

Ham Declaration

Exhibit A

1 **KRISTIN K. MAYES**
2 **ATTORNEY GENERAL**
3 (Firm State Bar No. 14000)
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10 **SUPERIOR COURT OF THE STATE OF ARIZONA**

11 **IN AND FOR THE COUNTY OF MARICOPA**

12 STATE OF ARIZONA, *ex rel.*
13 KRISTIN K. MAYES, Attorney General,

14 Plaintiff,

15 -vs.-

Case No: CV2024-005359

COMPLAINT

(Endangerment of Vulnerable Adults,
Consumer Fraud)

16 HERITAGE VILLAGE BLDG2, LLC, a
17 Delaware limited liability company; MRC
18 VSL HV MANAGEMENT, LLC, a
19 Delaware limited liability company; MRC
20 VSL HV MANAGEMENT II, LLC; a
21 Delaware limited liability company; MRC
22 VSL HERITAGE VILLAGE, LLC; a
23 Delaware limited liability company; MRC
24 VSL HERITAGE VILLAGE II, LLC; a
25 Delaware limited liability company;
26 MADISON REALTY COMPANIES,
LLC, a Colorado limited liability
company; RSC INT LLC, a Nevada
limited liability company; RONALD M.
STEWART, an individual; ROBERT
JOHN WALSH, an individual;
MATTHEW ARNOLD, an individual;
TRACY LI LANGENDOEN, an
individual; GARY LANGENDOEN, an
individual; MELINDA LEIBFRIED, an

1 individual; MOHAMMAD MUNZER
2 NASSER, an individual; ANA HOSPICE
3 CARE INC., an Arizona corporation;
4 JOSEPH LEIBFRIED, an individual;
5 EDWARD FECHSAR, an individual;
6 ERIC ELLSWORTH, an individual;
7 GREGORY BAIRD, an individual;
8 JOSHUA LANCASTER, an individual;
9 SAMUEL STOKES, an individual;
10 MRSC AZ APACHE JUNCTION
11 MASTER TENANT, LLC, a Delaware
12 limited liability company; MRSC AZ
13 MESA MASTER TENANT, LLC, a
14 Delaware limited liability company;
15 MRSC AZ APACHE JUNCTION, DST, a
16 Delaware business trust; MRSC AZ
17 MESA, DST, a Delaware business trust;
18 MRSC AZ HOLDINGS I, LLC, a
19 Delaware limited liability company;
20 JOHN DOES 1-100;

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Defendants.

1 **INTRODUCTION**

2 1. Heritage Village Assisted Living (“Heritage Village”) is an assisted living facility
3 located in Mesa, Arizona and currently licensed by the Arizona Department of Health Services
4 (“ADHS”) under the name Heritage Village Bldg2, LLC. The facility provides long-term care
5 and assistance with activities of daily living to its residents, all of whom are considered
6 “vulnerable adults” under Arizona’s Adult Protective Services Act.

7 2. In May 2023, the ARIZONA REPUBLIC launched a series of stories about assisted
8 living facilities in Arizona, including a searchable database of complaints against the facilities.
9 Heritage Village featured prominently in the series, which detailed resident-on-resident violence
10 at the facility and, in a November 2023 article, reported on the brutal rape of a resident by a
11 Heritage Village employee.

12 3. After the REPUBLIC article detailing the sexual assault committed by a Heritage
13 Village caretaker, ADHS conducted a series of facility surveys during which it identified dozens
14 of violations. On or about January 12, 2024, ADHS issued a Notice of Intent to Revoke Health
15 Care Institution License to Heritage Village, on the grounds that the life, health, and/or safety of
16 the Heritage Village residents are in immediate danger.

17 4. After reviewing the results of one of the ADHS surveys, the Attorney General
18 commenced an investigation to determine whether Heritage Village was endangering its residents.
19 The investigation also sought to determine whether Heritage Village had committed consumer
20 fraud by holding itself out as a facility capable of providing specialized care to vulnerable adults
21 while systematically understaffing the facility, thus providing inadequate care that consistently
22 violated Arizona law and regulations.

23 5. As a result of that investigation, the State learned that approximately 39 of the
24 residents at the facility are unable to ambulate even with assistance, a condition commonly known
25 as “bedbound” and/or “chairbound.”

26 6. Under the applicable regulations, assisted living facilities are not allowed to accept

1 or retain bedbound residents unless the resident’s physician certifies in writing that the facility is
2 capable of providing the resident with the necessary level of care, as set forth in each resident’s
3 care plan (also known as a service plan). As part of its investigation, the State requested the
4 written certifications and service plans for all bedbound residents.

5 7. Heritage Village produced approximately 39 written certifications for bedbound
6 residents. Approximately 31 of those certifications were signed by the medical providers *after*
7 the date of the State’s demand for production of the records. The service plans for the residents
8 in many instances were not up to date, and in some instances had only been created *after* the date
9 of the State’s demand for production.

10 8. Of the written certifications, all but four had been signed by the same three medical
11 providers. The State subpoenaed those three providers to answer questions under oath about their
12 certifications.

13 9. All three providers admitted that they signed the forms without understanding what
14 they were signing, without knowing the requirements that must be met before certification, and
15 without reviewing the service plans for the residents. One provider admitted she signed the forms
16 without reading them. One provider admitted he had never been to Heritage Village and did not
17 know his patients resided there. All of them testified that Heritage Village did not include copies
18 of the corresponding service plans when it gave the certification forms to the providers for
19 signature.

20 10. As of March 2024, approximately 25% of the vulnerable adults currently residing
21 at Heritage Village are bedbound. The vast majority of them still have not had a proper evaluation
22 by a physician who has reviewed the service plan and ensured the facility is capable of providing
23 the care set forth in the plan.

24 11. Heritage Village created most of the bedbound certifications in January 2024,
25 specifically in response to the State’s investigation, and not prior to acceptance or continued
26 acceptance of the bedbound residents as required by Arizona Law.

Ownership Defendants

1
2 16. The “Ownership Defendants” are those individuals and entities believed to have an
3 ownership interest in the Heritage Village enterprise and/or its assets.

4 17. Defendant Heritage Village Bldg2, LLC (“Defendant Bldg2”) is a Delaware limited
5 liability company registered to transact business in Arizona. On February 7, 2023, ADHS issued
6 a license for operation of an assisted living facility to “Heritage Village Bldg 2, LLC dba Heritage
7 Village Bldg 2, LLC,” which places a space between “Bldg” and “2.” On information and belief,
8 the licensed entity and Defendant Bldg2 are identical, as no legal entity with a space between
9 “Bldg” and “2” has ever existed.

10 18. Defendant MRC VSL HV Management, LLC (“Defendant MRC Management”) is
11 a Delaware limited liability company registered to transact business in Arizona and listed as a
12 member and manager of Defendant Bldg2. On information and belief, Defendant MRC
13 Management has an ownership interest in the Heritage Village enterprise.

14 19. Defendant MRC VSL HV Management II, LLC (“Defendant MRC Management
15 II”) is a Delaware limited liability company registered to transact business in Arizona. On
16 information and belief, Defendant MRC Management II has an ownership interest in the Heritage
17 Village enterprise.

18 20. Defendant MRC VSL Heritage Village, LLC (Defendant “MRC Heritage”) is a
19 Delaware limited liability company registered to transact business in Arizona. On information
20 and belief, Defendant MRC Heritage has an ownership interest in the Heritage Village enterprise.

21 21. Defendant MRC VSL Heritage Village II, LLC (Defendant “MRC Heritage II”) is
22 a Delaware limited liability company registered to transact business in Arizona. On information
23 and belief, Defendant MRC Heritage has an ownership interest in the Heritage Village enterprise,
24 including but not limited to ownership of the real property comprising the Heritage Village
25 campus.

26 22. Defendant MRC HV Investors, LLC (Defendant “MRC Investors”) is a Delaware

1 limited liability company registered to transact business in Arizona. On information and belief,
2 Defendant MRC Investors has an ownership interest in the Heritage Village enterprise.

3 23. Defendant Madison Realty Companies, LLC (“Defendant Madison Realty”) is a
4 Colorado limited liability company. On information and belief, Defendant Madison Realty has
5 an ownership interest in the Heritage Village enterprise.

6 24. Defendant RSC INT LLC (“Defendant RSC”) is a Nevada limited liability
7 company. On information and belief, Defendant RSC has an ownership interest in the Heritage
8 Village enterprise.

9 25. Defendant Ronald M. Stewart (“Defendant Stewart”) is an individual who, on
10 information and belief, resides in the state of Washington. On information and belief, Defendant
11 Stewart has ownership interests in Defendant RSC and the Heritage Village enterprise.

12 26. Defendant Robert John Walsh (“Defendant Walsh”) is an individual licensed to
13 practice law in the state of Nevada. On information and belief, Defendant Walsh has ownership
14 interests in Defendant RSC and the Heritage Village enterprise.

15 27. Defendant Matthew Arnold (“Defendant Arnold”) is an individual listed as the
16 organizer in the articles of organization for Defendant Madison Realty. On information and belief,
17 Defendant Arnold is a co-manager of Defendant Madison Realty. On information and belief,
18 Defendant Arnold has an ownership interest in the Heritage Village enterprise.

19 28. Defendant Tracy Li Langendoen (“Defendant T. Langendoen”), formerly known as
20 Xun Ying Li, is an individual who, on information and belief, resides in the state of California.
21 On information and belief, Defendant T. Langendoen is a member and co-manager of Defendant
22 Madison Realty. On information and belief, Defendant T. Langendoen has an ownership interest
23 in the Heritage Village enterprise.

24 29. Defendant Gary Langendoen (“Defendant G. Langendoen”) is an individual who,
25 on information and belief, resides in the state of California. Defendant G. Langendoen is listed
26 as the manager of Defendant Madison Realty. On information and belief, Defendant G.

1 Langendoen has an ownership interest in the Heritage Village enterprise. On information and
2 belief, Defendant G. Langendoen is the highest-ranking natural person in the Heritage Village
3 enterprise.

4 **Enterprise Defendants**

5 30. The “Enterprise Defendants” are those Defendants who currently are not known to
6 the State to have an ownership interest in the Heritage Village Enterprise, but are considered to
7 be part of the Heritage Village enterprise because they are either entities or a “group of persons
8 associated in fact” who are involved with providing care to the vulnerable adults residing at
9 Heritage Village.

10 31. Defendant Melinda Leibfried (Defendant “M. Leibfried”), also known as Linde
11 Leibfried, is an individual residing in Arizona. Defendant M. Leibfried is licensed in Arizona as
12 a Certified Assisted Living Facility Manager. On information and belief, Defendant M. Leibfried
13 is the Executive Director of Heritage Village, and serves in the role of Manager for the facility as
14 that term is defined in A.A.C. § R9-10-801(5). On information and belief, in 2023 Defendant M.
15 Leibfried received three separate disciplinary orders imposing stayed suspension and probation
16 for “incompetency or gross negligence in the performance of administrative duties” from the
17 Arizona State Board of Examiners of Nursing Care Institution Administrators and Assisted Living
18 Facility Managers.

19 32. Defendant Mohammad Munzer Nasser (Defendant “Nasser”) is a medical doctor
20 licensed to practice medicine in Arizona. On information and belief, Defendant Nasser serves as
21 the Medical Director for Heritage Village.

22 33. Defendant ANA Hospice Care Inc. (Defendant “ANA Hospice” or “Ability
23 Hospice”) is an Arizona corporation doing business under the registered trade name “Ability
24 Hospice.” Defendant ANA Hospice holds a license issued by ADHS to provide hospice care in
25 Arizona, which it does under the trade name Ability Hospice. On information and belief,
26 Defendant ANA Hospice sometimes uses the unregistered trade name “Ability Home Health &

1 Hospice.”

2 34. Defendant Joseph Leibfried (Defendant “J. Leibfried”) is an individual residing in
3 Arizona. Since 2022, Defendant J. Leibfried has been the Director of Defendant ANA Hospice.
4 On information and belief, Defendant J. Leibfried is the spouse of Defendant M. Leibfried.

5 35. Defendant Edward Fechsar (Defendant Fechsar) is an individual listed as an officer
6 of Defendant ANA Hospice.

7 36. Defendant Eric Ellsworth (Defendant Ellsworth) is an individual listed as an officer
8 of Defendant ANA Hospice. On information and belief, Defendant Ellsworth is a medical doctor
9 licensed to practice in Arizona.

10 37. Defendant Gregory Baird (Defendant Baird) is an individual listed as an officer of
11 Defendant ANA Hospice.

12 38. Defendant Joshua Lancaster (Defendant Lancaster) is an individual listed as an
13 officer of Defendant ANA Hospice.

14 39. Defendant Samuel Stokes (Defendant Stokes) is an individual listed as an officer of
15 Defendant ANA Hospice.

16 **Notice Defendants**

17 40. The “Notice Defendants” are those Defendants who currently are not known to the
18 State to have an ownership interest in the Heritage Village enterprise or to be participants in the
19 Heritage Village enterprise. These Defendants are named in this suit because the State believes
20 their property interests may be adversely impacted by the relief sought by the State against the
21 Ownership Defendants and Enterprise Defendants. These parties are named solely to provide
22 notice and an opportunity to be heard regarding the impact of this action on their interests.

23 41. Defendant MRSC AZ Apache Junction Master Tenant, LLC (Defendant “MRSC
24 Apache Junction”) is a Delaware limited liability company registered to do business in Arizona.
25 Defendant Madison Realty is listed as a manager and member of Defendant MRSC Apache
26 Junction. Defendant MRSC Apache Junction is licensed by ADHS to operate two Arizona

1 assisted living facilities under the trade names “Visions Senior Living at Apache Junction 1” and
2 “Visions Senior Living at Apache Junction 2.”

3 42. Defendant MRSC AZ Mesa Master Tenant, LLC (Defendant “MRSC Mesa”) is a
4 Delaware limited liability company registered to do business in Arizona. Defendant Madison
5 Realty is listed as a manager and member of Defendant MRSC Mesa. Defendant MRSC Mesa is
6 licensed by ADHS to operate two Arizona assisted living facilities under the trade names “Visions
7 Senior Living at Mesa 1” and “Visions Senior Living at Mesa 2.”

8 43. Defendant MRSC AZ Apache Junction, DST (Defendant “Apache Junction DST”)
9 is a Delaware Statutory Trust registered to do business in Arizona. On information and belief,
10 Defendant Madison Realty is the sole member of the signatory trustee of Defendant Apache
11 Junction DST.

12 44. Defendant MRSC AZ Mesa, DST (Defendant “Mesa DST”) is a Delaware Statutory
13 Trust registered to do business in Arizona. On information and belief, Defendant Madison Realty
14 is the sole member of the signatory trustee of Defendant Mesa DST.

15 45. Defendant MRSC AZ Holdings I, LLC (Defendant “MRSC Holdings”) is a
16 Delaware limited liability company. On information and belief, Defendant MRSC Holdings has
17 a property interest that may be impacted by this action.

18 46. Defendants JOHN DOES 1-100 are fictitiously named individuals and entities
19 currently unknown to the State who are a part of or have an ownership interest in the Heritage
20 Village enterprise. If and when the actual identities of these individuals and entities become
21 known to the State, they will be joined to this action to provide notice and an opportunity to be
22 heard regarding the remedies sought by the State.

23 **JURISDICTION AND VENUE**

24 47. The State brings this action pursuant to the Adult Protective Services Act (“APSA”);
25 A.R.S. §§ 46-451 to 46-474, and the Arizona Consumer Fraud Act (“ACFA”), A.R.S. §§ 44-1521
26 to 44-1534.

1 48. This Court has subject-matter jurisdiction pursuant to A.R.S. § 12-123.

2 49. Venue is proper in Maricopa County pursuant to A.R.S. § 12-401(17).

3 50. The State’s claims set forth herein are not barred by any statute of limitations
4 pursuant to A.R.S. § 12-510.

5 **HERITAGE VILLAGE LICENSURE BACKGROUND**

6 51. Heritage Village is a long-term care facility located in Mesa, Arizona. It is licensed
7 by ADHS under license number AL12412C as an Assisted Living Center, as that term is defined
8 in A.R.S. § 36-401(A)(8). Heritage Village is licensed to provide directed care services (the
9 highest level of care) as that term is defined in A.R.S. § 36-401(A)(16). The license authorizes
10 Heritage Village to operate 192 beds across eight different buildings, with a maximum of 24 beds
11 per building.

12 52. Heritage Village advertises for sale and sells residential long-term care services for
13 vulnerable adults. This advertisement occurs by means of, *inter alia*, a web site
14 (www.heritagevillageassisteliving.com) that solicits potential residents and their families to visit
15 the Heritage Village campus, as well as face-to-face sales pitches.

16 53. Prior to the current license, which consolidates all of the Heritage Village buildings
17 under one license number, Heritage Village operated each building under a separate license, which
18 were granted to specific-purpose limited liability companies named after each building number.
19 On or about February 7, 2023, Heritage Village consolidated all of the buildings under one single
20 license, issued to Building 2. The 2023 license was issued to “Heritage Village Bldg 2, LLC dba
21 Heritage Village Bldg 2, LLC.” On information and belief, no entity named “Heritage Village
22 Bldg 2, LLC” with a space between the abbreviation “Bldg” and the number “2,” has ever existed
23 in Delaware or Arizona.

24 54. Prior to the issuance of the 2023 license, Building 2 of Heritage Village operated
25 under license AL10534C, issued in 2017. That license expired on August 31, 2022 and was closed
26 by ADHS due to non-payment of licensure fees on October 1, 2022. From September 1, 2022 to

1 February 7, 2023, Heritage Village operated Building 2 without a valid license. ADHS ultimately
2 imposed a civil penalty of \$12,900 against Heritage Village for operating Building 2 and several
3 other buildings without a license for over five months.

4 55. When issuing the 2023 license, ADHS created a new facility ID number rather than
5 retain the existing facility number for Building 2.

6 56. As a result of consolidating the licenses from eight different buildings into a single
7 Building 2 license, and giving Building 2 a new facility ID number and license number, prior
8 negative information about Heritage Village in the ADHS database was separated from the current
9 active license for the facility. If a member of the public looking for current information searches
10 the phrase “Heritage Village” and restricts the search to active licenses (which is the default search
11 setting), only one record appears: the current license for Defendant Bldg2. However, changing
12 the search parameters to include closed licenses reveals 11 additional results for Heritage Village,
13 including the prior license for Building 2.

14 57. As a result, a person searching the ADHS database in March 2024 looking for the
15 active Heritage Village license would find the consolidated 2023 license only. The database
16 would report Heritage Village as having 56 total citations from ADHS (48 of which were
17 discovered between December 6, 2023 and January 22, 2024), with civil penalties imposed for a
18 total of \$13,900.

19 58. A search of the closed licenses associated with Heritage Village would reveal a total
20 of 113 additional citations across all buildings, with an additional \$14,750 in civil penalties
21 imposed. By consolidating the licenses into a single license, these additional citations and
22 penalties were effectively hidden from Arizona consumers searching for information about the
23 quality of care at Heritage Village.

24 59. On or about January 12, 2024, ADHS issued a “Notice of Intent to Revoke Health
25 Care Institution License and Notice of Right to Request Administrative Hearing” to Defendant
26 Bldg2.

1 adults, as required by law. Instead, the caregiver had only a certificate from an online CPR course
2 that did not include a demonstration of the caregiver's ability to perform CPR.

3 66. During the December 2023 inspection, ADHS discovered that at least one employee
4 and at least one resident had no medical documentation of freedom from infectious tuberculosis,
5 as required by law.

6 67. During the December 2023 inspection, ADHS discovered that the forms for
7 documenting the services provided to at least three residents were completely blank for multiple
8 day and night shifts, including no recorded services at all for three residents during the period
9 from December 1-6, 2023. ADHS noted that it had already cited Heritage Village for this type of
10 violation in October 2023, and in November 2023 sent Heritage Village a written demand to come
11 into compliance with the service documentation requirements. Heritage Village did not come into
12 compliance.

13 68. During the December 2023 inspection, ADHS found a plastic box full of
14 medications that had been prescribed for a former resident. The plastic box was located in a public
15 area, where any visitor to the facility would be able to read the labels to learn private health
16 information about the former resident and/or steal the drugs. This action violated both state and
17 federal law, as well as common sense notions about safe storage of prescription medication.

18 69. During the December 2023 inspection, ADHS discovered that at least three
19 residents had no documentation on file designating representatives to make decisions on behalf of
20 those residents, as required by law.

21 70. During the December 2023 inspection, ADHS discovered that the files of at least
22 two residents contained no documentation that vaccines for influenza and pneumonia had been
23 made available to the residents, as required by law.

24 71. During the December 2023 inspection, ADHS discovered that at least two residents
25 had no documentation that Heritage Village had provided skin care services for prevention of
26 pressure sores and infections, as required by law.

1 72. During the December 2023 inspection, ADHS discovered that some residents had
2 no bell, intercom, or other mechanical means to alert Heritage Village caregivers of emergencies
3 such as falls, as required by law. One resident informed ADHS that their remote call pendant had
4 been taken by Heritage Village staff to replace a battery, but the call pendant was never returned
5 to the resident.

6 73. During the December 2023 inspection, ADHS discovered that the door alarm on a
7 door leading to a back patio—a safety measure designed to alert staff when a dementia patient
8 wanders outside—was rendered useless because the door was propped open with a chair. In
9 addition, the gate on the fence surrounding the patio area was unlocked, meaning a resident could
10 wander completely outside the facility without any alert to caretakers.

11 74. During the December 2023 inspection, ADHS discovered that at least four residents
12 did not receive some of their prescribed medications because the medications were not available
13 at the facility. Some residents went days or weeks without taking their daily medications because
14 Heritage Village did not have the medication available. At least one resident was given pills that
15 were double the prescribed dosage, because the larger dose pills were the only ones available at
16 the facility.

17 75. During the December 2023 inspection, ADHS discovered at least one resident
18 whose doctor had submitted an order to stop taking the current dosage of a medication and start
19 taking a higher dosage. In reviewing the limited records for the resident’s drug administration,
20 ADHS discovered that rather than stopping the original dosage, caretakers at Heritage Village
21 administered both dosages, resulting in a dose 150% higher than prescribed by the resident’s
22 doctor.

23 76. During the December 2023 inspection, ADHS discovered that Heritage Village did
24 not provide a current drug reference guide or a current toxicology reference guide for use by staff,
25 as required by law. Heritage Village did make drug reference guides available, but those reference
26 books were out of date. In place of a current toxicology reference guide Heritage Village directed

1 staff to a web site operated by the National Library of Medicine called Toxnet, but that web site
2 is no longer operational, with most of the information disbursed among multiple other products
3 and services of the National Library of Medicine.

4 77. During the December 2023 inspection, ADHS discovered that Heritage Village
5 failed to comply with regulations regarding food service for residents. Meal menus were posted
6 in areas off-limits to residents, rather than in a conspicuous location as required by law. Heritage
7 Village also failed to serve snacks to residents, instead placing snacks in a location where residents
8 could help themselves (except for the bedbound residents, who were unable to reach the snack
9 locations without assistance and who numbered in the dozens at the time of the inspection).

10 78. During the December 2023 inspection, ADHS discovered that a resident had
11 suffered a fall requiring hospitalization on October 7, 2023. Although the resident's medical
12 record noted that the resident was "out of the facility," Heritage Village did not document the
13 October 7 fall and did not immediately contact the resident's representative, as required by law.
14 The resident returned to Heritage Village on October 21, 2023, and then suffered another fall
15 resulting in injury just nine days later.

16 79. During the December 2023 inspection, ADHS discovered that hot water
17 temperatures in areas used by residents were not maintained between 95°F and 120°F, as required
18 by law. ADHS tests revealed multiple sinks dispensing water at temperatures above the legal
19 limit, including several with temperatures in the range of 130°F to 139°F, a range that can easily
20 cause serious burns and injuries to elderly residents.

21 80. During the December 2023 inspection, ADHS discovered numerous environmental
22 hazards at Heritage Village, including uncovered garbage receptacles, uncovered soiled linens,
23 unsecured oxygen containers, and toxic cleaning chemicals stored in unlocked cabinets.

24 81. During the December 2023 inspection, ADHS discovered that at least three
25 residents had no service plan detailing the resident's needs and care requirements, as required by
26 law. ADHS also discovered at least five residents had service plans created more than 14 days

1 after the residents were accepted at the facility, and at least three residents had service plans that
2 were not updated with the frequency required by law.

3 82. During the December 2023 inspection, ADHS discovered that the service plans of
4 at least ten residents that were not signed by the resident or the resident’s representative, as
5 required by law.

6 83. During the December 2023 inspection, ADHS discovered that at least eight
7 residents were “unable to ambulate even with assistance” but their records did not contain forms
8 from their primary care providers certifying that the facility was able to care for the residents
9 within the scope of their service plans, as required by law.

10 84. Follow-up inspections conducted by ADHS during January 2024 revealed that
11 multiple previous citations had not been corrected, including deficient training of caretakers,
12 improper administration of medications, and lack of proper documentation of services and resident
13 incidents.

14 85. During the January 9, 2024 inspection, ADHS discovered that Heritage Village had
15 failed to notify Adult Protective Services about mandatory reporting incidents, including an
16 incident of resident-on-resident violence and an incident of caregiver-on-resident abuse.

17 86. During the January 9, 2024 inspection, ADHS discovered that Heritage Village had
18 attempted to prevent residents from entering one resident’s room by placing a “Dreambaby Lever
19 Door Child Safety Lock” on the outside handle facing the hallway. This left the resident secluded
20 and trapped inside the bedroom with no means of egress, in violation of law and all common sense
21 notions of emergency preparedness.

22 **SIMILAR ACTIONS OF NOTICE DEFENDANTS**

23 87. The Notice Defendants are part of the enterprise that operates the Visions Senior
24 Living facilities in Apache Junction and Mesa. On information and belief, the Notice Defendants
25 are controlled by the same beneficial owners who control Ownership Defendant entities, with
26 Defendant G. Langendoen being the highest-ranking natural person in the enterprise. Any order

1 barring the Ownership Defendants from owning or operating assisted living facilities in Arizona
2 will require the Notice Defendants to divest their interest in the Visions Senior Living facilities.

3 88. Operating under the same ownership and leadership as the Heritage Village
4 enterprise, the Visions facilities have also engaged in conduct similar to the Heritage Village
5 enterprise conduct that led to the initiation of this action.

6 89. During a September 21, 2023 survey of the Visions Apache Junction facility, ADHS
7 cited the facility for, *inter alia*, hiring a caregiver with an expired fingerprint card, accepting a
8 resident who required a level of care the facility was not licensed to provide, and failure to clean
9 and disinfect some resident bedrooms, at least two of which appeared to have feces smeared on
10 the walls.

11 90. In December 2023, ADHS issued a \$500 civil penalty to the manager of the Visions
12 Apache Junction facility for failure to maintain a service plan for a resident.

13 91. In April 2023, ADHS imposed civil penalties on the Visions Mesa facility for failure
14 to conduct quarterly employee disaster drills and semi-annual resident evacuation drills. In the
15 order imposing the penalty, ADHS noted that the Visions Mesa facility had been cited for
16 inadequate emergency drills in July 2021. During a December 2023 survey the facility could not
17 provide evidence that it had conducted any emergency drills during the 18 months after the
18 previous citation.

