTORNEYS' FEES) RESULTING FROM THE NEGLIGENCE OF ASSIGNEE, BUT NOT THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF ASSIGNEE.** The foregoing indemnities shall not terminate upon release or other termination of this Assignment. Any amount to be paid under this Paragraph by Assignor to Assignee shall be a demand obligation owing by Assignor to Assignee, shall bear interest from the date such amount becomes due until paid at the rate of interest payable on matured but unpaid principal of or interest on the Note and shall be secured by the Deed of Trust and by any other instrument securing the Note. This Assignment of Leases and Rents shall not operate to place responsibility upon Assignee for the control, care, management or repair of the Subject Property, nor for the carrying

out of any of the terms and conditions of the Leases; nor shall it operate to make Assignee responsible or liable for any waste committed on the Subject Property by the tenants or by any other parties or for any dangerous or defective condition of the Subject Property, or for any negligence in the management, upkeep, repair or control of the Subject Property resulting in loss or injury or death to any tenant, licensee, employee or stranger.

7. Assignor agrees that this Assignment is primary in nature to the obligation evidenced and secured by the Note, the Deed of Trust and any other document given to secure and collateralize the indebtedness secured by the Deed of Trust and that any default under this Assignment is and shall be a default under the Deed of Trust. Assignor agrees that Assignee may enforce this Assignment without first resorting to or exhausting any security or collateral securing the payment of the Note; provided however, that nothing herein contained shall prevent Assignee from suing on the Note, foreclosing the Deed of Trust or exercising any other right under any document securing the payment of the Note or at law or in equity.

8. Assignor covenants and agrees that so long as the indebtedness under the Note and Deed of Trust or any indebtedness secured by the Deed of Trust remain unpaid, in the event any lessee under the Leases should be the subject of any proceeding under the Federal Bankruptcy Code or any other federal, state or local statute which provides for the possible termination or rejection of any of the Leases assigned hereby, if any Lease is so rejected, no settlement for damages shall be made without the prior written consent of Assignee, and any check in payment of damages for rejection of any such Lease will be made payable to Assignee to the fullest extent permitted by law. Assignor hereby assigns any such payment to Assignee and further covenants and agrees that upon the request of Assignee, it will duly endorse to the order of Assignee any such check, the proceeds of which will be applied to the Note and other indebtedness secured by the Deed of Trust, principal, interest, attorneys' and collection fees and other amounts, in such order as Assignee in its sole discretion may determine.

9. Assignor agrees with Assignee that nothing contained herein and no act done or omitted by Assignee pursuant to the powers and rights granted Assignee hereunder shall be deemed to be a waiver by Assignee of its rights and remedies under the Note and the Deed of Trust or a waiver or curing of any default hereunder or under the Note or the Deed of Trust, and this Assignment is made and accepted without prejudice to any of the rights and remedies possessed by Assignee under the terms of the Note and the Deed of Trust. The right of Assignee to collect said principal sum, interest and indebtedness and to enforce any security therefore hold by it may be exercised by Assignee either prior to, simultaneously with, or subsequent to any action taken by it hereunder.

10. If the Note and all other indebtedness secured by the Deed of Trust are paid as the same becomes due and payable and if all of the covenants, warranties, undertakings and agreements made in the Deed of Trust and in this Assignment are kept and performed, then this Assignment shall become null and void and of no further force and effect but no lessee under the

Leases shall be required to take notice of such termination until a copy of a release of the Deed of Trust and this Assignment shall have been delivered to such lessee.

11. Assignor agrees that Assignee may take or release any security for the payment of the Note and other indebtedness secured by the Deed of Trust, may release any party primarily or secondarily liable therefore and may apply any security held by it to the satisfaction of the Note and such other indebtedness secured by the Deed of Trust without prejudice to any of its rights under this Assignment.

12. Assignor agrees that Assignee may at any time and from time to time in writing (a) waive compliance by Assignor with any covenant herein made by Assignor to the extent and in the manner specified in such writing; (b) consent to Assignor doing any act which hereunder Assignor is prohibited from doing, or consent to Assignor failing to do any act which hereunder Assignor is required to do, to the extent and in the manner specified in such writing; or (c) release any part of the Subject Property and/or the Leases, or any interest therein, from this Assignment. No such act shall in any way impair the rights of Assignee hereunder except to the extent specifically agreed to by Assignee in such writing.

13. Assignor agrees that the rights and remedies of Assignee hereunder shall not be impaired by any indulgence, including but not limited to (a) any renewal, extension or modification which Assignee may grant with respect to any indebtedness secured by the Deed of Trust, (b) any surrender, compromise, release, renewal, extension, exchange or substitution which Assignee may grant in respect of the Subject Property and/or the Leases and/or the Rents or any part thereof or any interest therein, or (c) any release or indulgence granted to any endorser, guarantor or surety of any indebtedness secured hereby.

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

15. Assignor agrees that notwithstanding (a) the fact that any Lease or the leasehold estate created thereby may be held, directly or indirectly, by or for the account of any person or entity which shall have an interest in the fee estate of the Subject Property, (b) the operation of law or (c) any other event, lessee's leasehold estate under such Lease shall not merge into the fee estate and the lessee shall remain obligated under such lease as assigned by this Assignment.