19 92. In December 2021, Sunwest Bank filed a Verified Complaint against Defendant
20 Mesa DST (Maricopa County Superior Court No. CV2021-054363) for breach of a loan
21 agreement, where the loan was secured by current and future rents generated by the Visions Mesa
22 facility. Sunwest Bank alleged that despite a provision in the loan agreement prohibiting
23 distributions of excess cash flow while the loan is in default, Defendant Mesa DST made
24 prohibited distributions of at least \$169,945 to the “Parent Trust, investors, affiliates and third
25 parties.” This case resulted in the appointment of a receiver to collect rents and prevent the
26 Visions Mesa owners from making further prohibited distributions of cash to themselves.

1 plans.

2 100. The failure to timely produce the bedbound certifications and service plans was
3 consistent with prior efforts by Heritage Village to delay production of documents while creating
4 a record that seems to demonstrate cooperation. For example, Heritage Village produced copies
5 of staff schedules as demanded, but printed the schedules in a way that made it impossible to read
6 the names of the staff members who worked particular shifts. Despite promises to produce new
7 copies of the staff schedules with readable information, Heritage Village never did so.

8 101. Heritage Village finally completed the production of the requested bedbound
9 resident documentation in February 2024, and the reason for the delay became clear. Heritage
10 Village had not produced the documents sooner because most of the documents did not already
11 exist and needed to be created. Approximately two-thirds of the certification forms were signed
12 by medical providers after the January 16, 2024 production promise.

13 102. Although the certification forms stated that the signing medical providers had
14 evaluated the service plans for the bedbound residents, several of the service plans produced by
15 Heritage Village were created after the signature dates on the certification forms.

16 **MEDICAL PROVIDER TESTIMONY ABOUT BEDBOUND CERTIFICATIONS**

17 103. The vast majority of the bedbound certification forms were signed by just three
18 medical providers, and each provider signed most documents on a single date. Heritage Village
19 sent the providers a stack of forms and asked for signatures on all of them immediately.

20 104. As part of the ongoing civil investigation, the State subpoenaed the three providers
21 to obtain their sworn testimony about how they came to sign the bedbound certification forms.

22 105. The first witness (“Witness 1”) is a family nurse practitioner employed by a third-
23 party health care company. [See Excerpts from Examination Under Oath for Witness 1, attached
24 hereto as **Exhibit 1**, at 4:20-25; 13:1-3; 13:19-25.] Witness 1 serves as the primary care provider
25 for approximately 70 of the residents at Heritage Village, which represents approximately half of
26 the current residents at the facility. [See **Ex. 1** at 17:14-18:2.] Since May 2022, Witness 1 has

1 performed patient care rounds at Heritage Village two days per week, and her company maintains
2 an office on the Heritage Village campus where she also sees residents. [See **Ex. 1** at 16:11-17:1;
3 53:6-23.] Witness 1 signed 12 bedbound certification forms, all on January 22, 2024.

4 106. The second witness (“Witness 2”) is a physician’s assistant employed by a third-
5 party mobile medicine company. [See Excerpts from Examination Under Oath for Witness 2,
6 attached hereto as **Exhibit 2**, at 4:16-17.] Witness 2 has been seeing patients at Heritage Village
7 since April 2022, and currently provides primary care for approximately 40 residents. [See **Ex. 2**
8 at 13:22-14:13.] Witness 2 signed 12 bedbound certification forms, eight of which were signed
9 on June 22, 2023, and four of which were signed on January 22, 2024.

10 107. The third witness (“Witness 3”) is a physician employed by Defendant Ability
11 Hospice as Medical Director. [See Excerpts from Examination Under Oath for Witness 3,
12 attached hereto as **Exhibit 3**, at 4:15-24; 7:7-21.] Since October 2022, Witness 3 has conducted
13 virtual visits with patients through an online video link, but has never visited the Heritage Village
14 facility and does not necessarily know whether his patients are residents at Heritage Village or
15 another care facility. [See **Ex. 3** at 11:23-13:21.] Witness 3 signed nine bedbound certification
16 forms, seven of which were signed on January 19, 2024, and two of which were signed on January
17 22, 2024.

18 108. Together these three witnesses signed at least 33 bedbound consent forms. All three
19 witnesses testified that they harbored incorrect understandings of what they were signing. All
20 three witnesses testified that they were not aware of the regulations that govern the bedbound
21 certifications. All three witnesses said that they never reviewed the service plans for any of the
22 patients for whom they signed bedbound certification forms.

23 109. Witness 1 testified that despite treating numerous bedbound patients at Heritage
24 Village since May 2022, she had never been asked to sign a bedbound certification form until
25 January 2024. [See **Ex. 1** at 18:17-19:21.] Witness 1 also testified that she was not familiar with
26 the applicable regulation and that nobody had ever explained to her what requirements must be

1 met before signing the form. [See **Ex. 1** at 24:5-18.] Witness 1 testified that she had never been
2 given copies of her patients' service plans so she could evaluate the scope of services as required
3 by law, and therefore had never reviewed the scope of services for any of the bedbound patients.
4 [See **Ex. 1** at 31:1-15.]

5 110. Witness 2 testified that although she has signed bedbound certification forms for
6 Heritage Village and other facilities, she was not aware of the requirements for the certification
7 because, "I honestly don't really read it. I just sign it." [See **Ex. 2** at 23:12-24:1.] Witness 2 also
8 testified that she believed the certification forms only confirmed the fact that the patients were
9 bedbound, rather than certify that the facility can meet the patients' needs. [See **Ex. 2** at 24:2-12.]
10 Witness 2 testified that she does not review service plans before signing bedbound certification
11 forms, and in fact she has never even seen a service plan for any Heritage Village resident. [See
12 **Ex. 2** at 25:2-26:4.]

13 111. Witness 3 testified that although he had signed the bedbound certification forms for
14 Heritage Village, he had never reviewed any patient service plans and was not sure what a service
15 plan is. [See **Ex. 3** at 21:2-8.] Witness 3 testified that he believed the bedbound certification
16 forms were intended to grant permission to Heritage Village to confine the patients to a bed or
17 wheelchair, rather than certifying that the patients' needs could be met by Heritage Village. [See
18 **Ex. 3** at 19:1-12.] When asked how he was able to certify that the patients' needs could be met
19 by Heritage Village when he had never visited Heritage Village, never spoken to Heritage Village
20 employees, and never reviewed the patient service plans, Witness 3 responded, "It looks like I
21 shouldn't have, quite frankly." [See **Ex. 3** at 22:16-23:3.]

22 112. Based on the testimony of these three witnesses, at least 33 bedbound residents at
23 Heritage Village have still never received a proper medical evaluation to determine whether
24 Heritage Village can meet their needs. When faced with a choice between bringing the facility
25 into substantial compliance with Arizona law or merely generating paperwork that creates an
26 illusion of compliance, Heritage Village chose the latter option.

1 113. Despite their long history of failing to comply with state law, including over 170
2 ADHS citations and tens of thousands of dollars in previous civil penalties, Heritage Village
3 continues to put the health, safety, and well-being of their vulnerable adult residents at risk.

4 114. Because Heritage Village refuses to comply with resident care laws and regulations,
5 ADHS has initiated proceedings to revoke the Heritage Village license. Although Heritage
6 Village has operated in the past with expired licenses, a formal revocation of the license would
7 require all current Heritage Village residents to transfer to new facilities. This could pose a
8 monumental challenge, as it may be extremely difficult to find available rooms in other facilities
9 that are both capable of caring for the residents and affordable enough for the family members
10 who are paying for the long-term care.

11 115. For these reasons, the State is filing this action to protect the residents who are
12 endangered by Heritage Village's ongoing failure to comply with applicable laws, and to prevent,
13 restrain, and remedy the abuse, neglect, and exploitation of these vulnerable adults.

14 **COUNT 1 – ENDANGERMENT OF VULNERABLE ADULTS**

15 **(ALL OWNERSHIP AND ENTERPRISE DEFENDANTS)**

16 116. The allegations in paragraphs 1 through 115 are restated and incorporated as if fully
17 set forth herein.

18 117. All residents of Heritage Village are over the age of 18.

19 118. All residents of Heritage Village are vulnerable adults because they are unable to
20 protect themselves from abuse, neglect, or exploitation due to physical and/or mental impairments.

21 119. The bedbound residents of Heritage Village are particularly vulnerable, because
22 they are unable to ambulate even with assistance, and therefore rely entirely on Heritage Village
23 to meet their daily needs and protect them in emergency situations such as building fires.

24 120. The acts and omissions of Ownership Defendants and Enterprise Defendants have
25 resulted in abuse of Heritage Village residents, including but not limited to injuries caused by
26 negligent acts or omissions, unreasonable confinement, and sexual assault.

1 set forth herein.

2 128. Ownership Defendants and Defendants M. Leibfried and Nasser have acted and
3 continue to act in concert, on a for-profit basis, to advertise and sell residential long-term care
4 services and/or health care services to vulnerable adults.

5 129. In advertising and selling services to vulnerable adults and their family members,
6 Heritage Village claims to provide “Memory Care,” a term with no definition in any Arizona
7 statute or regulation.

8 130. On information and belief, during the process of advertising and selling “memory
9 care” services Heritage Village does not provide definitions of “supervisory care services,”
10 “personal care services,” or “directed care services,” all of which are defined terms under Arizona
11 law. On information and belief, Heritage Village does not group its services into those three
12 legally-defined categories.

13 131. Ownership Defendants and Defendants M. Leibfried and Nasser failed to disclose
14 to residents or their representatives the extent of the enterprise’s noncompliance with Arizona
15 statutes and regulations intended to protect vulnerable adults residing in assisted living facilities.
16 This includes, but is not limited to, Heritage Village’s failure to inform residents or their
17 representatives that it did not allow for independent medical certifications for bedbound residents
18 by making resident service plans available to reviewing providers – or that many residents did not
19 even have service plans that could be reviewed.

20 132. The Heritage Village web site presents potential residents and their families with
21 numerous positive reviews copied and pasted from other unidentified sites on the internet, without
22 attribution and without including any negative reviews. On information and belief, some of the
23 positive reviews posted on the Heritage Village web site are from people with close business or
24 personal connections to the Heritage Village enterprise, including but not limited to Joe Leibfried
25 (believed to be Defendant J. Leibfried), Mike Leibfried, George Conney, and Lynn Conney. The
26 web site omits any information that would explain the connection of these individuals to Heritage

1 Village.

2 133. By consolidating all prior licenses under one new license, and by changing the entity
3 name on the license to create a new facility number, Heritage Village concealed and suppressed
4 more than 100 citations from public view by making those citations invisible when searching the
5 public database for active licenses only.

6 134. Heritage Village's extensive history of citations and penalties for failing to comply
7 with Arizona law, as well as the irregular licensing history of the facility effectively concealing
8 the vast majority of the citations and penalties from prospective residents, are material facts to
9 anyone considering moving to Heritage Village or placing a loved one in the facility.

10 135. Republication of positive reviews while omitting negative reviews, as well as
11 having people connected with the facility submit positive reviews while concealing their
12 connection to the facility, are material facts to anyone considering moving to Heritage Village or
13 placing a loved one in the facility.

14 136. Ownership Defendants and Defendants M. Leibfried and Nasser intended for
15 potential residents and their families to rely on the concealment, suppression, and omission of
16 these negative facts.

17 137. Ownership Defendants and Defendants M. Leibfried and Nasser used deceptive and
18 unfair trade practices that unjustly enriched the enterprise at the expense of Heritage Village's
19 vulnerable adult residents.

20
21 **WHEREFORE** Plaintiff State of Arizona prays for:

- 22 a. Upon proper application and hearing, an order appointing a receiver to take
23 control of the Heritage Village enterprise, protect the vulnerable adults currently
24 residing at the facility, and bring the facility into compliance with all applicable
25 laws and regulations;
- 26 b. An order holding Ownership Defendants and Enterprise Defendants liable for

- 1 abuse, neglect, and exploitation of vulnerable adults in violation of APSA;
- 2 c. An order holding Ownership Defendants and Defendants M. Leibfried and
- 3 Nasser liable for consumer fraud in violation of ACFA;
- 4 d. An order requiring Ownership Defendants and Enterprise Defendants to pay
- 5 restitution to current and former Heritage Village residents and/or their families,
- 6 in an amount to be determined at trial;
- 7 e. An order requiring Ownership Defendants and Enterprise Defendants to pay
- 8 civil penalties in an amount to be determined at trial;
- 9 f. An order requiring Ownership Defendants and Does 1-100 to divest themselves
- 10 of any direct or indirect interest in the Heritage Village enterprise pursuant to
- 11 A.R.S. § 46-455(H)(1);
- 12 g. An order prohibiting Ownership Defendants and Enterprise Defendants from
- 13 engaging in any activities or investments involving the provision of care to
- 14 vulnerable adults in the State of Arizona, pursuant to A.R.S. § 46-455(H)(2),
- 15 including an order to divest themselves of any direct or indirect interest in any
- 16 health care facility or assisted living facility controlled by Notice Defendants in
- 17 the State of Arizona;
- 18 h. An order requiring Ownership Defendants and Enterprise Defendants to pay all
- 19 costs and expenses of the State's investigation of the conduct described herein;
- 20 i. An order directing the Attorney General to list the disposition of this matter in
- 21 the Elder Abuse Central Registry;
- 22 j. An order referring the Court's findings to the Arizona Department of Economic
- 23 Security as substantiated findings of abuse, neglect, and exploitation for the
- 24 purpose of placing all Defendants who are natural persons and Does 1-100 on
- 25 the Adult Protective Services Registry pursuant to A.R.S. § 46-459; and
- 26 k. Such other relief as the Court deems just and proper

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DATED this 15th day of March, 2024.

KRISTIN K. MAYES
ATTORNEY GENERAL

By: /s/ Shane M. Ham
Shane M. Ham
Assistant Attorney General
Attorneys for Plaintiff State of Arizona

EXHIBIT 1

EXCERPTS FROM EXAMINATION UNDER OATH “WITNESS 1”

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In Re the Matter of:)	
)	CLU-INV-2023-0056
)	
Heritage Village.)	
_____)	

EXAMINATION UNDER OATH OF

[REDACTED]

PHOENIX, ARIZONA

February 20, 2024

Prepared by:
Deborah L. Tucker, RPR
Certified Reporter
Certification No. 50464

**CERTIFIED
TRANSCRIPT**

14:16:39 1 Q. Okay. And can you tell me the name of your
14:16:43 2 current employer?

14:16:44 3 A. [REDACTED].

14:16:46 4 [REDACTED]

14:16:50 5 [REDACTED]

14:16:57 6 [REDACTED]

14:17:02 7 [REDACTED]

14:17:05 8 [REDACTED]

14:17:07 9 [REDACTED]

14:17:09 10 [REDACTED]

14:17:13 11 [REDACTED]

14:17:15 12 [REDACTED]

14:17:15 13 [REDACTED]

14:17:18 14 [REDACTED]

14:17:19 15 [REDACTED]

14:17:20 16 [REDACTED]

14:17:21 17 [REDACTED]

14:17:24 18 [REDACTED]

14:17:25 19 Q. And then what does [REDACTED] do?

14:17:27 20 A. We provide medical care services to different
14:17:32 21 populations. For instance, I work in the primary care
14:17:39 22 side like you normally would go and see your own primary
14:17:42 23 care doctor. And I'm on the grounds of Heritage Village,
14:17:46 24 so I round as a mobile primary care provider in Heritage
14:17:52 25 Village and two other assisted living facilities.

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[REDACTED]

Q. In the average week, how many days are you on site at Heritage Village?

A. Can you please clarify for me? On site seeing their patients or just on site on the campus?

Q. On site visiting with patients.

A. I am currently rounding two days a week.

Q. And do you go to Heritage Village on other days besides those two days a week?

A. I do not. My office is located on the grounds of Heritage Village, and I do see patients from outside the facility two days a week.

Q. Where on the grounds of Heritage Village is your office located?

A. We are just -- so, the same building as their main office, just one door to the, I guess, left of their

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14:23:35 25

main office.
[REDACTED]
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[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
Q. Okay. How many patients at Heritage Village do you currently see?
A. I don't -- I can't give you an exact number. I can give you a ball park.
Q. Okay. What's the ball park?
A. I would say I see about 70 patients at Heritage Village.
Q. And if I understand correctly, there are currently around 150 residents at Heritage Village. Does that seem accurate to you?
A. That seems accurate.
Q. So, approximately half of them are under your

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14:24:00 10
14:24:06 11
14:24:11 12
14:24:14 13
14:24:16 14
14:24:16 15
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14:24:56 19
14:25:01 20
14:25:04 21
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direct care?
A. Correct.
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]ts
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
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[REDACTED]
(Deposition Exhibit 1 was marked for
identification.)
BY MR. HAM:
Q. Okay. I have just handed you what has been
marked as Exhibit Number 1 for this examination. It is a
stack of documents that have been stapled together. Are
you familiar with these documents?
A. Yes.
Q. What are they?

14:25:16 1 A. These are documents that I was asked to sign by
14:25:23 2 Heritage Village on all of their bedbound or wheel-bound
14:25:27 3 patients.

14:25:27 4 Q. And what is a bedbound patient and what is a
14:25:31 5 wheel-bound patient?

14:25:32 6 A. A bedbound patient would be somebody that would
14:25:37 7 require the support of, like, a lift or three or more
14:25:43 8 people to transfer.

14:25:45 9 A wheelchair bound patient is somebody that
14:25:49 10 can transfer with maybe one-person assistance into a
14:25:53 11 wheelchair for mobility, to move around the facility.

14:25:57 12 Q. Okay. Had you ever signed forms like these forms
14:26:04 13 before the date that you signed these?

14:26:06 14 A. No.

14:26:07 15 Q. This is your first time signing these forms?

14:26:09 16 A. This is my first time signing these forms.

14:26:11 17 Q. So, you had started doing rounding at Heritage
14:26:17 18 Village in May of 2022, but they had never asked you to
14:26:20 19 sign any of these bedbound consent forms until January of
14:26:24 20 2024?

14:26:25 21 A. Correct.

14:26:25 22 [REDACTED]

14:26:30 23 [REDACTED]

14:26:35 24 [REDACTED]

14:26:41 25 [REDACTED]

14:31:28 1
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14:32:04 12
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[REDACTED]

Q. And you had never signed any like this for Heritage Village either?

A. No.

Q. Okay. You see the title of the documents there on Exhibit 1 it says "Bedbound Consent," and then underneath that it says "AZ Regulation R9-10-814(B)? Do you see that?

A. Yes.

Q. Are you familiar with that regulation?

A. I am not, no.

Q. Has anybody ever explained to you what the requirements are for signing off on one of these forms that you see in Exhibit 1?

A. No, they have not.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

14:40:15 1 Q. Okay. And then Point Number 2, it says, "Reviews
14:40:20 2 the assisted living facility's scope of services."

14:40:24 3 Have you ever been given any of the scope of
14:40:26 4 service documents from the assisted living facility to
14:40:26 5 review?

14:40:31 6 A. I have not.

14:40:32 7 Q. Okay. And then the last one says, "Signs and
14:40:37 8 dates a determination stating that the resident's needs
14:40:39 9 can be met by the assisted living facility within the
14:40:43 10 assisted facility's scope of services and, for a retention
14:40:48 11 of a resident, are being met by the assisted living
14:40:48 12 facility."

14:40:51 13 So, I understand your testimony is that you
14:40:53 14 did not review the facility's scope of services?

14:40:56 15 A. I did not.

14:40:56 16 [REDACTED]
14:41:00 17 [REDACTED]
14:41:01 18 [REDACTED]
14:41:04 19 [REDACTED]
14:41:07 20 [REDACTED]
14:41:09 21 [REDACTED]
14:41:13 22 [REDACTED]
14:41:15 23 [REDACTED]
14:41:19 24 [REDACTED]
14:41:19 25 [REDACTED]

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15:15:22 8
15:15:25 9
15:15:28 10
15:15:32 11
15:15:33 12
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15:15:39 14
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[REDACTED]

BY MR. HAM:

Q. Do you see any of the Heritage Village residents outside of the Heritage Village campus?

A. I have on occasion, yes, where they've come in to see me in clinic on clinic days.

Q. In general, would those patients come to your Tempe clinic?

A. No, the Mesa where I'm on grounds. We have a doctor's office on the grounds of Heritage Village.

Q. So, if I understand your testimony then, you're saying that sometimes instead of you visiting them in their rooms they come to your office on the Heritage Village campus?

A. Yes.

Q. Do they ever -- Have you ever seen any Heritage Village patients outside of the Heritage Village campus, which I'm defining to include your office there?

A. No. So, like, meaning do they come over to Tempe to see me? No, they do not.

[REDACTED]

[REDACTED]

EXHIBIT 2

EXCERPTS FROM EXAMINATION UNDER OATH “WITNESS 2”

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In Re the Matter of:)	
)	CLU-INV-2023-0056
)	
)	
Heritage Village.)	
)	
_____)	

EXAMINATION UNDER OATH OF [REDACTED]

PHOENIX, ARIZONA

February 21, 2024

Prepared by:
Deborah L. Tucker, RPR
Certified Reporter
Certification No. 50464



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[REDACTED]
the witness herein, having been first duly sworn by the
Certified Reporter, was examined and testified as follows:

EXAMINATION

BY MR. HAM:

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09:37:07
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09:37:43
09:37:44

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Q. Can you tell me, what is your current occupation?

A. I'm a physician assistant doing mobile medicine.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

09:48:12 1
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09:48:17 3
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09:48:20 5
09:48:22 6
09:48:28 7
09:48:33 8
09:48:37 9
09:48:37 10
09:48:38 11
09:48:40 12
09:48:40 13
09:48:46 14
09:48:47 15
09:48:50 16
09:48:53 17
09:48:57 18
09:49:01 19
09:49:04 20
09:49:08 21
09:49:09 22
09:49:25 23
09:49:25 24
09:49:33 25

[REDACTED]

Q. When did you first start having interactions with Heritage Village?

A. April of '22.

Q. How did that come to be?

09:49:42 1 A. So, basically, my company assigns each provider
09:49:48 2 different facilities and depending on how many patients
09:49:52 3 you desire to see. So, Heritage Village was actually
09:49:55 4 close to my home and so it was an easy transition.

09:50:01 5 So, initially I saw some of the patients at
09:50:04 6 Heritage Village. And then -- for [REDACTED] And then I had
09:50:08 7 transitioned to seeing all of the patients at Heritage
09:50:11 8 Village for [REDACTED].

09:50:12 9 Q. How many of the residents at Heritage Village are
09:50:17 10 patients of [REDACTED]?

09:50:19 11 A. I don't know that. The number has gone down
09:50:23 12 significantly. Estimate, maybe around 40 patients right
09:50:29 13 now.

09:50:30 14 [REDACTED]

09:50:37 15 [REDACTED]

09:50:39 16 [REDACTED]

09:50:40 17 [REDACTED]

09:50:42 18 Q. How often are you on site at Heritage Village?

09:50:45 19 A. Once a week.

09:50:50 20 Q. Is it the same day every week?

09:50:52 21 A. Yes.

09:50:52 22 [REDACTED]

09:50:53 23 [REDACTED]

09:50:54 24 [REDACTED]

09:51:04 25 [REDACTED]

10:02:33 1
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10:03:00 10
10:03:05 11
10:03:08 12
10:03:12 13
10:03:15 14
10:03:18 15
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10:03:45 25

[REDACTED]

Q. Okay. In total, for these four facilities, [REDACTED], [REDACTED], [REDACTED], and Heritage Village, how many total bedbound consent forms do you think you've signed?

A. I wouldn't have a clue. It's one of those situations that I go through, I look at the name and say, yep, they're in a wheelchair or bed all the time, and I just sign it.

Q. Are the bedbound consent forms that you've signed for other facilities substantially similar to the ones that are here in Exhibit 1 --

A. Yes.

Q. -- in terms of the wording of them?

A. I wouldn't know for sure. I honestly don't

10:03:49 1 really read it. I just sign it.

10:03:52 2 Q. Okay. When you say you don't really read it, you
10:03:57 3 just sign it, what do you believe are the criteria
10:04:01 4 necessary for you to sign the form?

10:04:04 5 A. Basically, that -- that these are my patients,
10:04:09 6 and I verify that they're either in a bed or in a
10:04:15 7 wheelchair continuously, but they're non-ambulatory.

10:04:20 8 Q. So, as far as you're concerned, when you sign one
10:04:22 9 of these forms all you're really saying is that you are
10:04:26 10 confirming the patient is unable to ambulate even with
10:04:28 11 assistance?

10:04:29 12 A. Correct.

10:04:29 13 [REDACTED]

10:04:33 14 [REDACTED]

10:04:35 15 [REDACTED]

10:04:42 16 [REDACTED]

10:04:43 17 [REDACTED]

10:04:44 18 [REDACTED]

10:04:48 19 [REDACTED]

10:04:49 20 [REDACTED]

10:04:51 21 [REDACTED]

10:04:55 22 [REDACTED]

10:04:58 23 [REDACTED]

10:05:02 24 [REDACTED]

10:05:05 25 [REDACTED]

10:05:08 1
10:05:09 2
10:05:12 3
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10:05:30 10
10:05:33 11
10:05:37 12
10:05:38 13
10:05:39 14
10:05:43 15
10:05:48 16
10:05:49 17
10:05:52 18
10:05:53 19
10:05:57 20
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[REDACTED]

Q. It says, "I certify that the resident needs can be met by this assisted living facility."

So, just on that phrase there then, I understand your testimony that you are not really certifying that their needs can be met so much as you're certifying your confirmation that they are indeed bedbound?

A. Yes.

Q. And then the sentence goes on to say, "within the scope of service, open parentheses, as per service plan, close parentheses," do you see that?

A. Correct.

Q. What do you believe "scope of service" means?

A. That the facility can meet the needs of this patient.

Q. And when it says "as per service plan," what does that mean?

A. Each patient has a service plan that is written by the facility signed by the family members.

Q. And do you review these service plans before signing the forms?

A. I do not.

Q. Have you ever seen any of the service plans for any of your patients at Heritage Village?

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10:06:48 10
10:06:56 11
10:07:01 12
10:07:04 13
10:07:08 14
10:07:09 15
10:07:12 16
10:07:14 17
10:07:21 18
10:07:21 19
10:07:24 20
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A. No.

Q. Do you have any input whatsoever as to what the service plans say?

A. I don't.

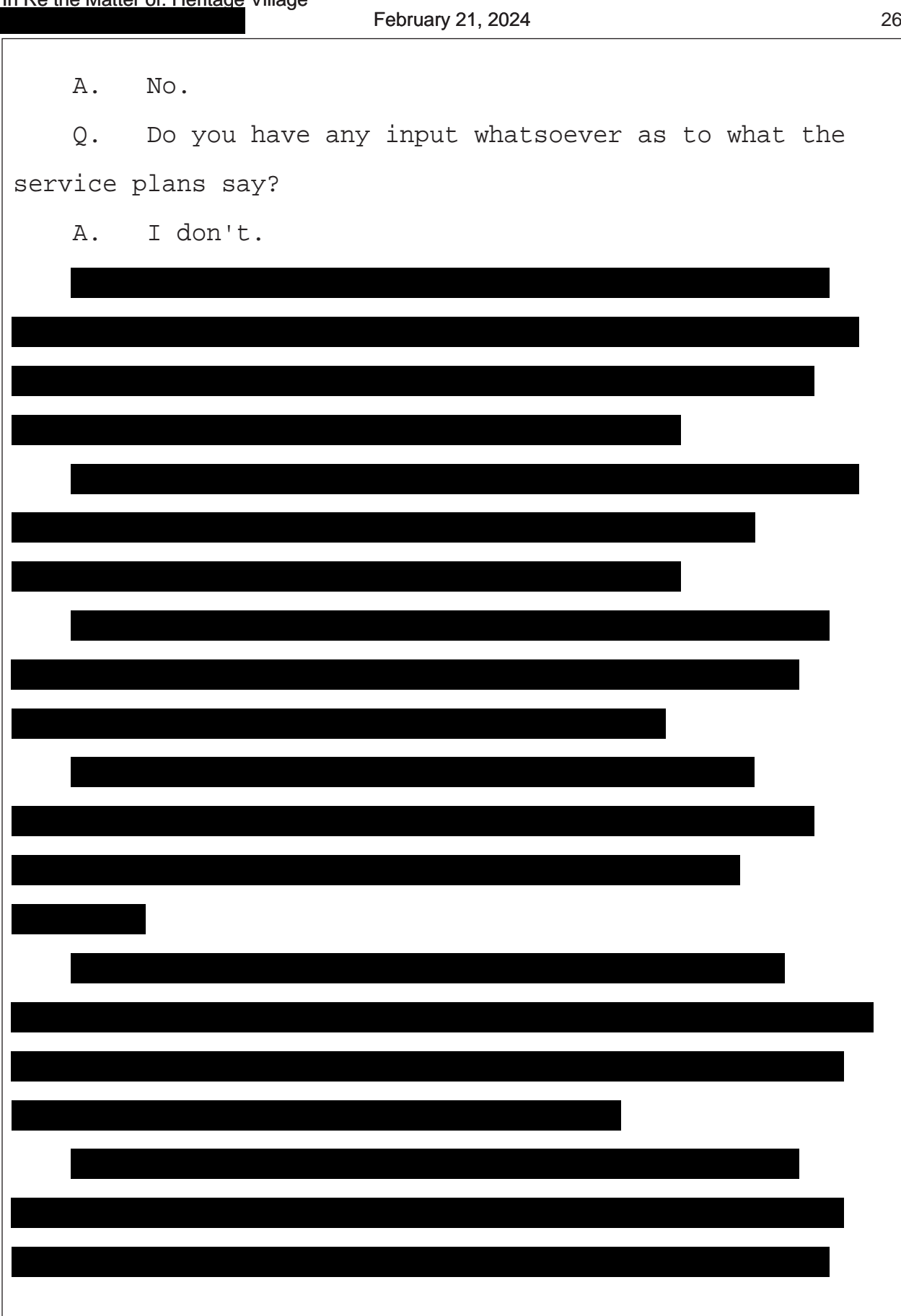


EXHIBIT 3

EXCERPTS FROM EXAMINATION UNDER OATH “WITNESS 3”

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In Re the Matter of:)	
)	CLU-INV-2023-0056
)	
Heritage Village.)	
_____)	

EXAMINATION UNDER OATH OF [REDACTED]

PHOENIX, ARIZONA
February 23, 2024

Prepared by:
Deborah L. Tucker, RPR
Certified Reporter
Certification No. 50464



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[REDACTED]
the witness herein, having been first duly sworn by the
Certified Reporter, was examined and testified as follows:

EXAMINATION

BY MR. HAM:

09:35:17
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09:35:30
09:35:30
09:35:31
09:35:32
09:35:35
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09:35:40
09:35:42
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09:35:51
09:35:58

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
Q. What is your current occupation?
A. Physician.
Q. Do you hold a license to practice medicine in
Arizona?
A. Yes.
Q. What kind of license do you hold?
A. Medical doctor, allopathic medicine.
Q. How long have you been licensed to practice in
Arizona?
A. 20, 21 -- almost 21 years. 2003.
[REDACTED]

09:37:02 1
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09:37:15 6
09:37:19 7
09:37:21 8
09:37:21 9
09:37:24 10
09:37:27 11
09:37:31 12
09:37:33 13
09:37:36 14
09:37:37 15
09:37:39 16
09:37:46 17
09:37:50 18
09:37:51 19
09:37:56 20
09:38:00 21
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09:38:05 23
09:38:07 24
09:38:08 25

[REDACTED]

Q. I'm going to be asking you some questions about documents you signed regarding the residents at the Heritage Village Assisted Living facility. Are you familiar with that facility?

A. I do take care of Hospice patients at that facility.

Q. How long have you been doing that?

A. I think October of 20-- October of '22, I think is the date that I started doing that.

Q. October of 2022?

A. Um-hum. 2022, yes, um-hum. I would have to check to know for sure, but that's roughly it.

[REDACTED]

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09:38:47 8
09:38:48 9
09:38:52 10
09:38:56 11
09:38:57 12
09:38:59 13
09:39:03 14
09:39:05 15
09:39:08 16
09:39:11 17
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[REDACTED]

Q. And what is the company that you work for?

A. Ability Hospice.

Q. Is that the only company that you work for?

A. No. I work for [REDACTED], is my primary employer.

Q. Can you explain a little bit about the relationship between your job with [REDACTED] and your job with Ability Hospice?

A. They're separate, separate employment. So, I work for [REDACTED], is my primary role. As a secondary employment, second job, so to speak, I work as a medical director for Ability Hospice.

Q. Okay. So you are -- Your title with Ability Hospice is Medical Director?

A. Yes.

[REDACTED]

[REDACTED]

[REDACTED]

09:43:42 1 pretty limited. My interaction with them is basically
09:43:46 2 seeing patients virtually. We -- With Hospice, you're
09:43:51 3 required to do a face-to-face visit with them. And we do
09:43:59 4 that as required by the Hospice regulations.

09:44:02 5 So, I've never actually been to Heritage
09:44:04 6 Village. I've seen individuals, but I don't know where
09:44:07 7 they are.

09:44:07 8 The nurse will message me and say, "Can you
09:44:10 9 do a face-to-face with this patient?"

09:44:12 10 They give me the patient's name, and I'll
09:44:16 11 say, "Sure. Let's do it at noon," or whatever. And I do
09:44:16 12 those usually on my lunch time when I'm at work with
09:44:19 13 [REDACTED].

09:44:20 14 And then they'll get on the video and
09:44:21 15 they'll say, "Oh, this is Mrs. [REDACTED]." And I'll talk to
09:44:25 16 Mrs. [REDACTED] for a few minutes and see how she's doing, see
09:44:28 17 if she has any concerns. And then we'll end the visit.

09:44:32 18 So, I don't actually know where that patient
09:44:34 19 is necessarily. So, that's . . .

09:44:39 20 Q. When you say you don't know where the patient is
09:44:42 21 necessarily, you mean you don't know if they're at
09:44:45 22 Heritage Village or you don't know what building and bed
09:44:48 23 they're in?

09:44:48 24 A. I don't know what facility they're at. I mean, I
09:44:51 25 don't know where these patients are necessarily. They may

09:44:54 1 be at Heritage Village. They may be elsewhere. They
09:44:57 2 don't really say, "Hey, I'm here at Heritage Village. I'm
09:44:59 3 doing this visit with you."

09:45:01 4 So, wherever they happen to be is where I do
09:45:04 5 the visit, so& . . .

09:45:05 6 Q. I see. So, the folks at Ability ask you to do a
09:45:10 7 Zoom meeting with a patient?

09:45:11 8 A. Correct.

09:45:12 9 Q. And you don't really know where the patient is
09:45:14 10 located, you just do the Zoom meeting?

09:45:16 11 A. Yeah. They'll say, you know, "Can you do this
09:45:19 12 for these two patients tomorrow at noon?"

09:45:21 13 I'll say, "Sure."

09:45:22 14 And then they'll patch me in. And it
09:45:25 15 appears that they're in some sort of assisted living
09:45:27 16 facility because they're in, you know, kind of a
09:45:30 17 residential-appearing place based on the background. But
09:45:33 18 they don't say, "I'm here at Heritage Village."

09:45:35 19 I believe we have patients elsewhere, as
09:45:39 20 well, so I don't know where they're streaming from, so to
09:45:42 21 speak.

09:45:42 22 [REDACTED]

09:45:45 23 [REDACTED]

09:45:47 24 [REDACTED]

09:45:47 25 [REDACTED]

09:53:32 1 Q. And so what did you understand that you were
09:53:35 2 certifying when you signed the forms?

09:53:40 3 A. That this individual was a fall risk and that --
09:53:46 4 that in order to have them confined to a bed or confined
09:53:55 5 to a wheelchair, they needed a doctor's signature. And so
09:54:00 6 that's . . .

09:54:02 7 Q. And who was it that told you that this was the
09:54:04 8 purpose for the form?

09:54:05 9 A. I recall the e-mail saying that these forms
09:54:10 10 needed to be signed to meet regulations, or something to
09:54:13 11 that effect. So, I can't remember, again, who the e-mail
09:54:16 12 was from.

09:54:16 13 [REDACTED]
09:54:23 14 [REDACTED]
09:54:27 15 [REDACTED]
09:54:31 16 [REDACTED]
09:54:32 17 [REDACTED]
09:54:32 18 [REDACTED]
09:54:35 19 [REDACTED]
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09:54:37 21 [REDACTED]
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09:54:44 23 [REDACTED]
09:54:49 24 [REDACTED]
09:54:50 25 [REDACTED]

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09:56:30 14
09:56:37 15
09:56:40 16
09:56:43 17
09:56:45 18
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[REDACTED]

Q. And those needs are as per the service plan as said here in parentheses?

A. Yeah. And I'm not sure what that service plan is, so . . .

Q. Have you ever seen any service plans for any of the patients at Heritage Village?

A. No, I haven't.

Q. And you've said already that you've never been to Heritage Village?

A. No.

Q. You've never spoken to anyone at Heritage Village?

A. Not that -- Beyond what we do -- If someone's at Heritage Village and someone's there on our end from Ability Hospice, but an employee of Heritage Village that I'm aware of, I do not.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

09:57:06 1
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09:57:25 11
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[REDACTED]

Q. When I say whether you've spoken to anyone at Heritage Village, what I mean is, have you spoken to anyone who is employed by Heritage Village?

A. Not that I'm aware of.

Q. Okay. So, how were you able to determine, if you had never been there and never spoken to any of the employees and never reviewed any of the service plans, how were you able to certify that Heritage Village was able to meet the patient's needs within the scope of service defined in the service plans?

A. It looks like I shouldn't have, quite frankly. I thought this was part of our -- this was part of our Ability Hospice, kind of, contract with them, or whatever. But now that you put it in that light, I probably should

09:58:05 1 not have signed this, quite frankly --

09:58:07 2 Q. Okay.

09:58:08 3 A. -- without having more information.

09:58:11 4 Q. Did anyone explain to you the purpose for the
09:58:17 5 form?

09:58:18 6 A. Not specifically beyond what this is. They said,
09:58:21 7 you know, "These" -- "These are our patients. We need to
09:58:25 8 have an order on file that they can be confined to a bed."

09:58:29 9 And so I said "Okay."

09:58:31 10 Q. Did anyone make an offer to you to provide
09:58:34 11 additional information about the patients that you didn't
09:58:38 12 already have?

09:58:38 13 A. No.

09:58:39 14 Q. Have you ever had access to the medical record
09:58:43 15 system at Heritage Village?

09:58:45 16 A. No.

09:58:45 17 [REDACTED]

09:58:45 18 [REDACTED]

09:59:04 19 [REDACTED]

09:59:04 20 [REDACTED]

09:59:07 21 [REDACTED]

09:59:09 22 [REDACTED]

09:59:10 23 [REDACTED]

09:59:12 24 [REDACTED]

09:59:15 25 [REDACTED]

Ham Declaration

Exhibit B



OFFICE OF THE ARIZONA ATTORNEY GENERAL

KRIS MAYES
ATTORNEY GENERAL

CIVIL LITIGATION DIVISION
CONSUMER PROTECTION & ADVOCACY SECTION
CONSUMER LITIGATION UNIT

SHANE HAM
SENIOR LITIGATION COUNSEL
602-542-7716
Shane.Ham@azag.gov

December 20, 2023

Heritage Village Bldg 2, LLC
dba Heritage Village Bldg 2, LLC
c/o National Document, LLC, Statutory Agent
300 W. Clarendon Ave., Ste. 240
Phoenix, AZ 85013

Heritage Village Assisted Living
licensed as Heritage Village Bldg 2, LLC [sic]
8035 E. Brown Road
Mesa, AZ 85207

**Re: Arizona Attorney General's Office Civil Investigative Demand of Heritage Village Assisted Living (CLU-INV-2023-0056)
Demand for Preservation of Documents**

To Whom It May Concern:

By delivery of this letter and its enclosures, the Attorney General's Office has served a civil investigative demand on the above-named entities. Accordingly, you have a legal duty to preserve all information in your custody or control that is potentially relevant to this investigation. It is your obligation to ensure that all persons who might have in their possession or under their control any potentially relevant information are fully aware of the duty to preserve described herein, and you take all reasonable steps to ensure that those persons preserve such information, without alteration, until further notice.

The Office of the Arizona Attorney General will pursue appropriate sanctions against anyone who intentionally or negligently causes or fails to prevent the destruction or alteration of any tangible object or document, including electronically stored documents, relevant to this investigation. The term "document" should be interpreted broadly to include any "writing," "recording," or "photograph," whether "original" or "duplicate," as those terms are used in Rule 1001 of the Arizona Rules of Evidence. Digital documents include all metadata associated with them. Preservation of digital documents includes preservation in full in their original format with their original attachments and characteristics. All devices of any type or condition that contain electronically stored information also should be preserved without alteration.

Preservation also includes the preservation of parts or incomplete portions of documents or tangible objects that may be obsolete, worn out, or damaged in any way.

If you have any document retention/destruction policies in effect, such policies must be stopped immediately with regard to any potentially relevant documents or objects.

You should take immediate steps to ensure that all potentially relevant tangible objects or documents stored by other persons in, for example, storage facilities or cloud servers, are preserved. This includes any documents in the possession of any attorneys who are engaged to represent you or the named companies.

If you have any questions about this reminder or any other aspect of this investigation, please call me. If you become aware of any destruction or alteration of potentially relevant tangible objects or documents, I will expect you to contact me immediately.

Sincerely,



Shane Ham
Senior Litigation Counsel
602-542-7716
Shane.Ham@azag.gov

SH/ih

Enclosure: Civil Investigative Demand



KRIS MAYES
ATTORNEY GENERAL

OFFICE OF THE ARIZONA ATTORNEY GENERAL
CIVIL LITIGATION DIVISION
CONSUMER PROTECTION & ADVOCACY SECTION

SHANE HAM
SENIOR LITIGATION COUNSEL
602-542-7716
Shane.Ham@azag.gov

CLU-INV-2023-0056

CIVIL INVESTIGATIVE DEMAND

TO: Heritage Village Bldg2, LLC dba Heritage Village Bldg 2, LLC
c/o National Document, LLC, Statutory Agent
300 W. Clarendon Ave., Ste. 240
Phoenix, AZ 85013

Heritage Village Assisted Living
licensed as Heritage Village Bldg 2, LLC [sic]
8035 E. Brown Road
Mesa, AZ 85207

YOU ARE HEREBY COMMANDED to file a written response to the following demand for information and attach or otherwise make available as directed the requested documents.

Your response must be made in accordance with the enclosed instructions **and must be made under oath by completing the verification below**. Once completed in accordance with the instructions your response must either be mailed or hand delivered to:

Shane Ham, Senior Litigation Counsel
Consumer Protection & Advocacy Section
Office of the Attorney General
2005 North Central Avenue
Phoenix, Arizona 85004-1592

The response must be received on or before **5:00 p.m. on January 5, 2024**.

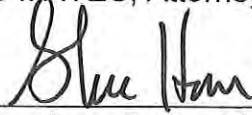
This demand is made pursuant to A.R.S. § 44-1524, in connection with an investigation under the Arizona Consumer Fraud Act (A.R.S. § 44-1521 *et seq.*). Your failure to comply with this demand will subject you to the proceedings and penalties provided by law.

The information you provide in response to each Civil Investigative Demand may be used against you in a civil or criminal proceeding brought by the Office of the Attorney General or any other local, state, or federal agency with whom it shares the information.

The Fifth Amendment to the Constitution of the United States and Article 2, Section 10 of the Arizona Constitution allow you to refuse to provide any information that may tend to prove you committed a crime, or subject you to fine, penalty, or forfeiture.

Executed this 20th day of December, 2023.

KRIS MAYES, Attorney General



Shane Ham, Senior Litigation Counsel

Telephone: (602) 542-7716

Shane.Ham@azag.gov

INSTRUCTIONS

1. This Civil Investigative Demand is directed as reflected on the first page and shall be deemed to include all corporations or other business entities that make up the Heritage Village Assisted Living facility, including but not limited to all entities relating to the nine buildings at the Mesa location and any entity previously licensed to provide services at the Mesa location.
2. In responding to each question, reproduce the question before the answer provided in response. In responding to requests for document production, state which documents are responsive to which requests.
3. In answering each question, divulge all responsive information and produce all responsive documents of which you and your officers, directors, employees, consultants, attorneys, agents, or other representatives have knowledge, possession, custody, or control.
4. If any facts set forth in your answers are supplied upon information and belief rather than actual knowledge, specifically describe or identify the source of such facts. If, after exercising due diligence to secure the answer, you cannot answer a question in full, state your answer to the fullest extent possible, and state why you are unable to answer the question fully. If the question does not apply to you, indicate that it is not applicable and state why it is not applicable.
5. Whenever a question calls for the identification of a document, include the following information in your answer:
 - a. the date of the document, if one is set forth on the document;
 - b. the exact title of the document;
 - c. the exact title of the file folder in which the document is located, if applicable;
 - d. the general subject matter of the document; and
 - e. the current location of the original document and the custodian thereof.
6. If there is a document which was once in your possession but now is not and is relevant to answering any question, identify the document by following the identification procedure set forth in Instruction 5 above.
7. Whenever the answer to a question is specifically contained within an existing document, you may produce that document in lieu of answering the question, but indicate, where applicable, what portion of the document answers the question.
8. If you produce documents in response to this Civil Investigative Demand, you must consecutively Bates label all documents.

9. If any document responsive to this Civil Investigative Demand is withheld under any claim of privilege, you are required to furnish a list identifying each document or portion of a document for which the privilege is claimed, together with the basis on which the privilege is claimed, the author(s) and recipient(s) of each document, and the paragraph or subparagraph of this Civil Investigative Demand to which each withheld document would respond.
10. If any document responsive to this Civil Investigative Demand has been lost, removed, destroyed, or altered prior to the service of this Civil Investigative Demand, you must:
 - a. describe each document, to the extent known, and the last time and location that the document is known or believed to have existed;
 - b. identify the date, sender(s), recipient(s), subject matter, present location, and location of any copies of each document; and
 - c. identify any person authorizing or participating in any removal, destruction or alteration of each document; the date of such removal, destruction, or alteration; and the method and circumstances of such removal, destruction, or alteration.
11. Whenever a question calls for the identification of a natural person, state the person's name, telephone number, last known residential and business address, e-mail address, and the business affiliation and title of the person at the time referred to in the question. Whenever a question calls for the identification of a business or organization, identify the persons employed by or representing such business or organization that have knowledge of the matter referred to in the question.
12. If you refuse to provide information in response to any of the attached demands because it tends to prove you committed a crime or may subject you to fine, penalty, or forfeiture, you should affirmatively state that is the reason for your refusal to provide information for that demand.

PREFERRED FORMATS FOR MATERIALS

A thumb drive or portable external hard drive is preferred for any responsive material that is capable of accurate reproduction in digital format. Secure electronic transfer can be performed either by encrypted email (if less than 25 MB) or via a secured file sharing website with a valid internet certificate. Otherwise, audio tapes are preferred in standard compact disc format; video tapes are preferred in standard DVD format; computer records are preferred on a CD or DVD usable in an IBM compatible personal computer running Windows, and using a standard program such as Excel or Word, or including the application software needed to examine or manipulate the records or information.

SUPPLEMENTATION REQUIRED

This is an ongoing Civil Investigative Demand. Respondent is required to supplement the initial response and provide the Attorney General with Documents that are responsive to the requests herein if responsive documents are newly discovered or created after the date of your response.

IDENTIFICATION OF DOCUMENTS PRODUCED

Each document submitted in compliance with this Civil Investigative Demand shall be produced in a manner that clearly identifies the paragraph of the request to which the document is responsive. Copies of original documents shall be legible to the same degree as the original.

DEFINITIONS

As used in this Civil Investigative Demand, and unless the context otherwise requires, the term:

“ADHS” means the Arizona Department of Health Services.

“Advertisement” or **“advertising”** includes the attempt by publication, dissemination, solicitation or circulation, oral or written, to induce directly or indirectly any person to enter into any obligation or acquire any title or interest in any merchandise.

“Correspondence” means all letters, electronic mail, telegrams, notices, text messages, social media messages, or other written communications or memoranda, or other records of conversations, meetings, conferences or other oral communications.

“Document” means any writing or any other tangible thing, whether printed, recorded, reproduced by any process, or written or produced by hand, including, but not limited to, letters, memoranda, notes, opinions, books, reports, studies, agreements, statements, communications (including inter-company and intra-company communications), correspondence, telegrams, logs, bookkeeping entries, summaries or records of personal conversations, diaries, calendars, telephone messages and logs, forecasts, photographs, tape recordings, computers, computer tapes or disks or other media upon which information may be recorded, computer bulletin board file or document, models, statistical statements, graphs, laboratory and engineering reports, notebooks, charts, plans, drawings, minutes, bylaws, resolutions, records of conferences, expressions or statements of policy, lists of persons attending meetings or conferences, lists of clients or customers or suppliers, reports or summaries of interviews, opinions or reports of negotiations, brochures, pamphlets, advertisements, circulars, trade letters, press releases, drafts of any document and revisions of drafts of any document, and any other similar paper or record. The term “document” also includes a copy of a document where the copy is not exactly the same as the original.

“Financial Records” shall mean, but is not limited to, any financial statements, income or loss statements, general ledgers or registers, cash receipts and disbursement

journals, balance sheets, profit and loss statements, statements of changes in financial conditions, audit engagement letters, annual reports (including but not limited to, annual reports to shareholders), federal, state or municipal tax returns, bank statements, canceled checks, bank drafts, certificates of deposit, passbooks, certificates or other evidence of interest in common trust funds, mutual funds or other investments, or other similar papers or records.

“Marketing” or **“marketing materials”** means “Advertisement” as defined herein.

“Merchandise” means any objects, wares, goods, commodities, intangibles, real estate, or services.

“Person” means any natural person or such person’s legal representative, partnership, domestic or foreign corporation, any company, trust, business entity, or association, any agent, employee, salesman, partner, officer, director, member, stockholder, associate, or trustee.

“Respondent” means the person(s) or entities to whom this Civil Investigative Demand is addressed, its merged, consolidated or acquired predecessors, divisions, units, subsidiaries whether or not wholly owned, and its present and former members, officers, directors, agents, representatives or employees of any of the foregoing.

“Sale” means any sale, offer for sale, or attempt to sell any merchandise or service for any consideration, including sales, leases and rentals of any real estate subject to any form of deed restriction imposed as part of a previous sale.

“You,” or **“your”** means the entity to whom this Civil Investigative Demand is directed as reflected on the first page, as well as that entity’s predecessors, successors, divisions, units, parents, subsidiaries, affiliates, members, officers, directors, agents, representatives, and employees.

CIVIL INVESTIGATIVE DEMAND

1. Describe in detail the policies and procedures of all Heritage Village facilities relating to the retention and destruction of documents and describe any action undertaken upon receipt of this CID to ensure that all documents responsive to this CID will be retained and not destroyed, whether pursuant to generally applicable policies and procedures, or otherwise.
2. For the named and licensed entity to whom this Civil Investigative Demand is directed, list all owners, members, shareholders, partners, or other person or entity holding an equity interest or share in the licensed entity.
3. For each entity listed in response to the previous item, list the full ownership interests in the same manner as the response to the previous item. For each subsequent entity named in response, repeat the process until only natural persons or trusts are named as responsive.
4. Provide a full list of all natural persons who exercise any kind of control or decision-making authority over any part of the Heritage Village operation in Mesa (including but not limited to owners, executives, managers, and board members) and provide a detailed description of each person's responsibilities with respect to Heritage Village.
5. Produce a list of all persons employed by Heritage Village in the past 36 months, including their names, dates of employment, job title, a brief description of job qualifications, and last known contact information.
6. Produce records of all staffing for all buildings in Heritage Village for each date in the past 36 months, including the name of each employee working on a given date, the position of each employee, the hours each employee was scheduled to work on that date, and the actual hours worked on that date.
7. Produce a list of all residents of the facility for the past 36 months along with the level of care that they received (supervisory, personal, directed) pursuant to their respective service plans.
8. Produce the written scope of services for the facility as required by A.A.C. § 9-10-803(A)(2).
9. Produce the written designation of a manager as required by A.A.C. § 9-10-803(A)(3).
10. Produce any written designation of acting manager as required by A.A.C. § 9-10-803(A)(6).
11. For all affected employees for the past 36 months, produce all documents indicating compliance with the background check requirements of A.R.S. § 36-411.

12. Produce any written designation of caregivers as required by A.A.C. § 9-10-803(B)(3).
13. Produce all documentation of policies and procedures as required by A.A.C. § 9-10-803(C).
14. Produce all documentation of all reports of alleged or suspected abuse, neglect, or exploitation of a vulnerable adult made by any employee as required by A.R.S. § 46-454.
15. Produce the quality management plan as required by A.A.C. § 9-10-804(A)(1).
16. Produce all quality management reports created in compliance with A.A.C. § 9-10-804(A)(2).
17. Produce all documentation of current contracted services as required by A.A.C. § 9-10-805(2).
18. Produce the complete personnel files of all managers, caregivers, and assistant caregivers including all documents demonstrating compliance with the requirements of A.A.C. § 9-10-806.
19. Produce all documentation provided by residents to the facility pursuant to the requirements of A.A.C. § 9-10-807(B).
20. Produce all residency agreements as required by A.A.C. § 9-10-807(D).
21. Provide all resident service plans as required by A.A.C. § 9-10-808(A).
22. Provide all respite care resident service plans as required by A.A.C. § 9-10-808(B).
23. Provide all calendars of planned activities as required by A.A.C. § 9-10-808(E).
24. Provide copies of the written documents provided to residents as required by A.A.C. § 9-10-810(A).
25. Provide copies of all arbitration agreements executed by residents or resident representatives in the past 36 months.
26. Produce copies of all advertising or marketing materials used by you in the past 36 months, including but not limited to flyers, pamphlets, web pages, marketing materials targeted at referral sources, text message campaigns, email campaigns, published advertisements, billboards, purchased search engine keywords, and broadcast advertising. This demand includes any materials intended for consumption by sales agents or third-party referral sources.
27. Provide a list of all persons or entities to whom any Heritage Village entity paid a fee or premium for referral of residents to Heritage Village.

28. Provide all contracts between any Heritage Village entity and any resident referral source.
29. Provide a detailed history of all ADHS licensing for the buildings at the Mesa locations, including issue dates, termination dates, and any periods that any buildings in the facility operated without a license.
30. Produce copies of all correspondence between you and ADHS regarding licensing, including but not limited to all applications for licenses and all communications with ADHS regarding the status, renewal, or consolidation of licenses.
31. Produce a list of all residents (or their representatives) who have filed any kind of formal complaint with Heritage Village or any governmental agency. For each resident, provide the resident's name, the resident's representative (if any), the last known contact information, the date of the complaint, the general nature of the complaint, and the status or resolution of the complaint.
32. Provide copies of all correspondence with ADHS relating to complaints, investigations, inspections, Statements of Deficiency, civil penalties, and any other enforcement actions against any part of the Heritage Village operation.
33. Produce a list of all civil legal actions (including lawsuits and arbitrations) filed against any of the entities affiliated with the Heritage Village operation in Mesa filed within the last 48 months. For each matter, state the case number, parties to the case, venue, judge or arbitrator, initiation date, and current status.