16. Assignor agrees and covenants with Assignee that this Assignment and the terms, provisions, representations and warranties herein contained shall be binding upon Assignor and Assignor's successors and assigns, and all subsequent owners of the Subject Property and shall inure to the benefit of Assignee and Assignee's successors and assigns, including all subsequent

holders of the Note and the Deed of Trust. All references in this Assignment to Assignor or Assignee shall be deemed to include all such successors and assigns of such respective party.

17. Assignor agrees that within this Assignment, words of any gender shall be held and construed to include any other gender, and words in the singular number shall be held and construed to include the plural and words in the plural number shall be held and construed to include the singular, unless the context otherwise requires.

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

19. Assignor agrees and covenants with Assignee that this Assignment shall not be construed or deemed made for the benefit of any third party or parties.

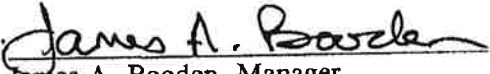
20. This Assignment shall be construed in accordance with and shall be subject to the laws of the State of Arizona.

21. This Assignment contains the entire agreement concerning the assignment by Assignor of the Leases and the Rents thereunder between the parties hereto. No variations, modifications or changes herein or hereof shall be binding upon any party hereto, unless set forth in a document duly executed by or on behalf of such party.

IN WITNESS WHEREOF, Assignor has executed this Assignment of Leases and Rents as of the date first above written.

Power Equipment, LLC,
an Arizona limited liability company

By: 
Gerald F. Booden, Jr., Manager

By: 
James A. Booden, Manager

STATE OF ARIZONA §
COUNTY OF MARICOPA §

BEFORE ME, the undersigned, a Notary Public in and for the said County and State, on this day personally appeared **Gerald F. Booden, Jr., Manager of Power Equipment, LLC, an Arizona limited liability company**, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same in the capacity therein stated and for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the 10th day of October, 2007.



Nanette DeRuiter
NOTARY PUBLIC, State of Arizona

STATE OF ARIZONA §
COUNTY OF MARICOPA §

BEFORE ME, the undersigned, a Notary Public in and for the said County and State, on this day personally appeared **James A. Booden, Manager of Power Equipment, LLC, an Arizona limited liability company**, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same in the capacity therein stated and for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the 10th day of October, 2007.



Nanette DeRuiter
NOTARY PUBLIC, State of Arizona

AFTER RECORDING RETURN TO:

Compass Bank
P.O. Box 797808
Dallas, Texas 75379-7808

PREPARED IN THE LAW OFFICE OF:

SETTLEPOU
3333 Lee Parkway
Eighth Floor
Dallas, Texas 75219

ABSOLUTE ASSIGNMENT OF LEASES AND RENTS (Permanent 504 Loan)

EXHIBIT "A"

LOT 1, OF INTERSTATE MECHANICAL CORPORATION, ACCORDING TO THE PLAT OF RECORD IN THE OFFICE OF THE COUNTY RECORDER OF MARICOPA COUNTY, ARIZONA, RECORDED AS BOOK 578 OF MAPS, PAGE 43.

EXCEPT THE FOLLOWING DESCRIBED PORTION:

A PART OF LOT 1 OF INTERSTATE MECHANICAL CORPORATION SUBDIVISION AS RECORDED AS BOOK 578 OF MAPS, PAGE 43 AND IS LOCATED IN THE NORTHWEST QUARTER (NE 1/4) OF SECTION 10, TOWNSHIP 1 NORTH, RANGE 3 EAST OF THE GILA AND SALT RIVER BASE MERIDIAN, MARICOPA COUNTY, ARIZONA. MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE INTERSECTION OF 24TH STREET AND JEFFERSON STREET;

THENCE NORTH 88 DEGREES 41 MINUTES 12 SECONDS WEST, ALONG THE CENTERLINE OF JEFFERSON STREET, A DISTANCE OF 336.30 FEET;

THENCE SOUTH 00 DEGREES 17 MINUTES 22 SECONDS WEST, A DISTANCE OF 40.01 FEET TO THE POINT OF BEGINNING;

THENCE CONTINUING SOUTH 00 DEGREES 17 MINUTES 22 SECONDS WEST, A DISTANCE OF 18.26 FEET;

THENCE NORTH 88 DEGREES 41 MINUTES 55 SECONDS WEST, A DISTANCE OF 163.62 FEET;

THENCE NORTH 86 DEGREES 47 MINUTES 22 SECONDS WEST, A DISTANCE OF 126.59 FEET;

THENCE SOUTH 46 DEGREES 49 MINUTES 18 SECONDS WEST, A DISTANCE OF 18.41 FEET;

THENCE NORTH 00 DEGREES 08 MINUTES 13 SECONDS EAST, A DISTANCE OF 14.75 FEET TO THE BEGINNING OF TANGENT CURVE, HAVING A 12.00 FOOT RADIUS AND IS CONCAVE SOUTHEASTERLY;

THENCE NORTHEASTERLY, ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 91 DEGREES 10 MINUTES 35 SECONDS, A DISTANCE OF 19.10 FEET;

THENCE SOUTH 88 DEGREES 41 MINUTES 12 SECONDS EAST, A DISTANCE OF 291.26 FEET TO THE POINT OF BEGINNING.