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<input type="checkbox"/> Return Receipt (electronic)	\$
<input type="checkbox"/> Certified Mail Restricted Delivery	\$
<input type="checkbox"/> Adult Signature Required	\$
<input type="checkbox"/> Adult Signature Restricted Delivery	\$

Postage	\$
Total Postage and Fees	\$

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PALM BUILDING

RECEIVED
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DEC 20 2023

Sent To	Heritage Village Assisted Living
Street and	licensed as Heritage Village Bldg 2, LLC [sic]
City, State,	8035 E. Brown Road Mesa, AZ 85207

PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions

E202 2255 1000 0140 2202

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Extra Services & Fees (check box, add fee as appropriate)	
<input checked="" type="checkbox"/> Return Receipt (hardcopy)	\$
<input type="checkbox"/> Return Receipt (electronic)	\$
<input type="checkbox"/> Certified Mail Restricted Delivery	\$
<input type="checkbox"/> Adult Signature Required	\$
<input type="checkbox"/> Adult Signature Restricted Delivery	\$

Postage	\$
Total Postage and Fees	\$

AZ AT JINNS GENERAL
PHOENIX MAIL ROOM
PALM BUILDING

RECEIVED
Postmark
DEC 20 2023

Sent To	Heritage Village Bldg 2, LLC
Street and	dba Heritage Village Bldg 2, LLC
City, State,	c/o National Document, LLC, Statutory Agent 300 W. Clarendon Ave., Ste. 240 Phoenix, AZ 85013

PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions

Ham Declaration

Exhibit C

Jennifer C. Wassermann
Direct Dial: (480) 344-4051
jwassermann@davismiles.com

February 23, 2024

Shane Ham, Senior Litigation Counsel
Office of the Arizona Attorney General
Consumer Protection & Advocacy Section – Consumer Litigation Unit
2005 N. Central Avenue
Phoenix, AZ 85004-1592
Via Email Only: Shane.Ham@azag.gov

RE: ARIZONA ATTORNEY GENERAL'S OFFICE CIVIL INVESTIGATIVE DEMAND ("CID") OF
HERITAGE VILLAGE ASSISTED LIVING (CLU-INV-2023-0056)

Dear Mr. Ham:

Without waiving any objections the target of this investigation has with respect to the unduly broad and burdensome nature of the CID request, we hereby submit the following in response to your request for a timeline:

1. An appropriate litigation hold was placed in effect and communicated to the management team. Details that may constitute confidential attorney client privileged information are withheld.
2. Entity ownership info. will be confirmed by March 1, 2024.
3. Same as (2) above.
4. Same as (2) above.
5. Objection to the overly-broad nature of this particular question in regard to a consumer fraud investigation. We can discuss what additional information, if any, is requested around the employee information that was previously provided.
6. Same objection and offer as above, pending conference of counsel.
7. Objection to the overly-broad nature of this particular question. We can discuss what additional information, if any, is requested around the resident information that has already been provided.
8. Done.
9. Done.
10. Done.
11. Same response as #5 above.
12. Same response as #5 above.
13. Done.
14. A production of documentation requested for 2022 - present can be provided by March 22, 2024.

15. Done.
16. A production of documentation request for 2022 – present can be provided by March 22, 2024.
17. Some documentation has already been produced, but any responsive documentation not already provided can be provided by March 26, 2024.
18. Same response as #5.
19. A production of any documentation responsive to this request can be provided by March 22, 2024.
20. Same response as #7 above.
21. Same response as #7 above.
22. Same response as #7 above.
23. Does the Arizona AG’s Office wish continued supplementation of activity calendars?
24. Resident rights are posted in each resident-occupied building on the premises, and are part of the new resident move-in packets. To pull & copy each such individual record from hundreds of files over an indeterminate amount of time is an unduly broad and burdensome request.
25. To the extent there are arbitration agreements responsive to this request, they will be provided by March 22, 2024.
26. Done. To the extent there are any supplements, that will be provided by March 26, 2024.
27. A list can be provided on/before March 15, 2024.
28. Done. To the extent there are any supplements, that will be provided by March 26, 2024.
29. ADHS licensing info. dating back to 2022 will be provided on/before March 1, 2024.
30. Each building was licensed at different times and ultimately building licenses were consolidated. It would be unduly burdensome and overbroad to provide “all correspondence and communications” with ADHS from the time the first building was licensed to present. A conference is requested to reasonable narrow down this request.
31. The respondent is unable to provide a list of residents who have filed any formal complaints with governmental agencies concerning Heritage Village because the agencies maintain complainants’ name and contact information as confidential. Complaints investigated by ADHS will be included as part of the response to (29).
32. Same response as (29) above. Confidential information covered under Regulations pertaining to informal settlement conference communications may be withheld consistent with A.R.S. § 41-1092.06(B).
33. This list will be provided on or before March 1, 2024.

Heritage Village wants to continue to be cooperative with this investigation, however, they are also now defending a Notice of Intent to Revoke issued by ADHS. While we understand these are two separate actions, their parallel timelines pose unique challenges. If we can get some realistic timeline parameters and narrow down the number of resident and staff records requested, that will help define the timeline it will take to produce those categories of records.

Sincerely,

DAVIS MILES, PLLC



Jennifer C. Wassermann
Partner

Ham Declaration

Exhibit D

February 27, 2024

Shane Ham, Senior Litigation Counsel
Office of the Arizona Attorney General
Consumer Protection & Advocacy Section – Consumer Litigation Unit
2005 N. Central Avenue
Phoenix, AZ 85004-1592
Via Email Only: Shane.Ham@azag.gov

RE: ARIZONA ATTORNEY GENERAL'S OFFICE CIVIL INVESTIGATIVE DEMAND ("CID") OF
HERITAGE VILLAGE ASSISTED LIVING (CLU-INV-2023-0056)

Dear Mr. Ham:

The licensee: Heritage Village Bldg 2 LLC (AL22412C) is registered as a foreign LLC with the AZ Corporation Commission as Heritage Village Bldg2, LLC. That entity is domiciled in Delaware.

The Manager and Member of the above is: MRC VSL HV Management LLC, also a Delaware limited liability company, whose members are:

- 1) Madison Realty Companies, LLC, a Colorado entity with a 75% interest in the above, and
- 2) RSC Int, LLC, a Nevada entity with a 25% interest in the above.

Per the First Amendment to the Operating Agreement of Madison Realty Companies, LLC dated as of August 13, 2021, the Members and Co-Managers are: Gary Langendoen and Xun Ying Li (aka Tracy) Langendoen; and Matthew Arnold is Co-Manager.

RSC Int, LLC's managers are: Robert Walsh and Ronald Stewart. It is believed that Ronald Stewart is the only Member of that entity, but that is what I need additional time to verify.

That would take the ownership chain down to the individual levels. [REDACTED]

[REDACTED]

Sincerely,

DAVIS MILES, PLLC



Jennifer C. Wassermann
Partner

Ham Declaration

Exhibit E

MASTER LEASE AGREEMENT

This MASTER LEASE AGREEMENT (this "**Lease Agreement**"), is made and dated as of October 14, 2022 (the "**Effective Date**") by and between MRC VSL HERITAGE VILLAGE II, LLC, a Delaware limited liability company (the "**Owner**"), having its principal office c/o Madison Realty Companies, LLC, 3452 E. Foothill Blvd., suite 720, Pasadena CA 91107; and MRC VSL HV MANAGEMENT II, LLC, a Delaware limited liability company (the "**Lessee**"), having its principal office at 864 Spruce Court, Denver, Colorado 80230.

WHEREAS, the Owner desires to lease to the Lessee the Leased Premises (hereinafter defined) on the terms and conditions set forth herein; and

NOW THEREFORE, in consideration of the foregoing Recitals and other good and valuable consideration, and intending to be legally bound, the Owner and the Lessee hereby agree as follows:

ARTICLE I **DEFINITIONS**

The Owner and the Lessee hereby mutually covenant and agree as follows:

1.01 **Definitions.** The following terms shall have the meanings specified below:

"**Additional Rent**" means all payments due from the Lessee under this Lease Agreement, except for Base Rent.

"**Base Rent**" means the payments of base rent in respect of the Leased Premises required pursuant to Section 4.02.A of this Lease Agreement.

"**Capital Additions**" means property of any kind acquired, constructed or rehabilitated by the Owner or the Lessee which is used or useful in connection with the Leased Premises and which is properly chargeable to the plant or property account under generally accepted accounting principles including, without limitation, land, easements, rights-of-way, leaseholds, other interests in real property, personal property, equipment, replacements of property retired or rendered obsolete, and permanent additions and betterments.

"**Department of Public Health**" means the Arizona Department of Health Services.

"**Event of Default**" means any of the events described in Section 7.01 of this Lease Agreement.

"**FF&E**" means furnishings, fixtures and equipment of all kinds used in connection with the Leased Premises, including additions, substitutions and replacements thereto.

"**Fiscal Year**" means the twelve month period hereby designated by the Owner and the Lessee for financial reporting purposes beginning on the first day of January in any calendar year and ending on the thirty-first day of December of such calendar year.

"Gross Revenues" means all revenues, receipts, income and other moneys at any time received by or on behalf of the Lessee from the operation of the Leased Premises, including, without limitation, revenues derived pursuant to the Subleases from the operation of the Leased Premises and all rights to receive the same whether in the form of accounts receivable, contract rights, chattel paper, instruments or other rights, and the proceeds thereof, and any insurance thereon, whether now existing or hereafter coming into existence and whether now owned or held or hereafter acquired by the Lessee, but excluding the proceeds of any loans to the Lessee and partnership contributions and insurance proceeds and eminent domain awards.

"Indemnified Parties" means the Lender, the Owner and any person who "controls" the Owner within the meaning of Section 15 of the Securities Act of 1933, as amended; any member, officer, director, official, employee, agent, general partner, limited partner and attorney of the Owner or the Lender; and their respective executors, administrators, heirs, successors and assigns (excluding the Lessee).

"Leased Premises" means the land located in Mesa, Arizona, and more particularly described in Exhibit A attached to this Lease Agreement, together with any additions thereto and substitutions therefor and any buildings, improvements, betterments, fixtures, equipment, furnishings, and other property, real or personal, now existing or at any time acquired, constructed or located thereon, including, but not limited to, the assisted living buildings currently located thereon, and including any Capital Additions, and all easements and other rights appurtenant thereto.

"Lease Term" means the duration of the term created in this Lease Agreement as specified in Section 2.02.

"Lender" means any holder of a deed of trust secured by the Leased Premises.

"Licenses" means one or more licenses to operate the Leased Premises as an assisted living facility, and any other licenses or permits required to operate the Leased Premises as a licensed facility.

"Loan" means any financing or refinancing secured by the Leased Premises.

"Operating Expenses" means all expenses required in operating and maintaining the Leased Premises, including, in each case, without limitation, (i) expenses of operation of the Leased Premises, including utilities, maintenance, repair, alteration, insurance and inspection expenses, (ii) expenses of professional, managerial, supervisory, administrative, engineering, architectural, legal, auditing and consulting services, (iii) sums payable to any Person, which sums, under generally accepted accounting principles, constitute expenses of operation and maintenance, and (iv) all taxes, assessments and other governmental charges, including, without limitation, property, franchise and excise taxes, but excluding taxes levied on income and/or profits of the Owner and/or the Lessee. Operating Expenses shall exclude Base Rent. Operating Expenses shall also include deductibles relating to casualty losses of a part of the Property.

"Person" means any natural person, corporation, partnership, limited liability company, trust, agency or other entity.

"Rent" means Base Rent and Additional Rent.

"Subleases" means, collectively, the sublease agreements between Lessor and Heritage Bldg7, LLC; Heritage Bldg8, LLC; Heritage Bldg9, LLC; Heritage Bldg1, LLC; Heritage Bldg2, LLC; Heritage Bldg3, LLC; Heritage Bldg5 LLC; and Heritage Bldg6, LLC.

Words importing persons shall include firms, associations and corporations, and words importing the singular number shall include the plural number and vice versa.

ARTICLE I

LEASE OF LEASED PREMISES: TERM OF LEASE

1.01 Lease of Leased Premises. The Owner hereby leases to the Lessee, and the Lessee hereby leases from the Owner, the Leased Premises on the terms and conditions set forth in this Lease Agreement.

1.02 Term of Lease. The Lease Term for the Leased Premises shall commence on the date hereof and shall expire on the tenth (10th) anniversary of such date, or such earlier date as may be hereinafter provided. In addition, provided the Lessee is not then in default, the Lessee shall have the option to extend the Lease Term for two (2) successive periods of five (5) years each upon the terms and conditions contained herein, upon written notice to the Owner given not later than 180 days prior to the expiration of the initial Lease Term or extended Lease Term, as the case may be.

1.03 Quiet Enjoyment. The Owner covenants and agrees with the Lessee that so long as the Lessee is in compliance with its obligations under this Lease Agreement, including the payment of the Rent and the other payments required under this Lease Agreement and the observance and performance of all the terms, covenants, and conditions on the Lessee's part to be observed and performed, the Lessee may peaceably and quietly have, hold and enjoy the Leased Premises for the Lease Term, subject to easements, agreements, restrictions, and covenants of record. The foregoing is subject to the rights reserved to the Owner of the Leased Premises.

1.04 Ownership of Capital Improvements. Any and all buildings and improvements now existing and/or hereafter erected on the Leased Premises; any betterments made to the Leased Premises; and all additions, substitutions, and replacements thereto during the Lease Term shall be owned by the Owner.

Lessee agrees that (a) except leases of FF&E entered into in the ordinary course of business with third-party lessees and property of tenants and residents of the Leased Premises, all FF&E located on the Leased Premises at the date of the Lease Agreement is and shall be the property of the Owner, and (b) any FF&E acquired by Owner or Lessee during the Lease Term remaining on the Leased Premises at the termination of the Lease Term shall be and/or become the property of the Owner.

ARTICLE II

RENTALS: APPLICATION OF GROSS REVENUES

2.01 General Obligation. This Lease Agreement is a general obligation of the Lessee.

3.02 Rental Payments.

A. The Lessee agrees to pay to the Owner during the Lease Term, as Base Rent for the Leased Premises, an amount equal to one hundred five percent (105%) of the aggregate annual (1) principal and interest (if applicable), (2) mortgage insurance premium (if applicable), (3) tax payment, (4) liability, property and other insurance payments and (5) replacement reserve fund, due from the Owner to Lender pursuant to the terms of the Loan. Payments of Base Rent shall be paid in monthly installments due in advance on the first day of each month. If the Lease Term commences on a date other than the first day of a calendar month, then the Base Rent for the partial month prior to the first full calendar month of the Lease Term shall be due and payable on the date of commencement.

B. If the Lessee fails to make any monthly payment of Base Rent and/or Additional Rent within fifteen (15) days after the due date thereof, the Owner may, at its option, impose a late charge upon the Lessee in an amount not to exceed five percent (5.0%) of the Base Rent and/or Additional Rent so delinquent.

C. If at the end of any Fiscal Year during the Lease Term, payments under this Lease have not been sufficient to cover all amounts due from the Owner to Lender in connection with the Loan, the Owner and Lessee shall renegotiate the amounts due under this Lease so that such amounts shall be sufficient to take care of such items.

D. If at the end of any Fiscal Year during the Lease Term, Lessee has positive net income in excess of \$1,000, the excess net income shall be deemed Additional Rent recognized by the Lessor and an expense recognized by the Lessee.

3.03 Security Interest In Gross Revenues. As security for the Rent and all other payments due to the Owner under the terms of this Lease Agreement, the Lessee grants to and creates in the Owner a security interest in the Gross Revenues, but the existence of such security interest shall not prevent the expenditure, deposit or commingling of Gross Revenues by the Lessee so long as all payments required under this Lease Agreement are made when due, nor prevent the write-off of any uncollectable accounts or bad debts. In the event of default by the Lessee under the terms and conditions of this Lease Agreement, beyond any applicable notice and cure periods, the Owner, without limitation of any other rights or remedies available to it and with any required consent of the Department of Public Health, shall have the right to appoint a receiver to collect the Gross Revenues and manage payments from such funds as permitted from time to time by the Department of Public Health, if applicable.

3.04 Obligations Unconditional. The obligations of the Lessee to make payments of Rent and all other payments required under this Lease Agreement shall be absolute and unconditional, without defense or set-off by reason of any default or other reason whatsoever, including by the Owner under this Lease Agreement or under any other agreement between the Lessee and the Owner or the Lender, and, except as may be expressly provided herein, such payments shall not be decreased, abated, postponed, or delayed for any reason whatsoever, including, without limitation, any acts or circumstances that may constitute failure of consideration, destruction of or damage to the Leased Premises, the taking by condemnation of any part of the Leased Premises, commercial frustration of purpose, failure of the Owner to

perform and observe any agreement, whether expressed or implied, or any duty, liability or obligation arising out of or connected with this Lease Agreement, or any defects in the Leased Premises or any failure of the Leased Premises to have been constructed in accordance with the plans and specifications therefor and/or applicable law, or failure of any resident or occupant of the Lessee to pay the fees, rentals or other charges owed to the Lessee, and irrespective of whether or not any such resident or occupant of the Lessee receives either partial or total reimbursement as a credit against such payment, it being the intention of the parties that the payments required of the Lessee under this Lease Agreement will be paid in full when due without any delay or diminution whatsoever.

3.05 Net Lease. This Lease Agreement is intended to be an entirely "net" lease, intending hereby to impose the burden of payment of all costs and expenses related to the use and occupancy of the Leased Premises during the Lease Term upon the Lessee. The Lessee agrees to pay when due all real estate and personal property taxes and special assessments assessed or imposed upon the Leased Premises during the Lease Term or which may be charged to the Owner in connection with the Leased Premises during the Lease Term and treat such payments as Operating Expenses. The Lessee agrees also to pay when due all payments required by this Lease Agreement, and premiums for liability insurance and full coverage hazard insurance on the Leased Premises during the Lease Term, and to treat such payments as Operating Expenses. The Lessee agrees also to pay when due all other Operating Expenses. Notwithstanding the foregoing, the Lessee shall not be liable for any federal, state or local income taxes which may be assessed against the Owner.

ARTICLE IV **COVENANTS AND REPRESENTATIONS OF THE LESSEE**

4.01 Maintenance and Operation of Leased Premises. The Lessee covenants that during the Lease Term, it shall:

A. pay or cause to be paid all costs of operating the Leased Premises including, without limitation, all charges for water, electricity, light, heat or power, sewage, telephone and other utility service, rendered or supplied during the Lease Term; all water, water meter, and sewer rents, rates, and charges; and any and all other governmental levies, fees, rents, assessments, or taxes and charges;

B. at its own cost or expense keep and maintain, or cause to be kept and maintained, in good repair and condition (excepting reasonable wear and tear), the Leased Premises and all additions and improvements thereto, excluding any rebuilding or restoration following damage to or destruction or condemnation of all or part of the Leased Premises, but in any event in such condition as Lender may require during the term of any Loan;

C. make, or cause to be made, all repairs, renewals, replacements and improvements to the Leased Premises in order to maintain adequate service and quality resident care;

D. not permit or suffer any waste of any of the Leased Premises;

E. maintain, or cause to be maintained, in good standing its Licenses and promptly comply, unless contested in good faith, with any and all requests and recommendations of the Department of Public Health and its representatives with respect to the operation of the Leased Premises, in providing care to residents;

F. comply with all applicable requirements of Titles XVIII and XIX of the Social Security Act, and the rules and regulations thereunder, as the same may now or hereafter be in effect, in order to maintain its status in good standing as a provider of health care services under such Titles;

G. upon receipt, promptly furnish the Owner with copies of any inspection reports made by the Department of Public Health or the United States Department of Health and Human Services, and promptly undertake to correct any deficiencies noted in such inspection reports regarding its operation of the Leased Premises as an assisted living facility; and

H. promptly inform the Owner of any decisions on behalf of the Department of Public Health as to a change in status of any certificate or license affecting the Lessee's operation of the Leased Premises as an assisted living facility.

4.02 Maintenance of Entity Existence. The Lessee agrees that during the Lease Term (unless this Lease Agreement is assigned in accordance with its terms, in which event this Section shall apply to such assignee), it will maintain its entity existence, will continue to be a limited liability company organized under the laws of the State of Delaware, will promptly pay all taxes assessed against it or any of its assets by any federal, state or local governmental authority, will not dissolve or otherwise dispose of all or substantially all of its assets, and will not consolidate with or merge into another entity or permit one or more other entities to consolidate with or merge into it.

4.03 Management. The Lessee agrees at all times during the Lease Term of this Lease Agreement to employ or cause to be employed a qualified management firm and/or qualified administrator to supervise the operation of the Leased Premises, who shall be experienced in the management and operation of facilities of the nature and size of the Leased Premises, and who shall be subject to the approval of the Owner and any Lender during the term of any Loan.

4.04 Payment of Lawful Taxes and Charges; Discharge of Liens.

A. The Lessee agrees to pay all taxes and assessments or other municipal or governmental charges of any kind whatsoever that may at any time during the Lease Term be lawfully imposed, levied or assessed upon or in respect of the Lessee's income, operations, assets or property, including the Leased Premises, or any part thereof, when the same shall become due, including any machinery, equipment or related property installed or brought by the Lessee therein or thereon, and all utility and other charges incurred in the operation, maintenance, use, occupancy and upkeep of the Leased Premises; provided, that with respect to special assessments or other governmental charges that lawfully may be paid in installments over a period of years, the Lessee shall be obligated to pay only such installments as are required to be paid during the term of this Lease Agreement. Notwithstanding the foregoing, the Lessee shall not be liable for any federal, state or local income taxes which may be assessed against the Owner.

B. The Lessee may, at its own expense and in good faith, contest any such taxes, assessments, charges, claims or demands and, in the event of any such contest, may, with the approval of the Owner, permit the taxes, assessments, charges, claims and demands so contested to remain unpaid during the period of such contest and may appeal therefrom.

4.05 Compliance With Law.

A. The Lessee covenants, represents and warrants that at all times during the Lease Term:

(1) all actions heretofore and hereafter taken by the Lessee with respect to the Leased Premises, including all repairs, additions, alterations or improvements thereto, have been and will at all times be in compliance in all material respects with all applicable requirements of federal, state and local laws, ordinances, rules, regulations and orders, and with all applicable requirements of any agency, board, or commission created under the laws of the state where the Leased Premises are located, or any other duly constituted public authority, and any requirement of an insurance company so long as such company is providing insurance in respect to the Lessee or the Leased Premises; and

(2) it shall not take any action which would cause the Leased Premises to be in violation of such laws, ordinances, rules, regulations or orders.

B. Notwithstanding any provision of this Lease Agreement, the Lessee shall have the right to contest in good faith any law, ordinance, rule, regulation or order, provided that such action is promptly and diligently pursued, and the Lessee agrees to keep the Owner informed as to the status of such contest and provided further that such action does not, in the Owner's judgment materially adversely affect the Lessee's ability to operate the Leased Premises and pay the Rent.

4.06 Additions and Alterations. Except where an emergency situation exists, during the Lease Term:

A. The Lessee shall not, without the prior written approval of the Owner, which will not be unreasonably withheld or delayed, make any alterations, changes, replacements, improvements and additions of a structural nature to the Leased Premises;

B. The Lessee agrees not to permit any alienation, removal, demolition, substitution, improvement, alteration or deterioration of the Leased Premises or any other act which might impair or reduce the usefulness or value thereof or the Owner's interest therein; and

C. The Lessee agrees to comply with all applicable requirements of law with respect to such alterations, changes, replacements, improvements and additions.

4.07 Financial and Other Restrictions. So long as this Lease Agreement remains in effect (and, as to the records required hereunder, for a period of three years thereafter), the Lessee agrees to:

A. Keep proper books of record and account in which full, true and correct entries will be made of all its business transactions in accordance with generally accepted accounting principles;

B. Make payment of all indebtedness incurred in the ordinary course of the Lessee's business within the times provided under the terms of such indebtedness and make payments of all taxes, governmental charges and/or payments in lieu of taxes promptly (unless the Lessee is contesting the validity thereof in good faith);

C. Provide to the Owner annual financial statements with respect to the Leased Premises, prepared by a certified public accountant or firm of certified public accountants acceptable to the Owner; and

D. With reasonable promptness provide to the Owner any other data and information which may be reasonably requested from time to time.

4.08 Inspections. The Lessee agrees that upon reasonable request, the Owner and its designees and representatives may at all reasonable times, upon reasonable notice, subject to the rights of patients, residents and tenants, if any, examine and inspect the Leased Premises. The Lessee will, on the request of the Owner, promptly make available for inspection by the Owner and its designees and representatives copies of all of the Lessee's correspondence, books, records and other documentation relating to the Leased Premises, but excepting communications between the Lessee and its attorneys. The Lessee agrees to maintain accounting records for the Leased Premises in accordance with its customary practice, separate from any general accounting records which the Lessee may maintain in connection with the Lessee's general business activities. The Lessee agrees that the Owner and its designees and representatives shall, at any reasonable time, have access to and the right to examine all accounting records of the Lessee which relate directly or indirectly to the Leased Premises.

4.09 Assignment and Subletting. Except as set forth in this Section 4.09, the Lessee may not assign this Lease Agreement or sublease the Leased Premises or any portion thereof without the prior written consent of the Owner. The Lessee shall be permitted to enter into leases and other possession and use agreements in the nature of assisted living rental, lease and/or services agreements with individual persons or vendors in the ordinary course of its operations.

4.10 Indemnification Concerning the Leased Premises.

A. The Lessee covenants and agrees, at its expense, to pay and to indemnify and save the Indemnified Parties harmless of, from and against, any and all claims, damages, demands, expenses, liabilities, and losses of every kind, character, and nature asserted by or on behalf of any person arising out of, resulting from, or in any way connected with, the condition, use, possession, conduct, management, operation, or leasing of the Leased Premises or any part thereof during the Lease Term, except for any claim, damage, demand, expense, liability or loss arising out of the negligence or willful misconduct of the party seeking indemnity.

B. If any action is brought against any Indemnified Party based upon any of the above and in respect to which indemnity may be sought against the Lessee, the Indemnified Party involved may request in writing that the Lessee assume the defense thereof, including the

employment of counsel selected by the Lessee satisfactory to such Indemnified Party (as reasonably determined), the payment of all costs and expenses and the right to negotiate and consent to settlement. Any one or more of the Indemnified Parties shall have the right to employ separate counsel at the sole cost and expense of such Indemnified Party in any such action, to participate in the defense thereof. The Lessee shall not be liable for any settlement of any such action effected without its consent, which consent shall not be unreasonably withheld nor delayed, but if settled with the consent of the Lessee or if there be a final judgment for the plaintiff in any such action, the Lessee agrees to indemnify and hold harmless the Indemnified Parties from and against any loss or liability by reason of such settlement or judgment.

C. The Lessee shall have the right to obtain insurance, if available, against the risks which it has undertaken in paragraph A of this Section, and to treat the cost of such insurance as a part of Operating Expenses.

4.11 Representations of the Lessee. The Lessee represents and warrants as follows:

A. Due Organization. The Lessee is a limited liability company, duly organized, validly existing and in good standing under the laws of the State of Delaware, and is duly authorized and qualified to operate this type of facility in the State of Arizona. The Lessee has powers adequate for the execution, delivery and performance of its obligations under this Lease Agreement and for carrying on the business now conducted by it and contemplated in connection with the Leased Premises. The execution and delivery of, and the performance by the Lessee of its obligations under this Lease Agreement have been duly authorized by all appropriate action by the Lessee, and this Lease Agreement constitutes the valid and binding obligations of the Lessee, enforceable in accordance with its terms, except as enforceability may be subject to the exercise of judicial discretion in accordance with general equitable principles and to applicable bankruptcy, insolvency, reorganization, moratorium and other laws for the relief of debtors heretofore or hereafter enacted to the extent that the same may be constitutionally applied.

B. Legal Proceedings. There is no action, suit, proceeding (including, without limitation, any condemnation proceeding or proceeding in the nature of bankruptcy or for reorganization or arrangement), or investigation at law or in equity before or by any court or public board or body, pending or, to the knowledge of the Lessee after due investigation, threatened, against the Lessee or the Leased Premises, nor, to the best knowledge of the Lessee, any basis therefor, wherein an unfavorable decision, ruling or finding would, in any material respect, adversely affect the business, assets or condition (financial or otherwise) of the Lessee or the Leased Premises or the transactions contemplated by this Lease Agreement, or which in any way would adversely affect the validity of this Lease Agreement.

C. Compliance With Law: Consents. The Lessee is not in violation of any term or provision of its organizational documents or in violation of any term or provision of any mortgage, lease, agreement or other instrument which is material to its business or assets, or of any judgment, decree, governmental order, statute, rule or regulation by which it is bound or to which it or any of its assets is subject. The execution, delivery and performance of and compliance with this Lease Agreement will not violate or constitute a default under the organizational documents of the Lessee or of any term or provision of any mortgage, lease, agreement or other instrument, or of any judgment, decree, governmental order, statute, rule or regulation by which

the Lessee is bound or to which any of its assets is subject. No approval by, authorization of, or filing with any federal, state, or local or other governmental commission, board, or agency or other governmental authority is necessary in connection with the execution and delivery of this Lease Agreement by the Lessee.

D. The Facility.

(1) The Lessee agrees to operate the Leased Premises as an assisted living facility.

(2) In the occupancy, maintenance, improvement and operation of the Leased Premises, the Lessee shall at all times comply in all respects with all applicable building, zoning and land use, environmental protection, sanitary, safety and other laws, rules and regulations, and shall not permit a nuisance thereon.

E. The foregoing representations and assurances are made for the benefit of the Owner and not for the benefit of any other third party.

4.12 Performance by Sublessees. Each of the covenants in this Article IV shall be included in the Subleases and performance thereof may be delegated to each sublessee.

ARTICLE V
INSURANCE AND CONDEMNATION

5.01 Insurance Coverage and Terms.

A. The Lessee agrees to procure and maintain, or cause to be procured and maintained, during the Lease Term, commercial general liability insurance and property insurance coverages with respect to the Leased Premises, naming the Owner and the Lender as additional insureds.

B. In the event that the Lessee fails to maintain any insurance as provided in this Section 5.01, the Owner may, at its option and upon such notice to the Lessee as is reasonable under the circumstances, procure and maintain such insurance. The Lessee agrees and covenants to pay any amounts so advanced therefor by the Owner, together with interest thereon at the prime rate of interest published in the Wall Street Journal plus five percent (5.0%), from the date thereof.

5.02 Insurance Proceeds. In the event of damage or destruction to the Leased Premises, the decision to repair, reconstruct, restore or replace the Leased Premises shall be made by the Owner.

5.03 Eminent Domain. Subject to the terms of any Loan, the proceeds of any condemnation award or other compensation paid by reason of a conveyance in lieu of the exercise of such power, with respect to the Leased Premises or any portion thereof shall be the property of the Owner. The Lessee shall, however, be entitled to recover any amounts payable to it for moving expenses, loss of personal property, and the like so long as they do not affect the Owner's award.

**ARTICLE VI
DEFAULT AND REMEDIES**

6.01 Events of Default. Each of the following shall be an "Event of Default" under this Lease Agreement:

A. If payment of any amount due under this Lease Agreement is not made when it becomes due and payable and if such payment remains unpaid for a period of fifteen (15) days; or

B. If the Lessee receives a notice of termination of any Licenses or "fast track" de-certification and such notice has not been suspended, extended, withdrawn or terminated within the time period required by the applicable governmental authority; or

C. Upon the denial, refusal to issue or loss of any permits or approvals necessary to operate the Leased Premises as an assisted living facility or if any such permits or approvals are at material risk of termination; or

D. If the Lessee shall:

(1) admit in writing its inability to pay its debts as they become due, or

(2) file a petition to be adjudicated a voluntary bankrupt in bankruptcy or a petition to otherwise take advantage of any federal or state bankruptcy or insolvency law, or

(3) make an assignment for the benefit of its creditors or seek a composition with its creditors, or

(4) consent to the appointment of a receiver of itself or of the whole or any substantial part of the Leased Premises, or

E. If (i) the Lessee shall, upon an involuntary petition under any section or chapter of the federal bankruptcy laws filed against it, be adjudicated a bankrupt; or (ii) a court of competent jurisdiction shall enter an order or decree appointing a trustee or receiver (interim or permanent) or appointing the Lessee a debtor-in-possession, with or without the consent of the Lessee, of the whole or any substantial part of the Leased Premises, or of the Gross Revenues, or approving a petition filed against the Lessee seeking reorganization or an arrangement under the federal bankruptcy laws or any other applicable law or statute of the United States of America or any legal subdivision thereof; and such adjudication, order or decree is not dismissed or vacated within a period of sixty (60) days from the date thereof; or

F. If the Lessee defaults in the due and punctual performance or observance of any other representation, agreement or covenant in this Lease Agreement and such default continues for thirty (30) days after written notice requiring the same to be remedied has been given by the Owner.

6.02 Remedies. Upon or after the occurrence of any Event of Default, the Lessee, upon demand of the Owner, shall forthwith surrender to the Owner the actual possession of the Leased

Premises and the Owner may enter and take possession of the Leased Premises and may exclude the Lessee, its agent and employees wholly therefrom. Upon or after the occurrence of any Event of Default the Owner may, upon notice, do any or all of the following at the Lessee's risk:

A. Re-enter and take possession of the Leased Premises or any portion thereof without terminating this Lease Agreement, and lease the Owner's interest in such Leased Premises for the account of the Lessee to any other party, holding the Lessee liable for the difference between (i) the net proceeds to the Owner from such re-leasing and (ii) the Rent and other amounts payable by the Lessee and due under this Lease Agreement, including the expenses of the Owner and the Lender, including reasonable attorneys' fees, incurred in connection with such default.

B. Terminate the Lease Term, exclude the Lessee from possession of the Leased Premises and lease the Owner's interest in the Leased Premises for the account of the Lessee, to any other party, holding the Lessee liable for all Rents and other amounts due under this Lease Agreement and not paid by such other party.

C. Take whatever action at law or in equity may appear necessary or desirable to collect the payment then due and thereafter to become due, or to enforce performance and observance of any obligation, agreement or covenant of the Lessee under this Lease Agreement.

6.03 Cooperation After Default. Lessee acknowledges and agrees that a significant portion of the value of the Leased Premises to the Owner is related to the ongoing operation of the Leased Premises as an assisted living facility. In the event the Owner exercises its rights under this Lease to take possession of or to re-let the Premises, the Owner intends to continue to operate the Leased Premises or lease the Leased Premises to a Lessee to operate the Leased Premises without interruption in the day-to-day activities of the Leased Premises in order to preserve the value of the Premises, and Lessee agrees to take any action and execute any documents reasonably deemed necessary or desirable by the Owner to avoid any interruption in the day-to-day operation of the Leased Premises and to ensure an orderly transition in the operation of the Leased Premises' business to the Owner or any new Lessee of the Premises. Without limiting the generality of the foregoing, Lessee agrees to (a) take the necessary steps to assign, at the Owner's option and request, to the Owner or any new Lessee of the Premises any and all Licenses, leases, contracts or other agreements relating to the operation of the Leased Premises and (b) assist the Owner in obtaining any new licenses or approvals as quickly as possible. Because monetary damages will not be sufficient to compensate the Owner for the loss in value caused by the cessation of operations of the Leased Premises, the Owner shall be entitled to specific performance of the terms and provisions of this Section 6.03.

6.04 Cumulative Rights: No Implied Waiver. No remedy conferred upon or reserved to the Owner by this Lease Agreement is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Lease Agreement or now or hereafter existing at law or in equity or by statute. No waiver by the Owner of any obligations, agreements or covenants under this Lease Agreement shall be deemed a waiver of any subsequent breach, and no delay or omission to exercise any right or power shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. Notwithstanding the existence of an Event of Default, the Owner shall

be entitled to continue to collect and to receive rent and other amounts owed hereunder without being deemed to have waived such default or any of its remedies.

ARTICLE VII MISCELLANEOUS

7.01 Surrender of Possession. Except as otherwise expressly provided in this Lease Agreement, at the expiration or earlier termination of the Lease Term (such date being referred to as the "**Closing Date**"), the Lessee agrees to surrender possession of the Leased Premises peacefully and promptly to the Owner in as good a condition as at the commencement of the Lease Term, loss by fire or other casualty covered by insurance, condemnation, or ordinary wear, tear, and obsolescence excepted. As of the Closing Date, this Lease Agreement shall become and be construed as an absolute assignment for purposes of vesting in the Owner (or the Owner's designee) all of Lessee's right, title, and interest in and to the following, to the extent assignable by law:

- A. the Licenses;
- B. all provider agreements;
- C. all certificates of need, if any;
- D. all documents, charts, personnel records, patient records, and other documents relating to the Leased Premises or operations at the Leased Premises;
- E. all existing agreements with patients and residents of the Leased Premises and any guarantors of such agreements and any and all patient trust fund accounts;
- F. all other assignable intangible property not enumerated above that is now or in the future used in connection with the operation of the Leased Premises as an assisted living facility;
- G. Lessee shall sign and deliver to the Owner, or its designee, any documents that may be reasonably necessary to transfer the foregoing to the Owner. If necessary for the Owner to operate the Leased Premises, for the period commencing on the Closing Date and ending on the date that the Owner or its designee obtains all appropriate licenses and certifications required to operate the Leased Premises as an assisted living facility, the Owner shall operate the Leased Premises as a manager under a management agreement with Lessee, with the Owner responsible for all costs of such operation (e.g., taxes, insurance, and maintenance).

7.02 Successors and Assigns. This Lease Agreement shall inure to the benefit of and shall be binding upon the Owner, the Lessee and their respective successors and permitted assigns.

7.03 Severability. In the event any provision of this Lease Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision of this Lease Agreement.

7.04 Counterparts. This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

7.05 Notices. All notices or other communications provided for in this Lease Agreement shall be in writing and shall be delivered personally to, or sent by certified or registered mail or recognized overnight delivery service to the respective offices of the Owner and the Lessee as set forth on the first page of this Lease Agreement, or such other address as may have been previously specified in a notice given in accordance with this Section 7.05.

The Owner or the Lessee may from time to time designate other representatives or addresses with respect to receipt of notices or other communications.

7.06 Headings. The Article and Section headings in this Lease Agreement are inserted for convenience of reference only and are not intended to define or limit the scope of any provision of this Lease Agreement.

7.07 Non-Waiver. It is understood and agreed that nothing contained in this Lease Agreement shall be construed as a waiver on the part of the parties, or any of them, of any right not explicitly waived in this Lease Agreement.

7.08 Amendments. This Lease Agreement shall not be amended without the prior written consent of the Owner and the Lessee and no such amendment shall be effective unless the same shall be in writing and executed by both parties hereto.

7.09 No Recording. Neither party shall record this Lease Agreement. At the request of the Lessee, the Owner, or HUD, the parties shall execute and record a memorandum of lease.

7.10 Estoppel Certificates. The Lessee agrees that upon request by the Owner or the Lender, it will execute and deliver to the Owner, the Lender and/or to such third party as is designated by the Owner or the Lender, a statement in writing certifying (i) that (except as may be otherwise specified by the Lessee) (a) this Lease Agreement is in full force and effect and unmodified and has not been assigned by the Lessee, (b) the Lessee is not in default under this Lease Agreement, and (c) to the best of the Lessee's knowledge, the Owner is not in default under this Lease Agreement, and (ii) as to such other factual matters as the Owner may reasonably request about this Lease Agreement.

7.11 Governing Law. The internal laws of the State of Arizona shall govern as to the interpretation, validity and effect of this Lease Agreement, without regard to such state's choice of law principles.

7.12 Entirety of Agreement. This Lease Agreement embodies the entire agreement and understanding of the parties with respect to the subject matter hereof, and supersedes all prior leases, agreements, correspondence, arrangements and understandings relating to the subject matter hereof.

[Signatures on Following Page]

IN WITNESS WHEREOF, the parties hereto have set their hands as of the date first herein above written.

LESSOR:

MRC VSL HERITAGE VILLAGE II, LLC
a Delaware limited liability company

By: Madison Realty Companies, LLC,
a Colorado limited liability company
Its: Manager

By: 
Name: Gary Langendoen
Its: Manager

LESSEE:

MRC VSL HV MANAGEMENT II, LLC, a
Delaware limited liability company

By: Madison Realty Companies, LLC,
a Colorado limited liability company
Its: Manager

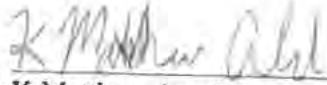
By: 
Name: K Matthew Arnold
Its: Manager

EXHIBIT A

LEGAL DESCRIPTION

HERITAGE VILLAGE ASSISTED LIVING, ACCORDING TO THE PLAT OF RECORD
APPROVED BY THE CITY OF MESA, AZ AS ATTACHED IN EXHIBIT B

{HV II Master Lease - 1 }

Ham Declaration

Exhibit F

**SETTLEMENT AGREEMENT BETWEEN
ARIZONA DEPARTMENT OF HEALTH SERVICES
AND
HERITAGE VILLAGE, L.L.C.**

JURISDICTION

The Arizona Department of Health Services (“Department”) is statutorily charged, pursuant to Arizona Revised Statutes (“A.R.S.”) § 36-132(A)(1), with the power and duty to protect the health of the people of Arizona. A.R.S. § 36-136(G) authorizes the Department’s Director (“Director”) to “make and amend rules necessary for the proper administration and enforcement of the laws relating to the public health.” A.R.S. § 36-405(A) requires the Director to adopt rules to establish minimum standards and requirements for the construction, modification and licensure of health care institutions necessary to assure the public health, safety and welfare. The relevant statutes governing the Department’s regulation of assisted living facilities are found at A.R.S. § 36-401 *et seq.* The relevant rules governing the Department’s regulation of assisted living facilities are found at Arizona Administrative Code (“A.A.C.”) Title 9, Chapter 10, Article 8. According to A.R.S. § 36-407(A), “[a] person shall not establish, conduct or maintain in this state a health care institution or any class or subclass of health care institution unless that person holds a current and valid license issued by the [D]epartment specifying the class or subclass of health care institution the person is establishing, conducting or maintaining.” A.R.S. § 36-430 states: “[t]he operation or maintenance of a health care institution which does not hold a current and valid license . . . is a violation of [A.R.S. Title 36, Chapter 4] and is declared a nuisance inimical to the public health and safety.”

According to A.R.S. § 36-431.01(A), “[t]he [D]irector may assess a civil penalty against a person who violates [A.R.S. Title 36, Chapter 4] or a rule adopted pursuant to this chapter in an amount of not to exceed five hundred dollars for each violation. Each day that a violation occurs constitutes a separate violation.” According to A.R.S. § 36-431.01(C), “[i]n determining the civil penalty pursuant to [A.R.S. § 36-431.01(A)], the [D]epartment shall consider the following:

1. Repeated violations of statutes or rules.
2. Patterns of noncompliance.
3. Types of violations.
4. Severity of violations.
5. Potential for and occurrences of actual harm.

6. Threats to health and safety.
7. Number of persons affected by the violations.
8. Number of violations.
9. Size of the facility.
10. Length of time that the violations have been occurring.”

RECITALS

On May 22, 2018, pursuant to A.R.S. Title 36, Chapter 4, Article 2 and A.A.C. Title 9, Chapter 10, the Department issued license numbers (collectively “Licensee” or “Heritage Village”):

- AL10534C (“AL10534 License”) to Heritage Village Bldg 2, LLC, dba Heritage Village Bldg 2, LLC (“Heritage Village Bldg 2”) to operate an assisted living center at 8035 East Brown Road, Building 2, Mesa, AZ 85207 (“AL10534 Facility”);
- AL10536C (“AL10536 License”) to Heritage Village Bldg 3, LLC, dba Heritage Village Bldg 3, LLC (“Heritage Village Bldg 3”) to operate an assisted living center at 8035 East Brown Road, Building 3, Mesa, AZ 85207 (“AL10536 Facility”);
- AL10535C (“AL10535 License”) to Heritage Village Bldg 5, LLC, dba Heritage Village Bldg 5, LLC (“Heritage Village Bldg 5”) to operate an assisted living center at 8035 East Brown Road, Building 5, Mesa, AZ 85207 (“AL10535 Facility”);
- AL10537C (“AL10537 License”) to Heritage Village Bldg 6, LLC, dba Heritage Village Bldg 6, LLC (“Heritage Village Bldg 6”) to operate an assisted living center at 8035 East Brown Road, Building 6, Mesa, AZ 85207 (“AL10537 Facility”).

The Licensee was authorized to provide directed care services¹ with a capacity of twenty-four (24) residents at each licensed facility. The effective date of the AL10534 License, AL10536 License, AL10535 License, and AL10537 License was September 1, 2020. AL10534 License, AL10536 License, AL10535 License, and AL10537 License closed effective October 1, 2022 after the Licensee failed to pay annual licensing fees within thirty (30) calendar days after the anniversary date of the AL10534 Facility, AL10536 Facility, AL10535 Facility, AL10537 Facility’s health care institution license along with the payment of the additional late payment fee in A.A.C. R9-10-106(F).

¹ According to A.R.S. § 36-401(A)(16). “directed care services” are “programs and services, including supervisory and personal care services, that are provided to persons who are incapable of recognizing danger, summoning assistance, expressing need or making basic care decisions.”

On February 7, 2023, pursuant to A.R.S. Title 36, Chapter 4, Article 2 and A.A.C. Title 9, Chapter 10, the Department issued license numbers (collectively "Licensee" or "Heritage Village"):

- AL12412C ("AL12412C License") to Licensee to operate an assisted living center at 8035 East Brown Road, Building 2, Mesa, AZ 85207 ("Heritage Village Bldg 2" or "AL12412 Facility");
- AL12413C ("AL12413C License") to Licensee to operate an assisted living center at 8035 East Brown Road, Building 3, Mesa, AZ 85207 ("Heritage Village Bldg 3" or "AL12413 Facility");
- AL12414C ("AL12414C License") to Licensee to operate an assisted living center at 8035 East Brown Road, Building 5, Mesa, AZ 85207 ("Heritage Village Bldg 5" or "AL12414 Facility");
- AL12416C ("AL12416C License") to Licensee to operate an assisted living center at 8035 East Brown Road, Building 6, Mesa, AZ 85207 ("Heritage Village Bldg 6" or "AL12416C Facility").

The Licensee is authorized to provide directed care services with a capacity of twenty-four (24) at each licensed facility. The effective date of AL12412C License, AL12413C License, AL12414C License, and AL12416C License is February 7, 2023.

On February 7, 2023, a Department Compliance Officer ("Officer") conducted an on-site initial inspection and complaint investigation at Heritage Village Bldg 2, Heritage Village Bldg 3, Heritage Village Bldg 5, and Heritage Village Bldg 6. The Officer substantiated the allegation of unlicensed care and documented the violation in a Statement of Deficiencies ("SOD") that was provided to the Licensee.

On May 12, 2023, the Department sent an Enforcement Agreement to the Licensee to inform them that the Department's Enforcement Team had assessed \$12,900.00 in civil fines for the violations at Heritage Village Bldg 2, Heritage Village Bldg 3, Heritage Village Bldg 5, Heritage Village Bldg 6 with a total civil fine of \$51,600. The fines were assessed at \$100.00 per day from October 1, 2022 to February 7, 2023 for a total of 129 days for each licensed facility. The Enforcement Agreement stated that the Enforcement Agreement "must be returned to the Department no later than May 22, 2023, or further enforcement action may be taken." The Licensee did not sign the Enforcement Agreement.

On August 2, 2023, the Department issued a Notice of Assessment of Civil Money Penalties. The Licensee requested an administrative hearing, and one was originally set for October 3, 2023. Pursuant to A.R.S. § 41-1092.06, Appellant requested an Informal Settlement Conference (“ISC”) which took place on August 23, 2023. As a result of the ISC, the parties agree to enter into this Settlement Agreement (“Agreement”).

AGREEMENT

THEREFORE, in consideration of the foregoing, and the terms, covenants, and conditions set forth herein, and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Licensee enters into this Agreement for settlement purposes and agrees to comply fully with the terms of this Agreement. This Agreement shall not in any way be construed as, nor deemed to be evidence of any admission or concession on the part of the Licensee with respect to any liability or wrongdoing whatsoever, which liability and wrongdoing are hereby expressly denied and disclaimed by Licensee.
2. Licensee is hereby notified that the Department relies on the exact terms of this Agreement. Licensee acknowledges and expressly agrees that the Department requires strict compliance with all terms and provisions of this Agreement. Acceptance by the Department of performance that is not in strict compliance with the terms of this Agreement shall not be deemed to waive the requirement of strict compliance for all future performance.
3. Licensee agrees that acceptance of this Agreement constitutes a withdrawal of the request for hearing in this matter and the waiver of any rights to contest or appeal the Notice, including any violation of statute or rule appearing in the Notice.
4. The effective date of this Agreement shall be the date of the last signature (“Effective Date”).
5. This Agreement is effective for a period of two (2) years from the Effective Date.
6. Licensee agrees that the Department shall file a request with the Office of Administrative Hearings in Docket No. 2024-BRFL-0044-DHS to vacate the hearing in this matter originally set for October 3, 2023, and to remand the matter to the Department for an Order consistent with the terms of this Agreement.
7. Licensee shall pay an assessed civil money penalty of \$12,900.00 to the Department within thirty (30) days of the Effective Date of this Agreement. Licensee shall pay the civil money

penalty through the Department's Licensing and Enforcement Portal at <https://licensing.azdhs.gov/LicensingOnline/RES>.

8. Licensee shall submit an attestation with supporting documentation to the Department within thirty (30) calendar days of the Effective Date of this Agreement. The attestation shall include how Heritage Village will invest \$38,700 into hiring and retaining certified caregivers. The accompanying supporting documentation can include, but not limited to hiring documentation or a contract with a staffing agency.
9. Licensee agrees that should Licensee violate the terms of this Agreement, Licensee shall pay \$38,700.00 within sixty (60) days of written notification that Licensee has violated this Agreement. Payment shall be made via the licensing portal as outlined in ¶ 7 of this Agreement.
10. If the Department determines that Licensee has violated the terms of this Agreement, the Department may issue a Notice of Non-Compliance ("NNC") to Licensee. Licensee agrees that the NNC will trigger the additional \$38,700.00 payment to the Department within sixty (60) days of receipt of the NNC. Licensee agrees that failure to comply with the NNC enforcement action may result in a license voluntary surrender and/or civil money penalties. Licensee agrees that license surrender and/or civil money penalties for failure to comply with the NNC is not subject to appeal under A.R.S. Title 41, Chapter 6, Article 10 or A.R.S. Title 12, Chapter 7, Article 6.
11. The Department has authority to enter into this Agreement pursuant to A.R.S. § 36-104(7).
12. No provision or principle of law or equity that holds the terms and conditions of a written document shall be interpreted against the party who drafted the Agreement shall have any application to this Agreement.
13. Licensee affirms that Licensee understands and agrees to the terms of this Agreement by affixing its signature below.
14. This Agreement shall only be modified in writing.
15. A waiver of any requirement contained in this Agreement shall not be deemed to be a waiver of any other provision.
16. This Agreement shall be governed, construed, and enforced by the laws of the State of Arizona.

17. This Agreement is subject to the approval of the Assistant Director of the Department's Division of Licensing Services. This Agreement is effective only upon the Assistant Director's approval. In the event the Assistant Director does not approve this Agreement, the Agreement is withdrawn and has no evidentiary value and may not be relied upon nor introduced in any disciplinary action or other proceeding by any party to this Agreement.
18. Each party to this Agreement represents and warrants that the party executing this Agreement on behalf of each party is fully authorized to sign this Agreement and that no further approvals are required to be obtained from any persons or entities. This Agreement has been reviewed by the parties and their legal counsel, or the parties acknowledge that they had the opportunity to seek legal counsel concerning this Agreement, but voluntarily chose not to seek legal counsel.
19. If for any reason, any portions of this Agreement are adjudicated invalid or unenforceable by any court of competent jurisdiction, the court in its discretion will determine the extent of the invalidity or unenforceability of the provision or provisions as they relate to this Agreement. Furthermore, the remaining unaffected provision or provisions of this Agreement will be valid, fully enforceable and in effect. However, if the invalid or unenforceable provision or provisions materially alter the purpose and intent of this Agreement, any court of competent jurisdiction will have the power to reform this Agreement to the manifest intent and purpose of the parties to this Agreement.
20. This Agreement may be circulated by electronic transmission and signed in counterpart that shall together constitute a single agreement.

Signatures on Final Page

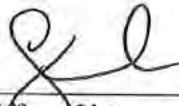
SIGNATURE PAGE

 10/26/2023

Gary Langendoen Date
Administrator *manager*
Heritage Village, L.L.C.
Licensee

Thomas Salow 10/26/23

Thomas Salow Date
Assistant Director
Division of Licensing Services
Arizona Department of Health Services

 _____
Tiffany Slater CINDY GRAHAM Date
Bureau Chief DEPUTY BUREAU CHIEF
Bureau of Residential Facilities Licensing
Division of Public Health Licensing
Arizona Department of Health Service

#11521908

Ham Declaration

Exhibit G

MRSC VSL HERITAGE VILLAGE ASSISTED LIVING
RESIDENT ADMISSION AGREEMENT

This RESIDENT ADMISSION AGREEMENT ("Agreement") is made by and between **MRSC VSL HERITAGE VILLAGE ASSISTED LIVING** ("Community") and the Resident(s) (herein "Resident" or "you"). This Community is licensed by the Arizona Department of Health Services as an Assisted Living Center. This Agreement is effective from the date it is signed and dated by both parties.

If more than one Resident is named above, and/or if a Responsible Party is identified below, then all are jointly and severally entering into this Agreement, and any reference to "Resident" or "you" shall refer to and bind all such parties.

RECITALS

We operate the Community located at **8035 E Brown Rd. Mesa, Az 85207**. This Agreement is a contract for single or double occupancy for the Resident(s) at this Community and a contract for the services provided under this Agreement. The Community hereby rents to the Resident for the term of the Agreement, House 5 room [**House Room**] (the "Accommodation"). The date of occupancy will be

TERMS AND CONDITIONS

1. **BASIC SERVICES**. The Community shall provide the following basic services to you as outlined in your monthly rate in Schedule A. The current fees for Optional services not included in your monthly rate are set forth in Schedule B.

- 1.1. **Basic Services included in the Net Monthly Fee**

- 1.1.1. Unfurnished lodging in the Accommodation (at your request, the Community will provide you with basic furnishings at an additional fee).

- 1.1.2. Floor and window coverings in the Accommodation.

- 1.1.3. Gas, water, electricity, and heating for the Accommodation.

- 1.1.4. Security, maintenance of interior and exterior common areas, and the option to connect cable television

- 1.1.5. Three nutritious meals per day and snacks, except to the extent that you elect, in accordance with the general policies of the Community, to exclude meals.

- 1.1.6. A basic modified diet if prescribed by a physician.

- 1.1.7. Laundry facilities, access to public telephones, storage space.

- 1.1.8. Weekly housekeeping, to include vacuuming of carpets, mopping of floors, cleaning of sinks and tub/shower, dusting, and emptying the trash. Deep cleaning is **not included** in the Net Monthly Fee and will generate an additional charge.

1.1.9. Clean bed and bath linen weekly.

1.1.10. Opportunity for social, recreational, educational and cultural activities designed to enhance the physical and social well-being of the residents. Transportation for outside events is included.

1.1.11. Use of the Community's common areas in accordance with the Community's general policies.

1.1.12. Repair and maintenance of the Community, including all accommodations and common areas, except as otherwise set forth herein.

1.1.13. Regular observation of your general health, including your physical and mental condition; evaluation of your need for additional assistance as indicated and appropriate and documentation or communication of unusual changes or unusual observations to the Resident's physician or responsible person.

1.1.14. Maintenance of records of dosages of medication that are centrally stored when requested by the prescribing physician or the Department of Health Services.

1.1.15. Provision of First Aid kits and treatment of minor injuries, arrangement for examination by a physician if required, immediate dispatch of 911 upon detection of an emergency.

1.1.16. Provision of an emergency response call system in each Accommodation.

1.2. Assisted Living Services Available for Additional Fee. For an additional fee, the Community makes available assisted living services to all Residents of the Community. (See Schedule A) These services include assistance with meeting medical and social needs and assistance with activities of daily living such as bathing, dressing, escorting, and personal hygiene. If an amount is listed in Schedule A under "Assisted Living Fee" for one or both Residents, you have elected to add Assisted Living Services to this Agreement at the level indicated. Assisted Living Services will be provided to you at the level and at the fee indicated, as more fully described in Schedule A to this Agreement ("Assisted Living Services"). In the event that you are not currently using Assisted Living Services but subsequently wish to contract for Assisted Living Services, or if your Assisted Living needs change and are increased or decreased to a different level, you agree that the portion of the Net Monthly Fee for Assisted living Services shall be adjusted at the time of such election to include the appropriate monthly fee for Assisted Living Services from Schedule A. A change shall only be affected by means of a written amendment to this Agreement.

1.3. Optional Services Available for an Additional Fee. The additional services described in Schedule B to this Agreement ("Optional Services") shall be available on a fee-for-service basis at the rates set forth on Schedule B, subject to adjustment as set forth in section 2.3 below.

1.4. Third Party Services. If you require third party services within the Community under your service plan (including, but not limited to, ancillary, health, and medical services), the Community will advise, in writing, how third-party services may be arranged, accessed and monitored, along with any restrictions on such third party services, and indicate who will be financially responsible for the third party services.

1.5. Services Not Included. The Community shall **not** be responsible for furnishing or paying for any health care items or services not expressly included in this Agreement, including but not limited to home health, hospice, physician services, nursing services, surgery, hospital care, treatment or examination of eyes or teeth, medications, vitamins, eyeglasses, contact lenses, hearing aids, orthopedic appliances, prosthetic devices, medical supplies, incontinence products, laboratory tests and x-ray services. You are responsible for paying for any and all excluded services.

2. FEES

2.1. Monthly Fees. You agree to pay to the Community the Net Monthly Fee set forth in Schedule A, on or before the first (1st) day of each month during the term of this Agreement.

2.2. Optional Service Fees. For the additional services you choose, you agree to pay the fees set forth in the Optional Service Fees schedule attached hereto as Schedule L. Fees for Optional Services are due upon delivery of our monthly invoice.

2.3. Right to Change Monthly Fees. Except as required by applicable law, we may change the amount of the fees for Basic Services and/or Assisted Living Services at any time during the term of this Agreement by giving you at least thirty (30) days prior written notice. The notice shall state the amount, the reason(s) for the change in fees, and a general description of the increase/fee change (except when due to a change in the level of a resident's care). We also have the right to add to or delete any Optional Services, and to alter the prices for Optional Services, at any time during the term of this Agreement upon thirty (30) days prior written notice under the same conditions as set forth above.

2.3.1 For any rate increase due to a change in the level care of the Resident, the Community will provide the Resident and the Resident's representative, if any, written notice of the rate increase within fourteen (14) business days after the initiation of services at the new level of care. The Notice will include a detailed explanation of the additional services to be provided at the new level of care and an itemization of charges.

2.3.2 The Right to Notice of Change in Monthly Fees does not apply to increases in optional services provided by individuals, professionals, or organizations under a separate fee-for-service arrangement with the Resident.

2.4. Partial Calendar Months. If the first month of the term of this Agreement is a partial month, the Net Monthly Fee for such month(s) shall be prorated on the basis of a thirty (30) day calendar month.

2.5. Monthly Statements/Invoices. The Community shall forward to you monthly statements reflecting all separate charges incurred by you.

2.6. Late Fees. If the Net Monthly Fee is not paid in full on or before the due date referenced above, a late charge will be assessed as follows:

<u>If payment is received after:</u>	<u>Late Charge:</u>
7th day of the month	\$100.00

In addition to the above fee, you will be responsible for the unpaid amount plus interest at the maximum legal rate from the due date until our receipt of the payment. Further, a \$35.00 fee will be charged for any checks returned for insufficient funds. All returned checks must be redeemed by cashier's check or money order.

2.7. Payments. All payments shall be delivered to the Community's business office or other designated location.

2.7.1. The acceptance of any late payments or partial payments shall not change the due date or the amount of any future payment and shall not relieve you or your Responsible Party of any obligation to pay the balance of the amount due and owing and any applicable late fees.

3. TERM: TERMINATION. The term of this Agreement shall be month to month and may be terminated as set forth in this Section. The term shall commence on the Effective Date set forth in Schedule A, and shall continue thereafter until the earlier to occur of any of the following:

3.1. Termination by Resident.

3.1.1. **YOU MAY TERMINATE THIS AGREEMENT AT ANY TIME, WITH OR WITHOUT CAUSE, BY GIVING US THIRTY (30) DAYS' PRIOR WRITTEN NOTICE.** You need not cite a specific reason for the termination

3.1.2. You may terminate this Agreement without notice due to the following (as substantiated by a governmental agency):

3.1.2.1. Neglect;

3.1.2.2. Abuse;

3.1.2.3. Exploitation; or

3.1.2.4. Conditions of imminent danger of life, health, or safety.

3.1.2.5. Note: ALTCS clients are not required to provide a move-out notice.

3.1.3. You can terminate this Agreement by providing a 14-day written

notice to the Community's Executive Director documenting the failure of the Community to comply with the Resident's Service Plan or the Residency Agreement.

3.1.3. If you provide a written notice to move-out but then wishes to remain or requires an extension of the move-out date, a written request for rescinding or extending the move-out notice must be submitted and acceptance will be at the discretion of the Community.

3.2. Termination by Community.

3.2.1. This agreement can be terminated by the Community **without notice** if you exhibit behavior that is an immediate threat to the health and safety of the yourself or other individuals in the Community;

3.2.2. This agreement can be terminated by the Community by providing the resident with a **14-calendar day written notice of termination of residency** due to the following:

3.2.2.1. Documented nonpayment of fees, charges, or deposit,

3.2.2.2. If the resident requires any of the following:

(a) Medical services;

(b) Nursing services, unless the Facility is able to provide such services in compliance with A.R.S. § 36-401(c); or

(c) Behavioral health services,

3.2.2.3. The assisted living services needed by the individual are not within the assisted living facility's scope of services;

3.2.2.4. The Community is unable to provide the assisted living services needed by the resident; or

3.2.2.5. The resident requires restraints, including the use of bed rails

3.2.3. Except as provided in section 3.2.1 or 3.2.2, above, the Community shall provide a **30-day written notice** to terminate this Agreement for any other reason, including, but not limited to, non-compliance with the residency agreement, residency handbook, house rules, or any other internal Community requirements.

3.3. **Surrender.** You agree to surrender the Accommodation in good condition, reasonable wear and tear excepted, at the expiration or earlier termination of the term. You also agree to continue paying Net Monthly Fees until all of your personal property has been removed from the Accommodation. Any refunds owing will be processed and mailed to You within 30 days of full surrender of the Accommodation.

3.3.1. You will be charged a fee equivalent to one month's rent in the event you fail to provide timely written notice as set forth in Section 3.1, above.

4. COMMUNITY FEE. The Resident is required to pay a one time, non-refundable Community Fee at the time of admission to the Community. This fee covers administrative and preparation costs associated with admission and residency such as pre-admission appraisal, preparation of documents for admission, and other costs associated with the commencement of your residency. The Community Fee is not rent, deposit, or a fee paid in lieu of Monthly Fees or other fees hereunder.

5. GENERAL POLICIES. You agree to abide by and observe the general policies of the Community, which are established to promote a harmonious and a pleasant environment in the Community. By signing this Agreement, you acknowledge having received the Community's Resident Handbook, which contains the Community's general policies and resident responsibilities (which shall be reasonable). Such general policies may be revised at any time by the Community. Should you wish to suggest any rule changes in the Resident Handbook, you may submit any such suggestions to the Community's business office or any other designated location. Upon review of such suggestion(s), you will be notified of Community's decisions to implement/deny your suggestion. The Resident Handbook is incorporated into this Agreement by reference and is made an express part of this Agreement.

6. GRIEVANCE PROCEDURES. The Community encourages its residents to provide feedback, suggestions, and concerns. The Executive Director and Wellness Director will welcome a time to discuss resident concerns. Residents and resident's representatives have the right to voice grievances without discrimination or reprisal. The Community does not tolerate any act of neglect or abuse by staff members, other residents, vendors, or visitors.

Complaints or concerns may be presented verbally, in writing, or during Resident Council meetings and will be investigated by the Community. Community Grievance Forms can be obtained from the Executive Director or any staff member. The Executive Director or his/her designee will respond to the complainant within seven (7) working days of the initial concern to acknowledge receipt and describe steps taken towards resolution. Should action warrant, the Community will act promptly, including reporting to any relevant outside agencies in accordance with Arizona and Federal laws and guidelines.

Residents also have the right to contact external advocacy agencies. Local and State advocacy contact information are posted in the building. Residents also have a listing of these contacts in their copy of the admission paperwork they sign.

7. FAMILY VISITS. The Community's policy regarding family visits intends to encourage family involvement with Residents and to provide ample opportunity for family participation in Community activities. You agree to abide by and observe the Community's general policies regarding family visits and other communication with residents contained in the Community's Resident Handbook.

8. ABSENCE FROM THE COMMUNITY. You are responsible for paying your fees even when you are absent from the Community, including but not limited to, times when you are on vacation or transferred temporarily to any outside health facility. The holding rate for the Accommodation during this period of temporary absence is the pro-rated net monthly fee less the care charges.

9. ADVANCE DIRECTIVES. It is the policy of the Community to ask all prospective Residents whether they have executed any Advance Directives and, if so, whether you would like to provide the Community with any pre-existing Advance Directive Information at the time of admission. The Advance Directive includes health care powers of attorney, living wills, or other documents which describe the amount, level or type of health care you would want to receive at a time when you can no longer communicate those decisions directly to a doctor or other health care professional.

9.1. It is your responsibility to inform the Community of any change or revocation to any Advance Directive documents provided to the Community.

10. INCOMPETENCY. In the event you become legally incompetent or are unable to properly care for yourself or your property, and in the event that you have made no other designation of a person or legal entity to serve as your guardian or conservator, you hereby grant authority to the Community to apply to a court of competent jurisdiction for the appointment of a conservator or guardian.

10.1. Some residents in the Community may suffer from cognitive impairment, including Alzheimer's disease or dementia. This condition can cause unexpected behavior such as wandering, forgetfulness, agitation or confusion, wandering into private areas or misplacing items. Despite the Community's efforts to monitor these residents, the Community makes no representations or guarantees that we can predict or control the behavior of these residents. As such, the Community is not responsible for the unexpected behavior/actions of such residents.

11. ACTIVITIES. We encourage our residents to participate in physical activities to the extent they are capable. As a result, there is an associated risk that falls and other personal injuries may occur from time to time. If you are uncomfortable with this type of environment, we suggest that you consider a higher level of care or refrain from voluntarily participating in physical activities that may pose a risk of fall or injury.

12. FREEDOM FROM RESTRAINTS. This Community is not permitted to use restraints on its residents, and the use of restraints is never acceptable. The Community also makes no representations or guarantees that we can always prevent a resident from wandering or attempting to wander from the Community, entering a private area, or engaging in physical contact with other residents despite our efforts to observe a resident's whereabouts.

13. PERSONAL PHYSICIAN. You shall be responsible for obtaining and paying for all health care services you require. You agree to keep the Administration of the Community informed of the Randi Martin, address and telephone number of your personal physician at all times, and hereby authorize us and our staff to consult with your personal physician regarding your health and care. In the event of an emergency in which you require immediate medical attention, we shall attempt to contact your personal physician. If your personal physician is unavailable for any reason, you authorize the Community to contact a licensed physician or hospital of the Community's choice to attend to your needs. You further agree to be responsible for all associated physician and hospital fees, transportation fees, and fees for medications and treatments prescribed as a result of this consultation.

13.1. Prior to or at the time of admission, you agree to provide to the Community copies of your recent medical history.

14. ASSUMPTION OF RISK. The Community makes no representations or guarantees that it or any of its employees can prevent falls or injuries. Nor does the Community or its employees represent or guarantee that your health condition will not change or deteriorate. If you have a restrictive health condition, are prone to injury, or may be at risk for any reason, you may wish to refrain from participation in any activities at the Community that may exacerbate or cause potential risk of injury. If, despite your condition or risk of injury, you participate in any activity at the Community, you assume the risk of any associated injury.

14.1. Injury to Others. If you intentionally cause injury or harm to another resident or employee of the Community, you will be responsible for all associated damages and/or resulting loss.

14.2. Injury to Self. The Community will not be responsible if you cause injury or harm to yourself.

14.3. Exit from the Community. The Community is not intended to be a "lockdown" facility, and all exits are designed for quick egress in accordance with fire safety codes. The Community cannot prevent you from exiting, nor will it be responsible in the event you leave the building for any injury or damage which may result from your time away from the Community.

15. LOSS OF PERSONAL PROPERTY. The Community makes no representations or guarantees that we can prevent the loss of your personal items. The Community will make reasonable efforts to safeguard Resident property through implementation of the Community's Theft and Loss Prevention program (copies of which are posted in the Community and available upon request). However, despite the Community's efforts and Theft and Loss Prevention program, loss due to theft, fire or other reasons may still occur. Thus, it is recommended that you do not bring items of great value to the Community and/or purchase appropriate insurance coverage to cover any losses.

16. ACCOMMODATION MODIFICATIONS. The Accommodation you have selected will have received standard refurbishment, as described in the

Community's policies. Any other modifications to the Accommodation will be at your expense and you must have prior written administrative approval for any modifications.

17. DAMAGE LIABILITY. You agree to be responsible for the cost of any repairs and/or replacements within your Accommodation that are more than normal wear and tear. Also, you shall be responsible for the reimbursement of any cost due to loss or damage to the Community caused by you or your guests or invitees.

18. NON-DISCRIMINATION. The Community shall provide all services to residents without regard to religion, race, sex, color, sexual orientation, national origin, or ancestry.

19. TELEPHONE SERVICES. The Community shall provide any deaf, hearing impaired, or otherwise impaired resident with equipment and services as required to improve the quality of their telecommunications (which does not necessarily include the provision of a separate telephone line).

20. RIGHT OF ENTRY. You agree that the Community and its employees, agents and contractors shall be entitled, at all reasonable times, to enter your Accommodation for purposes of management, housekeeping, enforcement of applicable laws and regulations, emergency purposes, and any other reasonable purpose. You further agree to use only the locks and locking devices provided for the Community. In addition, because your Accommodation is part of an Assisted Living Center, licensed by the Arizona Department of Health Services, any duly authorized agent of the Department may, upon stating the purpose of his or her visit, enter and inspect any portion of the Community, including your Accommodation, without advance notice.

21. REMOVAL AND STORAGE. Any abandoned property belonging to the resident shall become the property of the Facility after (30) thirty days. If the Resident wishes to retrieve the personal property after the last day of occupancy but on or before the (30) thirty days of abandonment, a storage fee of \$50 per day will be charged and paid to the Facility prior to release of property.

22. MISCELLANEOUS

22.1. Real Property or Trust Interest. You acknowledge that you shall have no estate, leasehold, or other real property interest in your Accommodation or in the Community, and you shall have no ownership or management interest in the Community or any third-party contractor. You may not lease your Accommodation to any other person or allow any other person to occupy it.

22.2. No Security Interest. This Agreement does not grant to you or anyone else any security interest in any land, buildings, or other property owned or managed by the Community, whether at the Community or elsewhere. Your rights under this Agreement are and shall be subordinate to any mortgage, deed of trust, or other encumbrance or security interest that is placed on Community property, now or in the future.

22.3. Resident Involvement. You are encouraged to participate in the Community and in the many avenues provided for your involvement in the affairs of the Community. You understand that final policy and governance authority is vested by law in the Community and its officers.

22.4. Joint and Several Liability. If more than one (1) Resident is covered hereby, or if one (1) or more Responsible Party is designated herein, then all such Resident(s) and Responsible Party(s) shall be jointly and severally liable for the Resident's or Residents' obligations hereunder, and the Community may pursue any or all of them jointly or individually for all or any part of such obligations.

22.5. Attorneys' Fees. In the event the Community deems it necessary to incur attorneys' fees as a result of your non-payment or other breach of this Agreement, you agree to pay all such fees and related costs of collection upon demand.

22.6. Waiver. The Community's waiver of any covenant, term, condition or provision of the Agreement or any breach thereof shall not be deemed to be a waiver of any subsequent breach of same or any other covenant, term, condition or provision herein contained. No covenant, term, condition or provision of the Agreement shall be deemed to have been waived by the Community, unless such waiver is in writing and signed by an authorized agent of the Community.

22.7. Modifications. The Community expressly reserves the right to modify any of its rules, policies and procedures at any time it deems necessary.

22.8. Remedies. In addition to and without limiting our rights under Section 3.2 above, in the event of any default or breach by Resident, the Community may recover from the Resident all damages incurred by the Community by reason of the Resident's breach or default and pursue any remedy now or thereafter available to the Community under this Agreement and the laws and judicial decisions of the State of Arizona. All such remedies shall be cumulative and not exclusive, and may be exercised by the Community singly, successively and/or concurrently with each other and any other right or remedy available to Community at law, in equity or under this Agreement.

22.9. Notices. Any notice you desire or are required to give to the Community shall be sent to the attention of the Executive Director of the Community in writing at the address in the Recital paragraph of this Agreement. Any notice we are required to give you shall be given to you in writing at the Community, or if you are not your own responsible party or payor, to the person at the address set forth in Schedule A, Basic Provisions, or to such other address or person as may be specified by written notice to us signed by you or your personal representative. Notice may be by personal delivery or by mail and in the case of mail shall be deemed effective when properly posted.

22.10. Integration. This Agreement constitutes the entire agreement of the parties and supersedes all prior and contemporaneous negotiations, understandings and agreements of the parties with respect to the subject matter

hereof.

22.11. Amendment. This Agreement may be amended only by mutual written agreement of the parties.

22.12. Severability. If one or more of the provisions of this Agreement is hereafter declared invalid or unenforceable by judicial, legislative or administrative authority of competent jurisdiction, the parties hereto agree that the invalidity or unenforceability of such provisions shall not in any way affect the validity or enforceability of any other provisions of this Agreement.

22.13. Governing Law. This Agreement shall be construed, interpreted and applied in accordance with the laws of the State of Arizona.

22.14. Assignment. You shall not assign or transfer any of your rights under this Agreement, including your right to occupy the Accommodation.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date set forth below.

BY SIGNING BELOW, I CERTIFY THAT (i) I HAVE READ OR HAVE HAD COMMUNICATED TO ME THE FULL CONTENTS OF THIS AGREEMENT, (ii) I UNDERSTAND AND AGREE TO ABIDE BY THE TERMS OF THIS AGREEMENT AND (iii) I HAVE BEEN PROVIDED A COPY OF THIS AGREEMENT.

Resident Signature

Date

2nd Resident Signature

Date

Responsible Party/ Guarantor/ POA Signature

Date

Heritage Village Assisted Living Manager Signature

Date

HERITAGE VILLAGE ASSISTED LIVING
RESIDENT ADMISSION AGREEMENT

This RESIDENT ADMISSION AGREEMENT (“Agreement”) is made by and between **Heritage Village Assisted Living** (“Community”) and the Resident(s) **[name]** (herein “Resident” or “you”). This Community is licensed by the Arizona Department of Health Services as an Assisted Living Center. This Agreement is effective from the date it is signed and dated by both parties.

If more than one Resident is named above, and/or if a Responsible Party is identified below, then all are jointly and severally entering into this Agreement, and any reference to “Resident” or “you” shall refer to and bind all such parties.

R E C I T A L S

We operate the Community located at **8035 E. Brown Rd. Mesa, AZ 85207**. This Agreement is a contract for single or double occupancy for the Resident(s) at this Community and a contract for the services provided under this Agreement. The Community hereby rents to the Resident for the term of the Agreement, room **[apt#]** (the “Accommodation”). The date of occupancy will be **[date]**.

T E R M S A N D C O N D I T I O N S

1. **BASIC SERVICES**. The Community shall provide the following basic services to you as outlined in your monthly rate in Schedule A. The current fees for Optional services not included in your monthly rate are set forth in Schedule B.

1.1. **Basic Services included in the Net Monthly Fee**

1.1.1. Unfurnished lodging in the Accommodation (at your request, the Community will provide you with basic furnishings at an additional fee).

1.1.2. Floor and window coverings in the Accommodation.

1.1.3. Gas, water, electricity, and heating for the Accommodation.

1.1.4. Security, maintenance of interior and exterior common areas, and the option to connect cable television

1.1.5. Three nutritious meals per day and snacks, except to the extent that you elect, in accordance with the general policies of the Community, to exclude meals.

1.1.6. A basic modified diet if prescribed by a physician.

1.1.7. Laundry facilities, access to public telephones, storage space.

1.1.8. Weekly housekeeping, to include vacuuming of carpets, mopping of floors, cleaning of sinks and tub/shower, dusting, and emptying the trash. Deep cleaning is **not included** in the Net Monthly Fee and will generate an additional charge.

1.1.9. Clean bed and bath linen weekly.

1.1.10. Opportunity for social, recreational, educational and cultural activities designed to enhance the physical and social well-being of the residents. Transportation for outside events is included.

1.1.11. Use of the Community's common areas in accordance with the Community's general policies.

1.1.12. Repair and maintenance of the Community, including all accommodations and common areas, except as otherwise set forth herein.

1.1.13. Regular observation of your general health, including your physical and mental condition; evaluation of your need for additional assistance as indicated and appropriate and documentation or communication of unusual changes or unusual observations to the Resident's physician or responsible person.

1.1.14. Maintenance of records of dosages of medication that are centrally stored when requested by the prescribing physician or the Department of Health Services.

1.1.15. Provision of First Aid kits and treatment of minor injuries, arrangement for examination by a physician if required, immediate dispatch of 911 upon detection of an emergency.

1.1.16. Provision of an emergency response call system in each Accommodation.

1.2. Assisted Living Services Available for Additional Fee. For an additional fee, the Community makes available assisted living services to all Residents of the Community. (See Schedule A) These services include assistance with meeting medical and social needs and assistance with activities of daily living such as bathing, dressing, escorting, and personal hygiene. If an amount is listed in Schedule A under "Assisted Living Fee" for one or both Residents, you have elected to add Assisted Living Services to this Agreement at the level indicated. Assisted Living Services will be provided to you at the level and at the fee indicated, as more fully described in Schedule A to this Agreement ("Assisted Living Services"). In the event that you are not currently using Assisted Living Services but subsequently wish to contract for Assisted Living Services, or if your Assisted Living needs change and are increased or decreased to a different level, you agree that the portion of the Net Monthly Fee for Assisted living Services shall be adjusted at the time of such election to include the appropriate monthly fee for Assisted Living Services from Schedule A. A change shall only be effected by means of a written amendment to this Agreement.

1.3. Optional Services Available for an Additional Fee. The additional services described in Schedule B to this Agreement (“Optional Services”) shall be available on a fee-for-service basis at the rates set forth on Schedule B, subject to adjustment as set forth in section 2.3 below.

1.4. Third Party Services. If you require third party services within the Community under your service plan (including, but not limited to, ancillary, health, and medical services), the Community will advise, in writing, how third-party services may be arranged, accessed and monitored, along with any restrictions on such third party services, and indicate who will be financially responsible for the third party services.

1.5. Services Not Included. The Community shall **not** be responsible for furnishing or paying for any health care items or services not expressly included in this Agreement, including but not limited to home health, hospice, physician services, nursing services, surgery, hospital care, treatment or examination of eyes or teeth, medications, vitamins, eyeglasses, contact lenses, hearing aids, orthopedic appliances, prosthetic devices, medical supplies, incontinence products, laboratory tests and x-ray services. You are responsible for paying for any and all excluded services.

2. FEES

2.1. Monthly Fees. You agree to pay to the Community the Net Monthly Fee set forth in Schedule A, on or before the first (1st) day of each month during the term of this Agreement.

2.2. Optional Service Fees. For the additional services you choose, you agree to pay the fees set forth in the Optional Service Fees schedule attached hereto as Schedule L. Fees for Optional Services are due upon delivery of our monthly invoice.

2.3. Right to Change Monthly Fees. Except as required by applicable law, we may change the amount of the fees for Basic Services and/or Assisted Living Services at any time during the term of this Agreement by giving you at least thirty (30) days prior written notice. The notice shall state the amount, the reason(s) for the change in fees, and a general description of the increase/fee change (except when due to a change in the level of a resident’s care). We also have the right to add to or delete any Optional Services, and to alter the prices for Optional Services, at any time during the term of this Agreement upon thirty (30) days prior written notice under the same conditions as set forth above.

2.3.1 For any rate increase due to a change in the level care of the Resident, the Community will provide the Resident and the Resident’s representative, if any, written notice of the rate increase within fourteen (14) business days after the initiation of services at the new level of care. The Notice will include a detailed explanation of the additional services to be provided at the new level of care and an itemization of charges.

2.3.2 The Right to Notice of Change in Monthly Fees does not apply to increases in optional services provided by individuals, professionals, or organizations under a separate fee-for-service arrangement with the Resident.

2.4. Partial Calendar Months. If the first month of the term of this Agreement is a partial month, the Net Monthly Fee for such month(s) shall be prorated on the basis of a thirty (30) day calendar month.

2.5. Monthly Statements/Invoices. The Community shall forward to you monthly statements reflecting all separate charges incurred by you.

2.6. Late Fees. If the Net Monthly Fee is not paid in full on or before the due date referenced above, a late charge will be assessed as follows:

<u>If payment is received after:</u>	<u>Late Charge:</u>
7th day of the month	\$100.00

In addition to the above fee, you will be responsible for the unpaid amount plus interest at the maximum legal rate from the due date until our receipt of the payment. Further, a \$35.00 fee will be charged for any checks returned for insufficient funds. All returned checks must be redeemed by cashier's check or money order.

2.7. Payments. All payments shall be delivered to the Community's business office or other designated location.

2.7.1. The acceptance of any late payments or partial payments shall not change the due date or the amount of any future payment and shall not relieve you or your Responsible Party of any obligation to pay the balance of the amount due and owing and any applicable late fees.

3. TERM: TERMINATION. The term of this Agreement shall be month to month and may be terminated as set forth in this Section. The term shall commence on the Effective Date set forth in Schedule A, and shall continue thereafter until the earlier to occur of any of the following:

3.1. Termination by Resident.

3.1.1. **YOU MAY TERMINATE THIS AGREEMENT AT ANY TIME, WITH OR WITHOUT CAUSE, BY GIVING US THIRTY (30) DAYS' PRIOR WRITTEN NOTICE.** You need not cite a specific reason for the termination

3.1.2. You may terminate this Agreement without notice due to the following (as substantiated by a governmental agency):

3.1.2.1. Neglect;

3.1.2.2. Abuse;

3.1.2.3. Exploitation; or

3.1.2.4. Conditions of imminent danger of life, health, or safety.

3.1.2.5. Note: ALTCS clients are not required to provide a move-out notice.

3.1.3. You can terminate this Agreement by providing a 14-day written

notice to the Community's Executive Director documenting the failure of the Community to comply with the Resident's Service Plan or the Residency Agreement.

3.1.3. If you provide a written notice to move-out but then wishes to remain or requires an extension of the move-out date, a written request for rescinding or extending the move-out notice must be submitted and acceptance will be at the discretion of the Community.

3.2. Termination by Community.

3.2.1. This agreement can be terminated by the Community **without notice** if you exhibit behavior that is an immediate threat to the health and safety of the yourself or other individuals in the Community;

3.2.2. This agreement can be terminated by the Community by providing the resident with a **14-calendar day written notice of termination of residency** due to the following:

- 3.2.2.1. Documented nonpayment of fees, charges, or deposit,
- 3.2.2.2. If the resident requires any of the following:
 - (a) Medical services;
 - (b) Nursing services, unless the Facility is able to provide such services in compliance with A.R.S. § 36-401(c); or
 - (c) Behavioral health services,
- 3.2.2.3. The assisted living services needed by the individual are not within the assisted living facility's scope of services;
- 3.2.2.4. The Community is unable to provide the assisted living services needed by the resident; or
- 3.2.2.5. The resident requires restraints, including the use of bed rails

3.2.3 Except as provided in section 3.2.1 or 3.2.2, above, the Community shall provide a **30-day written notice** to terminate this Agreement for any other reason, including, but not limited to, non-compliance with the residency agreement, residency handbook, house rules, or any other internal Community requirements.

3.3. Surrender. You agree to surrender the Accommodation in good condition, reasonable wear and tear excepted, at the expiration or earlier termination of the term. You also agree to continue paying Net Monthly Fees until all of your personal property has been removed from the Accommodation. Any refunds owing will be processed and mailed to You within 30 days of full surrender of the Accommodation.

3.3.1. You will be charged a fee equivalent to one month's rent in the event you fail to provide timely written notice as set forth in Section 3.1, above.

4. COMMUNITY FEE. The Resident is required to pay a onetime, non-refundable Community Fee at the time of admission to the Community. This fee covers administrative and preparation costs associated with admission and residency such as pre-admission appraisal, preparation of documents for admission, and other costs associated with the commencement of your residency. The Community Fee is not rent, deposit, or a fee paid in lieu of Monthly Fees or other fees hereunder.

5. GENERAL POLICIES. You agree to abide by and observe the general policies of the Community, which are established to promote a harmonious and a pleasant environment in the Community. By signing this Agreement, you acknowledge having received the Community's Resident Handbook, which contains the Community's general policies and resident responsibilities (which shall be reasonable). Such general policies may be revised at any time by the Community. Should you wish to suggest any rule changes in the Resident Handbook, you may submit any such suggestions to the Community's business office or any other designated location. Upon review of such suggestion(s), you will be notified of Community's decisions to implement/deny your suggestion. The Resident Handbook is incorporated into this Agreement by reference and is made an express part of this Agreement.

6. GRIEVANCE PROCEDURES. The Community encourages its residents to provide feedback, suggestions, and concerns. The Executive Director and Wellness Director will welcome a time to discuss resident concerns. Residents and resident's representatives have the right to voice grievances without discrimination or reprisal. The Community does not tolerate any act of neglect or abuse by staff members, other residents, vendors, or visitors.

Complaints or concerns may be presented verbally, in writing, or during Resident Council meetings and will be investigated by the Community. Community Grievance Forms can be obtained from the Executive Director or any staff member. The Executive Director or his/her designee will respond to the complainant within seven (7) working days of the initial concern to acknowledge receipt and describe steps taken towards resolution. Should action warrant, the Community will act promptly, including reporting to any relevant outside agencies in accordance with Arizona and Federal laws and guidelines.

Residents also have the right to contact external advocacy agencies. Local and State advocacy contact information are posted in the building. Residents also have a listing of these contacts in their copy of the admission paperwork they sign.

7. FAMILY VISITS. The Community's policy regarding family visits intends to encourage family involvement with Residents and to provide ample opportunity for family participation in Community activities. You agree to abide by and observe the Community's general policies regarding family visits and other communication with residents contained in the Community's Resident Handbook.

8. ABSENCE FROM THE COMMUNITY. You are responsible for paying your fees even when you are absent from the Community, including but not limited to, times when you are on vacation or transferred temporarily to any outside health facility. The holding rate for the Accommodation during this period of temporary absence is the pro-rated net monthly fee less the care charges.

9. ADVANCE DIRECTIVES. It is the policy of the Community to ask all prospective Residents whether they have executed any Advance Directives and, if so, whether you would like to provide the Community with any pre-existing Advance Directive Information at the time of admission. The Advance Directive includes health care powers of attorney, living wills, or other documents which describe the amount, level or type of health care you would want to receive at a time when you can no longer communicate those decisions directly to a doctor or other health care professional.

9.1. It is your responsibility to inform the Community of any change or revocation to any Advance Directive documents provided to the Community.

10. INCOMPETENCY. In the event you become legally incompetent or are unable to properly care for yourself or your property, and in the event that you have made no other designation of a person or legal entity to serve as your guardian or conservator, you hereby grant authority to the Community to apply to a court of competent jurisdiction for the appointment of a conservator or guardian.

10.1. Some residents in the Community may suffer from cognitive impairment, including Alzheimer's disease or dementia. This condition can cause unexpected behavior such as wandering, forgetfulness, agitation or confusion, wandering into private area or misplacing items. Despite the Community's efforts to monitor these residents, the Community makes no representations or guarantees that we can predict or control the behavior of these residents. As such, the Community is not responsible for the unexpected behavior/actions of such residents.

11. ACTIVITIES. We encourage our residents to participate in physical activities to the extent they are capable. As a result, there is an associated risk that falls and other personal injuries may occur from time to time. If you are uncomfortable with this type of environment, we suggest that you consider a higher level of care or refrain from voluntarily participating in physical activities that may pose a risk of fall or injury.

12. FREEDOM FROM RESTRAINTS. This Community is not permitted to use restraints on its residents, and the use of restraints is never acceptable. The Community also makes no representations or guarantees that we can always prevent a resident from wandering or attempting to wander from the Community, entering a private area, or engaging in physical contact with other residents despite our efforts to observe a resident's whereabouts.

13. PERSONAL PHYSICIAN. You shall be responsible for obtaining and paying for all health care services you require. You agree to keep the Administration of the Community informed of the name, address and telephone number of your personal physician at all times, and hereby authorize us and our staff to consult with your personal physician regarding your health and care. In the event of an emergency in which you require immediate medical attention, we shall attempt to contact your personal physician. If your personal physician is unavailable for any reason, you authorize the Community to contact a licensed physician or hospital of the Community's choice to attend to your needs. You further agree to be responsible for all associated physician and hospital fees, transportation fees, and fees for medications and treatments prescribed as a result of this consultation.

13.1. Prior to or at the time of admission, you agree to provide to the Community copies of your recent medical history.

14. ASSUMPTION OF RISK. The Community makes no representations or guarantees that it or any of its employees can prevent falls or injuries. Nor does the Community or its employees represent or guarantee that your health condition will not change or deteriorate. If you have a restrictive health condition, are prone to injury, or may be at risk for any reason, you may wish to refrain from participation in any activities at the Community that may exacerbate or cause potential risk of injury. If, despite your condition or risk of injury, you participate in any activity at the Community, you assume the risk of any associated injury.

14.1. Injury to Others. If you intentionally cause injury or harm to another resident or employee of the Community, you will be responsible for all associated damages and/or resulting loss.

14.2. Injury to Self. The Community will not be responsible if you cause injury or harm to yourself.

14.3. Exit from the Community. The Community is not intended to be a "lock down" facility, and all exits are designed for quick egress in accordance with fire safety codes. The Community cannot prevent you from exiting, nor will it be responsible in the event you leave the building for any injury or damage which may result from your time away from the Community.

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20. RIGHT OF ENTRY. You agree that the Community and its employees, agents and contractors shall be entitled, at all reasonable times, to enter your Accommodation for purposes of management, housekeeping, enforcement of applicable laws and regulations, emergency purposes, and any other reasonable purpose. You further agree to use only the locks and locking devices provided for the Community. In addition, because your Accommodation is part of an Assisted Living Center, licensed by the Arizona Department of Health Services, any duly authorized agent of the Department may, upon stating the purpose of his or her visit, enter and inspect any portion of the Community, including your Accommodation, without advance notice.

21. REMOVAL AND STORAGE. Any abandoned property belonging to the resident shall become the property of the Facility after (30) thirty days. If the Resident wishes to retrieve the personal property after the last day of occupancy but on or before the (30) thirty days of abandonment, a storage fee of \$50 per day will be charged and paid to the Facility prior to release of property.

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22.2. No Security Interest. This Agreement does not grant to you or anyone else any security interest in any land, buildings, or other property owned or managed by the Community, whether at the Community or elsewhere. Your rights under this Agreement are and shall be subordinate to any mortgage, deed of trust, or other encumbrance or security interest that is placed on Community property, now or in the future.

22.3. Resident Involvement. You are encouraged to participate in the Community and in the many avenues provided for your involvement in the affairs of the Community. You understand that final policy and governance authority is vested by law in the Community and its officers.

22.4. Joint and Several Liability. If more than one (1) Resident is covered hereby, or if one (1) or more Responsible Party is designated herein, then all such Resident(s) and Responsible Party(s) shall be jointly and severally liable for the Resident's or Residents' obligations hereunder, and the Community may pursue any or all of them jointly or individually for all or any part of such obligations.

22.5. Attorneys' Fees. In the event the Community deems it necessary to incur attorneys' fees as a result of your non-payment or other breach of this Agreement, you agree to pay all such fees and related costs of collection upon demand.

22.6. Waiver. The Community's waiver of any covenant, term, condition or provision of the Agreement or any breach thereof shall not be deemed to be a waiver of any subsequent breach of same or any other covenant, term, condition or provision herein contained. No covenant, term, condition or provision of the Agreement shall be deemed to have been waived by the Community, unless such waiver is in writing and signed by an authorized agent of the Community.

22.7. Modifications. The Community expressly reserves the right to modify any of its rules, policies and procedures at any time it deems necessary.

22.8. Remedies. In addition to and without limiting our rights under Section 3.2 above, in the event of any default or breach by Resident, the Community may recover from the Resident all damages incurred by the Community by reason of the Resident's breach or default and pursue any remedy now or hereafter available to the Community under this Agreement and the laws and judicial decisions of the State of Arizona. All such remedies shall be cumulative and not exclusive, and may be exercised by the Community singly, successively and/or concurrently with each other and any other right or remedy available to Community at law, in equity or under this Agreement.

22.9. Notices. Any notice you desire or are required to give to the Community shall be sent to the attention of the Executive Director of the Community in writing at the address in the Recital paragraph of this Agreement. Any notice we are required to give you shall be given to you in writing at the Community, or if you are not your own responsible party or payor, to the person at the address set forth in Schedule A, Basic Provisions, or to such other address or person as may be specified by written notice to us signed by you or your personal representative. Notice may be by personal delivery or by mail and in the case of mail shall be deemed effective when properly posted.

22.10. Integration. This Agreement constitutes the entire agreement of the parties and supersedes all prior and contemporaneous negotiations,

understandings and agreements of the parties with respect to the subject matter hereof.

22.11. Amendment. This Agreement may be amended only by mutual written agreement of the parties.

22.12. Severability. If one or more of the provisions of this Agreement is hereafter declared invalid or unenforceable by judicial, legislative or administrative authority of competent jurisdiction, the parties hereto agree that the invalidity or unenforceability of such provisions shall not in any way affect the validity or enforceability of any other provisions of this Agreement.

22.13. Governing Law. This Agreement shall be construed, interpreted and applied in accordance with the laws of the State of Arizona.

22.14. Assignment. You shall not assign or transfer any of your rights under this Agreement, including your right to occupy the Accommodation.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date set forth below.

BY SIGNING BELOW, I CERIFY THAT (i) I HAVE READ OR HAVE HAD COMMUNICATED TO ME THE FULL CONTENTS OF THIS AGREEMENT, (ii) I UNDERSTAND AND AGREE TO ABIDE BY THE TERMS OF THIS AGREEMENT AND (iii) I HAVE BEEN PROVIDED A COPY OF THIS AGREEMENT.

Resident Signature

Date

2nd Resident Signature

Date

Responsible Party/Guarantor/POA Signature

Date

Heritage Village Assisted Living Manager Signature

Date

Ham Declaration

Exhibit H

**Heritage Village Bldg 2, LLC, dba
Heritage Village Bldg 2, LLC
8035 East Brown Road
Mesa, AZ 85207**

This facility is licensed to operate as a(n) ASSISTED LIVING CENTER

Total Capacity: 192 DIRECTED CARE; 24 Beds in each Building 1, 2, 3, 5, 6, 7, 8, and 9

Effective Date: February 7, 2023



Recommended By: Tiffany Slater, Bureau Chief

License: AL12412C AMEND- BED INCREASE
(Effective 8-18-2023)



Issued By: Tom Salow, Assistant Director

PROPERTY OF THE
ARIZONA DEPARTMENT OF HEALTH SERVICES



**Heritage Village Bldg2, LLC, dba
Heritage Village Bldg 2
8035 East Brown Road, Building 2
Mesa, AZ 85207**

**This facility is licensed to operate as a(n) Assisted Living Center
Total Capacity: Directed Care 24**

Effective Date: September 1, 2020

Recommended By: Harmony Duport, Bureau Chief

License: AL10534C

Issued By: Colby Bower, Assistant Director

HEALTH AND WELLNESS FOR ALL ARIZONANS

PURSUANT TO A.R.S. §41-1092.11 (A), UPON SUBMITTAL OF A TIMELY AND SUFFICIENT APPLICATION
THIS LICENSE WILL REMAIN IN EFFECT UNTIL REISSUED OR REVOKED
TO BE FRAMED AND DISPLAYED IN A CONSPICUOUS PLACE

Ham Declaration

Exhibit I

1 **BEFORE THE DIRECTOR OF**

2 **THE ARIZONA DEPARTMENT OF HEALTH SERVICES**

3 In the Matter of:) Docket No.: 2024-BRFL-T0125-DHS
4 Heritage Village Bldg 2 LLC, dba)
Heritage Village Bldg 2 LLC) NOTICE OF INTENT TO REVOKE
5 8035 East Brown Road) HEALTH CARE INSTITUTION LICENSE
Mesa, AZ 85207) AND NOTICE OF RIGHT TO REQUEST
6) ADMINISTRATIVE HEARING
)

7 **I. JURISDICTION**

8 The Arizona Department of Health Services (“Department”) is charged by Arizona
9 Revised Statutes (“A.R.S.”) § 36-132(A)(1) with the power and duty to protect the health of the
10 people of Arizona.

11 A.R.S. § 36-136(G) authorizes the Director of the Department (“Director”) to “make and
12 amend rules necessary for the proper administration and enforcement of the laws relating to the
13 public health.”

14 A.R.S. § 36-405(A) requires the Director to “adopt rules to establish minimum standards
15 and requirements for constructing, modifying and licensing health care institutions necessary to
16 ensure the public health, safety and welfare.” A.R.S. § 36-405(B)(2) authorizes the Director, by
17 rule, to “[p]rescribe standards for determining a health care institution’s substantial compliance
18 with licensure requirements.” According to A.R.S. § 36-401(A)(48), “[s]ubstantial compliance”
19 means that “the nature or number of violations revealed by any type of inspection or investigation
20 of a health care institution does not pose a direct risk to the life, health or safety of patients or
21 residents.”

22 According to A.R.S. § 36-401(A)(23), “[h]ealth care institution” means “every place,
23 institution, building or agency, whether organized for profit or not, that provides facilities with
24

1 medical services, nursing services, behavioral health services, health screening services, other
2 health-related services, supervisory care services, personal care services or directed care services
3 and includes home health agencies as defined in section 36-151, outdoor behavioral health care
4 programs and hospice service agencies.” One classification of a health care institution is an
5 assisted living center. *See* A.R.S. §§ 36-401(A)(8), (9), and (23); and Arizona Administrative
6 Code (“A.A.C.”) R9-10-102. According to A.R.S. § 36-401(A)(8), an “[a]ssisted living center”
7 means “an assisted living facility that provides resident rooms or residential units to eleven or
8 more residents.”¹

9 A.R.S. § 36-427(A)(1) grants the Department the authority to revoke the license of any
10 health care institution if its owners, officers, agents, or employees “[v]iolate [A.R.S. Title 36,
11 Chapter 4] or the rules of the [D]epartment adopted pursuant to [A.R.S. Title 36, Chapter 4].”
12 A.R.S. § 36-427(A)(3) grants the Department authority to revoke the license of any health care
13 institution if its owners, officers, agents, or employees “[h]ave been, are or may continue to be
14 in substantial violation of the requirements for licensure of the institution, as a result of which
15 the health or safety of one or more patients or the general public is in immediate danger.”

16 Pursuant to A.R.S. §§ 36-136(G) and 36-405, and in accordance with A.R.S. § 36-427,
17 A.A.C. R9-10-111 and A.A.C. R9-10-112 were adopted. According to A.A.C. R9-10-111(A)(5),
18 the Department may revoke a health care institution license under A.R.S. § 36-427 and A.A.C.
19 R9-10-112 “[i]f the Department determines that an applicant or licensee is violating applicable
20 statutes and rules and the violation poses a direct risk to the life, health, or safety of a patient.”
21 According to A.A.C. R9-10-112(A)(3) and (4), “[t]he Department may deny, revoke, or suspend
22

23 ¹ According to A.R.S. § 36-401(A)(9), an “[a]ssisted living facility” means “a residential care institution, including
24 an adult foster care home, that provides or contracts to provide supervisory care services, personal care services or
directed care services on a continuous basis.”

1 a license to operate a health care institution if an applicant, a licensee, or a controlling person of
2 the health care institution:” “[d]oes not comply with the applicable requirements in A.R.S. Title
3 36, Chapter 4 and [A.A.C. Title 9, Chapter 10];” or “[h]as operated a health care institution,
4 within the preceding ten years, in violation of A.R.S. Title 36, Chapter 4 or [A.A.C. Title 9,
5 Chapter 10], that posed a direct risk to the life, health, or safety of a patient.”

6 According to A.A.C. R9-10-111(B), in determining whether a revocation pursuant to
7 A.A.C. R9-10-111(A)(5) is appropriate, “the Department shall consider the direct risk to the life,
8 health, or safety of a patient in the health care institution based on:

- 9 1. Repeated violations of statutes or rules,
- 10 2. Pattern of violations,
- 11 3. Types of violation,
- 12 4. Severity of violation, and
- 13 5. Number of violations.”

14 **II. LICENSURE HISTORY**

15 On February 7, 2023, pursuant to A.R.S. Title 36, Chapter 4, Article 2, and A.A.C. Title
16 9, Chapter 10, the Department issued license number AL12412C (“License”), to Heritage
17 Village Bldg 2 LLC, dba Heritage Village Bldg 2 LLC² (“Licensee”) to operate an assisted living
18 center at 8035 East Brown Road, Mesa, AZ 85207 (“AL12412 Center”). On August 18, 2023,
19 the Department issued an amended license to Licensee, increasing the licensed capacity of the
20 Center.³ The Licensee is authorized to provide directed care services⁴ with a total capacity of
21 one hundred ninety-two (192). The effective date of the Licensee’s perpetual License is February
22 7, 2023.

23 ² The member listed in the Arizona Corporation Commission for Heritage Village Bldg 2 LLC is MRC VSL HV
24 Management, LLC. Madison Realty Companies, LLC is listed as the manager of MRC VSL HV Management, LLC.

³ The amended license was issued as a result of changes in the address of the separate buildings licensed by the
Department – the governing authority and management remained the same.

⁴ According to A.R.S. § 36-401(A)(16), “[d]irected care services” are “programs and services, including supervisory
and personal care services, that are provided to persons who are incapable of recognizing danger, summoning
assistance, expressing need or making basic care decisions.”

1
2 **III. REASONS FOR DEPARTMENT’S INTENT TO REVOKE HEALTH CARE**
3 **INSTITUTION LICENSE**

4 On July 22, 2019, pursuant to A.R.S. Title 36, Chapter 4, Article 2, and A.A.C. Title 9,
5 Chapter 10, the Department issued license number AL10535C (“AL10535”), to Heritage Village
6 Bldg 5 LLC, dba Heritage Village Bldg 5⁵ to operate an assisted living center at 8035 East Brown
7 Road, Mesa, AZ 85207 (“Heritage Village Bldg 5”). AL10535 was authorized to provide
8 directed care services⁶ with a total capacity of twenty-four (24). On February 20, 2020, a
9 Department Health Care Compliance Surveyor (“Surveyor”) conducted an on-site complaint
10 investigation of complaint number AZ00161619 at Heritage Village Bldg 5. During the
11 complaint investigation, the Surveyor documented three (3) violations in a Statement of
12 Deficiencies (“SOD”) that was provided to Heritage Village Bldg 5 LLC, dba Heritage Village
13 Bldg 5. In violation of A.A.C. R9-10-806(A)(5)(c), the Manager failed to ensure Heritage
14 Village Bldg 5 had caregivers with the qualification, experience, skills, and knowledge necessary
15 to ensure the health and safety of a resident. R2’s medication administration record (“MAR”)
16 dated November 2019 through December 2019 revealed on December 9, 2019, R2 was
17 prescribed “Lorazepam 0.5 mg take one (1) tablet by mouth every six (6) hours.” The MAR was
18 electronically signed by E3 on December 10, 2019 indicating R2 refused the 12:00 AM dose of
19 Lorazepam. A document dated December 10, 2019 indicated E3 reported not giving R2 the
20 12:00 AM scheduled Lorazepam and did not try to give R2 the medication because E3 reported

21
22 ⁵ The member listed in the Arizona Corporation Commission for Heritage Village Bldg 5 LLC is MRC VSL HV
Management II, LLC. Madison Realty Companies, LLC is listed as the manager of MRC VSL HV Management II,
23 LLC.

24 ⁶ According to A.R.S. § 36-401(A)(16), “[d]irected care services” are “programs and services, including supervisory
and personal care services, that are provided to persons who are incapable of recognizing danger, summoning
assistance, expressing need or making basic care decisions.”

1 R2 “normally” refused the medication. E5 told E3 to, “not give the medication because [R2]
2 would be getting tired anyway. [E5] states this is not true.” At 5:00 AM, E2 responded to R1
3 and R2’s room after hearing a loud noise. The document detailed a resident to resident
4 altercation resulting in severe injuries. The document further stated, E3 was issued a written
5 warning for failing to administer medications as prescribed and E2 was, “terminated due to gross
6 resident neglect.” The deficient practice posed a risk as the staff failed to maintain resident
7 safety. On April 2, 2020, the Department issued a Notice of Civil Fines (“AL10535 Enforcement
8 Agreement”) to Heritage Village Bldg 5 LLC, dba Heritage Village Bldg 5. The AL10535
9 Enforcement Agreement indicated a \$500.00 penalty was assessed for the violation of A.A.C.
10 R9-10-806(A)(5)(c). The Enforcement Agreement also stated that the Licensee understood that
11 further violations could result in further enforcement action. The AL10535 Enforcement
12 Agreement was executed on April 9, 2020.

13 On August 13, 2019, pursuant to A.R.S. Title 36, Chapter 4, Article 2, and A.A.C. Title
14 9, Chapter 10, the Department issued license number AL10753C (“AL10753”), to Heritage
15 Village Bldg 7 LLC, dba Heritage Village Bldg 7⁷ to operate an assisted living center at 8035
16 East Brown Road, Mesa, AZ 85207 (“Heritage Village Bldg 7”). AL10753 was authorized to
17 provide directed care services⁸ with a total capacity of twenty-four (24). On February 20, 2020,
18 Department Surveyors conducted an on-site complaint investigation of complaint number
19 AZ00162734 at Heritage Village Bldg 7. During the complaint investigation, the Surveyors
20 documented six (6) violations in a SOD that was provided to Heritage Village Bldg 7 LLC, dba

22 ⁷ The member listed in the Arizona Corporation Commission for Heritage Village Bldg 7 LLC is MRC VSL HV
23 Management II, LLC. Madison Realty Companies, LLC is listed as the manager of MRC VSL HV Management II,
24 LLC.

⁸ According to A.R.S. § 36-401(A)(16), “[d]irected care services” are “programs and services, including supervisory
and personal care services, that are provided to persons who are incapable of recognizing danger, summoning
assistance, expressing need or making basic care decisions.”

1 Heritage Village Bldg 7. In violation of A.A.C. R9-10-806(A)(5)(c), the Manager failed to
2 ensure Heritage Village Bldg 7 had caregivers with the qualification, experience, skills, and
3 knowledge necessary to ensure the health and safety of a resident. The Department received an
4 email dated February 20, 2020 that indicated additional information regarding an “on-going
5 investigation” of an encounter by E4 with O5. The caregiver reported O5, a former resident
6 reported E4 “inappropriately touched” O5. E1 reported the caregiver documented the incident
7 and placed it in the resident’s medical record, however, the Manager had no knowledge of the
8 incident. E1 reported Heritage Village Bldg 7 was taking “immediate steps to suspend the
9 caregiver for failing to report the incident [in] a timely manner.” A review of the written report
10 for O5 dated August 23, 2019 stated “Description of Occurrence” and the boxes for “Sexually
11 Inappropriate,” “Hallucinations,” and “Other (Description)” were marked. The report also
12 included a handwritten description of the alleged sexual abuse and that the caregiver “proceeded
13 to ask more questions and resident denied...” The report indicated no action was taken and no
14 other individual was notified. The deficient practice posed a risk as a caregiver did not inform
15 the Manager of potential abuse which resulted in the Manager’s inability to report, investigate
16 and prevent abuse. On April 2, 2020, the Department issued a Notice of Civil Fines (“AL10753
17 Enforcement Agreement”) to Heritage Village Bldg 7 LLC, dba Heritage Village Bldg 7. The
18 AL10753 Enforcement Agreement indicated a \$500.00 penalty was assessed for the violation of
19 A.A.C. R9-10-806(A)(5)(c). The Enforcement Agreement also stated that the Licensee
20 understood that further violations could result in further enforcement action. The AL10753
21 Enforcement Agreement was executed on April 9, 2020.

22 On December 5 and 6, 2023, Department Compliance Officers (“Officers”)⁹ and a

23 _____
24 ⁹ The term “Surveyor” and “Officer” are interchangeable titles for inspectors that work on behalf of the Department.

1 Department Compliance Officer Supervisor (“Supervisor”) conducted an on-site compliance
2 inspection and complaint investigation of complaint numbers AZ00203955, AZ00203854,
3 AZ00203699, AZ00203434, AZ00203264, AZ00203148, and AZ00202744, at the Center.
4 During the compliance inspection and complaint investigation, the Officers documented thirty-
5 six (36) violations in a Statement of Deficiencies (“SOD”) that was provided to the Licensee.
6 The SOD is incorporated by reference and provides the detailed reasons for this Notice of Intent
7 to Revoke Health Care Institution License and Notice of Right to Request an Administrative
8 Hearing (“Notice.”) Below is the summary of some of the most serious deficiencies cited in the
9 SOD:

- 10 1. In violation of A.A.C. R9-10-806(A)(1)(b)(i), the Manager failed to ensure
11 that one (1) employee, working as a caregiver, provided documentation of
12 completion of a caregiver training program approved by the Department or the
13 Board of Examiners for Nursing Care Institution Administrators and Assisted
14 Living Facility Managers (NCIA Board). A review of personnel records
15 revealed E9 was hired as a caregiver on June 24, 2022. E9’s personnel record
16 did not include evidence that E9 had completed a caregiver training program
17 approved by the Department or the NCIA Board. E9 had a certificate obtained
18 online that was dated September 4, 2022 and stated, “Renewable 1 year from
19 date” from “Caregiver Training University” Chicago, IL. The NCIA Board
20 website found no evidence that E9 had completed a caregiver training
21 program approved by the Department or the NCIA Board. E9 was scheduled
22 to work alone on the second shift. The deficient practice posed a direct health
23 and safety risk to the residents if the employee was not trained and qualified to
24 meet the needs of residents.
2. In violation of A.A.C. R9-10-806(A)(10), the Manager failed to ensure that
one (1) caregiver’s cardiopulmonary resuscitation (CPR) training was valid.
A.A.C. R9-10-803(C)(1)(e)(i) specifies that the CPR training must include a
demonstration of the employee’s ability to perform CPR. E11’s CPR training
certificate was from New Life CPR & First Aid, which was an online-only
training course and did not include a return demonstration of the caregiver’s
ability to perform CPR. The deficient practice posed a risk to the health and

1 safety of residents if a caregiver was unable to perform CPR appropriately in
2 an emergency.

- 3 3. In violation of A.A.C. R9-10-808(A)(1), the Manager failed to ensure that six
4 (6) residents had a documented service plan which was completed within
5 fourteen (14) days after the residents were accepted into the Center. R3, R19,
6 R20, R23, R25, and R28 did not have a documented service plan completed
7 within fourteen (14) days after the residents were accepted into the Center.
8 The deficient practice posed a risk to the health and safety of the residents if
9 the caregivers did not know what services the residents needed.
- 10 4. In violation of A.A.C. R9-10-808(A)(4)(b)(ii), the Manager failed to ensure
11 that two (2) residents' written service plans, at the personal care level, were
12 reviewed and updated at least once every six (6) months¹⁰. R1's and R4's
13 services plans were not updated at least once every six (6) months. The
14 deficient practice posed a risk to the health and safety of the resident if the
15 service plans were not updated as required to reinforce and clarify services.
- 16 5. In violation of A.A.C. R9-10-808(A)(4)(b)(iii), the Manager failed to ensure
17 that seven (8) residents' written service plans, at the directed care level, were
18 reviewed and updated at least once every three (3) months. R5's, R8's, R9's,
19 R12's, R19's, R22's, R23's, and R28's service plans were not updated at least
20 once every three (3) months. The deficient practice posed a risk to the health
21 and safety of the residents if the service plans were not updated as required to
22 reinforce and clarify services.
- 23 6. In violation of A.A.C. R9-10-808(A)(5)(a), the Manager failed to ensure that
24 ten (10) residents' written service plans were signed and dated by the residents
or the residents' representatives. R's, R8's, R9's, R12's, R13's, R14's, R17's,
R18's, R19's, and R20's service plans did not include documentation of the
signature and date of the resident or the resident's representative. The
deficient practice posed a risk to the health and safety of the residents if the
service plans were not developed and updated to articulate decisions and
agreements.
7. In violation of A.A.C. R9-10-808(A)(1)-(5), the Manager failed to ensure that
two (2) residents had documented service plans. R3 and R24 did not have a
written service plan. Based on R3's and R4's date of acceptance, a service

¹⁰ The SOD includes an error and R2 should be excluded from this deficiency.

1 plan was required. The deficient practice posed a risk to the health and safety
2 of the residents if the caregivers did not know what services the residents
3 needed.

4 8. In violation of A.A.C. R9-10-808(B)(1)(a)(i)-(ii), the Manager failed to ensure
5 that one (1) respite care resident had a documented service plan. R6 did not
6 have a written service plan. Based on R6's date of acceptance, a service plan
7 was required. The deficient practice posed a risk to the health and safety of the
8 resident if the caregivers did not know what services the resident needed.

9 9. In violation of A.A.C. R9-10-811(A)(5), the Manager failed to ensure that
10 information from residents' medical records was protected from unauthorized
11 use. The Officers observed a plastic box full of multiple blister packs of
12 medications unlocked and uncovered in the reception area of the
13 administration building. The blister packs were labeled with resident names
14 and information about the medications. The labels were clearly visible. E2
15 reported the medications were discontinued or belonged to residents who
16 longer resided at the Center and they have been gathered to be disposed of. E2
17 acknowledged the medications were stored where information could be
18 accessed. The deficient practice posed a risk as the residents' personal
19 information was not protected.

20 10. In violation of A.A.C. R9-10-815(B)(1), the Manager failed to ensure that
21 seven (7) residents who were unable to ambulate even with assistance had a
22 determination from a medical practitioner that the residents' needs could be
23 met by the Center. R2, R9, R17, R18, R20, R21, R24, and R28 were unable to
24 ambulate even with assistance. R2's, R9's, R17's, R18's, R20's, R24's, and
R28's medical records did not include a determination from a medical
practitioner that the residents' needs could be met by the Center. The deficient
practice posed a risk to the health and safety of the residents if the residents'
needs could not be met by the Center.

11. In violation of A.A.C. R9-10-815(F)(2)(a)(i)-(ii), the Manager failed to ensure
there was a means of exiting the Center that controlled or alerted employees
of the egress of a resident from the Center. The Supervisor observed a door
leading to the patio in the back of House #3 had a door alarm intended to alert
employees to the egress of a resident to the outside area, however, the door
was propped open with a chair. The Supervisor observed the fence enclosing
the patio had a gate which was not locked. The gate did not have an alarm or
other means to alert employees to a resident's egress. E1, E2, and E22

1 acknowledged there were residents at the directed level of care in House #3.
2 The deficient practice posed a direct health and elopement safety risk to
3 residents if the Center was unaware of their general or specific whereabouts.

4 On December 13, 2023, the Department sent a copy of the SOD to the Licensee along
5 with a letter (“Notice of Enforcement”) notifying the Licensee that the case had been referred to
6 the Department’s Enforcement Team. The Notice of Enforcement also informed the Licensee
7 that they “have an opportunity to submit a written Informal Dispute Resolution (IDR) if [they]
8 have evidence the SOD contains errors or inaccuracies. On December 26, 2023, the Department
9 received an IDR request from the Licensee. The IDR did not result in any amendments or
10 changes to the SOD.

11 Based on the type, severity, and number of the foregoing violations, the Department has
12 reasonable cause to believe that Licensee and the Center have been, are, or may continue to be
13 in substantial violation of A.R.S. Title 36, Chapter 4 and A.A.C. Title 9, Chapter 10, which
14 results in a direct risk to the life, health and safety of the patients at the Center. *See* A.R.S. § 36-
15 427(A)(1) and (3); A.A.C. R9-10-111(A)(5) and (B); and R9-10-112(A)(3) and (4).

16 **IV. FINDINGS, NOTICES, AND INSTRUCTIONS TO REQUEST A HEARING**

17 **YOU ARE HEREBY NOTIFIED** that based on the foregoing and pursuant to A.R.S. §
18 36-427(A)(1) and (3), A.A.C. R9-10-111(A)(5) and (B), and R9-10-112(A)(3) and (4), the
19 Department herein intends to revoke the License (number AL12412C), issued to Licensee
20 (Heritage Village Bldg 2 LLC, dba Heritage Village Bldg 2 LLC) to operate an assisted living
21 center at 8035 East Brown Road, Mesa, AZ 85207.

22 **YOU ARE ADVISED** that you have the right to request a hearing before the Arizona
23 Office of Administrative Hearings and to have an Administrative Law Judge review this Notice.
24 *See* A.R.S. § 41-1092.03(B). You may request a hearing by submitting a written request to the

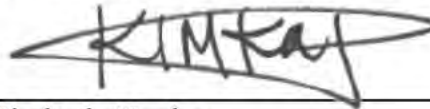
1 Clerk of the Department, Arizona Department of Health Services, 150 N. 18th Ave., Room 200,
2 Phoenix, AZ 85007, **within thirty (30) calendar days** after this Notice is received. If you submit
3 a timely request for a hearing, you will be given an opportunity at the hearing to respond to this
4 Notice and to present evidence and argument on all relevant issues. *See* A.R.S. § 41-1092.07(D).

5 **IF YOU TIMELY REQUEST A HEARING, YOU MAY ALSO REQUEST** that the
6 Department hold an informal settlement conference by submitting a written request to the
7 Department **no later than twenty (20) calendar days** before the hearing scheduled in the matter.
8 Such request shall be sent to the Compliance Unit, Arizona Department of Health Services,
9 Public Health Licensing Services, 150 N. 18th Avenue, Suite 410, Phoenix, AZ 85007. *See*
10 A.R.S. § 41-1092.06(A).

11 **IF YOU DO NOT TIMELY REQUEST A HEARING** following receipt of this
12 Notice, the revocation of your health care institution license **will be automatically effective**
13 **immediately upon the expiration of the thirty (30) day period following receipt of this**
14 **Notice**, and the Department's revocation of your license will not be subject to judicial review.
15 *See* A.R.S. § 41-1092.08(H).

16 DATED this 12th day of January, 2024.

17 ARIZONA DEPARTMENT OF HEALTH SERVICES

18 

19 _____
20 Kimberly Kaplan
21 Director's Designee
22
23
24

1 ORIGINAL filed on the 12th day of January, 2024, with:

2 Clerk of the Department
3 Arizona Department of Health Services
4 150 N. 18th Ave., Ste. 200
5 Phoenix, AZ 85007

6 COPY of the foregoing sent by certified mail return receipt requested
7 on the 12th day of January, 2024, to:

8 Heritage Village Bldg 2 LLC, dba
9 Heritage Village Bldg 2 LLC
10 8035 East Brown Road
11 Mesa, AZ 85207

12 National Document, LLC, Statutory Agent
13 Heritage Village Bldg 2 LLC
14 300 West Clarendon Avenue, Suite 240
15 Phoenix, AZ 85013

16 MRC VSL HV Management LLC, Manager
17 Heritage Village Bldg 2 LLC
18 925 S. Niagara St., Ste 340
19 Denver, CO 80224

20 COPIES of the foregoing sent by electronic/interdepartmental/regular mail
21 on the 12th day of January, 2024, to:

22 Heritage Village Bldg 2 LLC, dba
23 Heritage Village Bldg 2 LLC
24 8035 East Brown Road
Mesa, AZ 85207

National Document, LLC, Statutory Agent
Heritage Village Bldg 2 LLC
300 West Clarendon Avenue, Suite 240
Phoenix, AZ 85013

MRC VSL HV Management LLC, Manager
Heritage Village Bldg 2 LLC
925 S. Niagara St., Ste 340
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6 PHLENF@azdhs.gov
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7 150 N. 18th Ave.
Phoenix, AZ 85007

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Ham Declaration

Exhibit J

BUCHALTER

A PROFESSIONAL CORPORATION
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Pro Hac Vice (To Be Filed)

CV2021-054363

Attorneys for Plaintiff
SUNWEST BANK

**IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA**

SUNWEST BANK, a California banking
corporation,

Plaintiff,

v.

MRSC AZ Mesa DST, a Delaware statutory
trust; John Does I-X,

Defendant.

No.

VERIFIED COMPLAINT FOR:

Breach of Contract (Appointment of
Receiver)

**(COMMERCIAL COURT
ASSIGNMENT REQUESTED)**

Plaintiff, Sunwest Bank ("Plaintiff"), through its undersigned counsel, for its
Complaint against defendants, complains and alleges as follows:

PARTIES

1. Plaintiff was and is a California banking corporation, and is authorized to conduct business in the State of Arizona as a commercial bank.

2. Defendant MRSC AZ Mesa Junction, DST (“Defendant” or “Mesa”), is a Delaware statutory trust doing business in Maricopa County, Arizona. Mesa operates a 21-unit, 31-bed senior assisted living facility (“Property”).¹

3. The true names and capacities of the defendants named herein as John Does I-X, whether individual, corporate, partnership, associate or otherwise, are unknown to Plaintiff and, as such, are sued by fictitious names. When Plaintiff ascertains the true names and capacities of the John Doe Defendants, Plaintiff will include their true names and capacities as if originally named herein. Plaintiff is informed and believes that each of the John Doe Defendants may assert some interest in the Rents and Profits Collateral [as defined herein] at issue herein, which interest is subordinate and subject to the interests of Plaintiff.

4. The collateral that is the subject of this action is comprised of all of Defendant’s right, title and interest in and to all current and future Rents,² and other benefits of the Property, files, records and documents related thereto, any and all personal property assets, as defined in the Uniform Commercial Code of Arizona,³ (collectively, the Rents and Personal Property Collateral are referred to as the “Rents and Profits Collateral”).

¹ Mesa is controlled and managed by Gary Langendoen and Matthew Arnold, both of whom are Authorized Representatives under the Loan Documents [defined herein] and Authorized Agents of the loan facilities provided by Plaintiff to Defendants (“Authorized Agents”).

² “Rents” is defined in Section 1(f) of the Mesa Deed [defined herein] as: “...and all right, title and interest of Trustor...cash or securities deposited thereunder to secure the performance by the lessees of their obligations thereunder and all rents, additional rents, revenues, prepayments, tax, insurance and replacement reserve deposits, receipts, termination, cancellation, and option payments, service reimbursements, fees, accounts receivables, issues and profits...from the Land and the Improvements...(collectively, the “Rents”).”

³ And, as such collateral is more particularly described in the Mesa Security Agreement [defined herein] and as set forth in Section 1.2(m) and (n) of the Mesa Deed, the “Personal Property Collateral”)

JURISDICTION

5. The Court has subject matter jurisdiction over this case pursuant to the Arizona Constitution and A.R.S. §12-123.

6. The Court has personal jurisdiction over Defendant because it does business in Maricopa County, Arizona, and has caused events to occur in Maricopa County, Arizona. Moreover, the Rents and Profits Collateral is located in Maricopa County.

7. Venue in Maricopa County is proper pursuant to A.R.S. §12-401.

THE LOAN

8. On or about May 25, 2016, Plaintiff extended credit accommodations to Mesa (the "Mesa Loan") evidenced by a Loan Agreement executed by defendant Mesa (the "Mesa Loan Agreement"). A true and correct copy of the Mesa Loan Agreement is attached as **Exhibit 1** and incorporated by reference.

9. Concurrently, with the execution of the Mesa Loan Agreement, Mesa executed a Promissory Note in the principal sum of \$2,500,000.00 (the "Mesa Note") in favor of Plaintiff, a true and correct copy of which is attached as **Exhibit 2** and incorporated by reference.

10. To secure repayment of the indebtedness evidenced by the Mesa Note, on May 25, 2016, Mesa, as trustor, executed and delivered to Plaintiff, as beneficiary, a Deed of Trust, Security Agreement, Assignment of Leases and Rents, and Fixture Filing ("Mesa Deed"). The Mesa Deed was recorded on June 3, 2016 in the Official Records of the Recorder's Office of Maricopa County, State of Arizona, as instrument number 20160384389. A true and correct copy of the Mesa Deed is attached as **Exhibit 3** and incorporated by reference.

11. As further inducement to extend the Mesa Loan, on or about May 25, 2016, Mesa executed a Borrower Security Agreement ("Mesa Security Agreement"), pursuant to the terms of which said defendant granted a security interest in certain described assets (collectively, the "Personal Property Collateral") to secure its indebtedness under the Mesa Loan Agreement and

Note. A true and correct copy of the Mesa Security Agreement is attached as **Exhibit 4** and incorporated by reference.

12. Plaintiff duly perfected its security interests in the Mesa Personal Property Collateral by filing the appropriate UCC financing statement (the “Mesa Financing Statement”) with the Office of the Arizona Secretary of State. A true and correct copy of the Mesa Financing Statement is attached as **Exhibit 5** and incorporated by reference.

13. The Mesa Loan Agreement, Mesa Note, Mesa Deed and Mesa Security Agreement are hereinafter collectively referred to as the “Loan Documents.”⁴

THE DEFAULTS

14. Monetary and covenant Events of Default occurred under the terms of the Loan Documents, including, but not limited to (i) the failure to pay interest (ii) the failure to pay late charges (iii) the failure to pay the requisite deposits to the Capital Expenditure Reserve and (iv) the failure to pay attorneys’ fees, and, as a result of these Events Of Default, the making of prohibited distributions and payments to Defendant’s Parent Trust, investors, affiliates and third parties.

15. As a result of the Events of Default, there is now due and owing as of December 9, 2021, on the Mesa Loan the aggregate amount of \$2,348,895.32, plus accruing interest, costs and expenses. Attached hereto collectively as **Exhibit 6**, and incorporated herein, is the payoff statement setting forth the amounts due on the Mesa Loan.

16. The Mesa Loan Agreement has a required Capital Expenditure Reserve pursuant to Section 2.6(d) (“CapEx”). Defendant has failed to make its required monthly deposits to its CapEx account in the aggregate amount of \$45,498.00.

17. It is imperative that Defendant generates sufficient income to meet its payment obligations to Plaintiff as required pursuant to the Loan Documents. If no Event of Default has

⁴ Unless otherwise defined herein, each capitalized term used shall have the meaning as set forth in the Loan Documents.

occurred under the Loan Documents, then Defendant is permitted to distribute monthly Excess Cash Flow, *but* upon an Event of Default, Defendant is *not permitted to make any distributions or payments* of any kind of Excess Cash Flow [*see*, Section 6.2(b) of the Mesa Loan Agreement].

18. In violation of Section 6.2(b) of the Mesa Loan Agreement, since November 6, 2020 and continuing through November 20, 2021, Defendant has made prohibited distributions or payments in at least the aggregate sum of \$169,945.00 (“Prohibited Payments”) to Defendant’s Parent Trust, investors, affiliates and third parties.

19. Defendant has failed to maintain the required Debt Service Coverage Ratio (“DSCR”) pursuant to the Mesa Loan Agreement. Thus, Defendant is losing money, has little or no ability to repay the Mesa Loan, and is in default of the required DSCR.

20. The Loan Documents provide that Defendant agrees to pay reasonable attorneys’ fees incurred in the enforcement thereof. Plaintiff has employed the law firm of Buchalter, A Professional Corporation, for the purpose of instituting and prosecuting this Action.

21. Plaintiff has performed all of the promises, covenants and conditions it agreed to perform in accordance with the terms of the Loan Documents, except for those promises, covenants and conditions excused by the acts or omissions of Defendant.

REMEDIES UNDER THE LOAN DOCUMENTS

22. In the event of default, which has occurred here, the Loan Documents set forth the non-exclusive remedies that Plaintiff is entitled, as a matter of right, to exercise.

The Mesa Loan Agreement

23. The Mesa Loan Agreement, in Section 9.4 entitled “**Right to Appoint Receiver**” provides in pertinent part:

Upon the occurrence of and during the continuance of an Event of Default under this Agreement or the other Loan Documents, Lender, in addition to all other rights, options, and remedies granted to Lender under this Agreement or at Law or in equity, may appoint or seek appointment of a receiver, without notice and without regard to the solvency of Borrower or the adequacy of the security, for the purpose of preserving the Project, preventing waste and to

protect all rights accruing to Lender by virtue of this Agreement and the other Loan Documents....

24. The Mesa Loan Agreement, in Section 9.9 entitled “**Injunctive Relief**” provides in pertinent part:

The parties acknowledge and agree that, in the Event of a breach or threatened breach of Borrower’s or any Guarantor’s obligations under any Loan Documents, Lender may have no adequate remedy in money damages and, accordingly, shall be entitled to an injunction (including without limitation, a temporary restraining order, preliminary injunction, writ of attachment, or order compelling an audit) against such breach....

The Mesa Deed

25. The Mesa Deed, in Article IX entitled “**Rights and Remedies Upon Default**” in Section 9.1 provides, in pertinent part, that upon and occurrence of any Event of Default that Trustor may:

(h) apply for the appointment of a receiver...for all or any part of the Property and the Rents, and the proceeds, issues and profits thereof, without notice and without regard to the adequacy of the security for the Indebtedness and without regard to the solvency of Trustor...(and Trustor hereby consents to the appointment of such receiver and shall not oppose any such appointment and such receiver shall have all powers and duties prescribed by applicable law...Trustor agrees that Beneficiary shall have the absolute and unconditional right to the appointment of a receiver, without the posting of any kind of any bond or undertaking....

(i) the license granted to Trustor under Section 2.1 hereof shall automatically be revoked and Beneficiary may enter into or upon the Property, either personally or by its agents...and take possession of all books, records and accounts related thereto....”

OTHER RELEVANT BORROWER COVENANTS IN THE LOAN DOCUMENTS

The Mesa Loan Agreement

26. The Mesa Loan Agreement, in Section 2.6 entitled “**Reserves and Escrows**” provides in pertinent part:

(a) General Reserve and Escrow Requirements. Borrower agrees to establish and maintain all of the reserves required in this Section 2.6....

(d) Capital Expenditure Reserve. Borrower shall or cause Master Lessee to make an initial deposit of One Hundred Thirty Thousand Dollars (\$130,000) in a bank control restricted account (“Capital Expenditure Reserve”) established by Lender. On a monthly basis, commencing with the initial debt service payment, Borrower shall pay or cause Master Lessee to pay Lender deposits in the amount of Five Hundred Twenty-Five and 00/100 Dollars (\$525.00) (approximately \$300 per unit per year) to be held by Lender in the Capital Expenditure Reserve....

27. The Mesa Loan Agreement, in Section 2.5 entitled “**Loan Payments; Cash Management and Certain Fees**” provides in pertinent part:

(f) Late Charges. If payments of principal, interest due on the Loan, or any other amounts due hereunder or under the Note or the other Loan Documents are not timely made and remain overdue for a period of ten (10) days, Borrower, without notice or demands by Lender, shall promptly pay an amount (the “**Late Charge**” equal to five percent (5%) of each delinquent payment in order to defray the expense incurred by Lender in handling and processing such delinquent payment....”

28. The Mesa Loan Agreement, in Section 6.2 entitled “**Real Property Covenants**” provides in pertinent part:

(b) Cash Distributions. So long as no Event of Default exists, Borrower may distribute monthly Excess Cash Flow⁵ less any amount other than principal and interest payments due to Lender under the Loan Documents for such month to Parent Trust.⁶ Upon an Event of Default, Borrower shall not make any distributions or payment of any kind.

29. The Mesa Loan Agreement, in Section 2.1 entitled “**Affirmative Covenants**” provides in pertinent part:

⁵ Excess Cash Flow is defined in Schedule 1.3 as “For any period means the Net Cash Flow for such period less current principal and interest payments due on the Loan for such period.” Net Cash Flow, in turn, is defined, in part as “For any Period means, all revenues of Borrower, determined on a cash basis, derived from the ownership, operation, use, leasing and occupancy of the Project during such period...less the actual, customary and reasonable expenses actually paid by the Borrower in connection with operating the Project paid during such period....”

⁶ Parent Trust is defined in Section 5.1(a)(ii).

(p) Debt Service Coverage Ratio. Borrower will, and, as to the Project, shall cause Master Lessee to, maintain, at all times during the term of the Loan, a Debt Service Coverage Ratio of not less than the amount set forth below:

	<u>Debt Service Coverage Ratio</u>
Borrower Debt Service Coverage Ratio	1.35 to 1.00
Master Lessee Debt Service Coverage Ratio	1.40 to 1.00

30. The Mesa Loan Agreement, in Section 9.12 entitled “**Events of Default**” provides in pertinent part:

The occurrence of any one or more of the following shall constitute an “**Event of Default**” as said term is used herein:

a. Failure of Borrower to pay within five (5) days when due any principal, interest, premium or fee under any Loan Document or any other amount due under any Loan Document;

b. Failure to strictly comply with the provisions of Section 2.6(d) (Capital Expenditure Reserve)....

c. Failure of Borrower for a period of thirty (30) days after written notice from Lender, to observe or perform any non-monetary covenant or condition contained in this Agreement or any other Loan Documents not set forth in the subsection listed in Section 9.1(b) above....

31. The Mesa Loan Agreement, in Section 12.4 entitled “**Governing Law**” provides in pertinent part:

IRRESPECTIVE OF THE PLACE OF EXECUTION AND/OR DELIVERY, THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS SHALL BE GOVERNED BY, AND SHALL BE CONSTRUED IN ACCORDANCE WITH, THE INTERNAL LAWS OF THE STATE OF CALIFORNIA, WITHOUT REGARD TO CONFLICTS OF LAW PRINCIPLES; PROVIDED, HOWEVER, THAT THE LAWS OF THE STATE WHERE THE LAND IS LOCATED SHALL APPLY TO THE CREATION, PERFECTION AND ENFORCEMENT OF ANY LIENS, SECURITY INTERESTS AND ENCUMBRANCES GRANTED OR CREATED BY THE MORTGAGE ON REAL PROPERTY LOCATED IN THE STATE WHERE THE LAND IS LOCATED.....

32. The Mesa Loan Agreement, in Section 12.24 entitled “**Cross Default and Cross Collateralization**” provides in pertinent part:

(a) Cross Default. As stated under Section 9.1 hereof, an Event of Default under any of the Affiliated Loan Documents⁷ shall be an Event of Default under this Agreement. In addition, a Default or Event of Default under any of the Loan Documents shall be a Default under the Affiliated Loan Documents, including without limitation, the Affiliated Loan Agreements....

(b) Cross Collateralization. Borrower acknowledges and agrees that the Collateral securing this Loan, also secures the Obligations (as such term is defined in the Affiliated Loan Agreements) under the Affiliated Loans (the “Affiliated Obligations”). As more particularly described in the Security Agreement and Deed of Trust.

The Mesa Deed

33. The Mesa Deed, in Article II entitled “**Assignment of Rents**” in Section 2.1 provides in pertinent part:

2.1 Assignment of Rents. Trustor hereby absolutely and unconditionally assigns to Beneficiary, all of Trustor’s right, title and interest in and to all current and future Leases and Rents, and other benefits of the Property, whether now due, past due or to become due, including all prepaid rents and security deposits. Notwithstanding any provision in the Deed of Trust to the contrary, the parties hereby confirm that (a) this assignment constitutes a present, absolute assignment and not an assignment for security, and (b) this assignment is provided to facilitate payment and performance of the Obligation. Trustor hereby gives Beneficiary the right to collect Rents and apply them to payments of the principal, interest and all other sums payable under the Loan Documents. Nevertheless, subject to the terms of the Loan Agreement and Section 9.1(i) of this Deed of Trust, Beneficiary grants to Trustor a revocable license to administer the Leases and to collect, receive, use and enjoy the Rents...so long as no Event of Default (as defined in Section 8.1 below)⁸ shall exist and be continuing and Trustor shall hold the Rents, or a portion thereof sufficient to discharge all current sums due on the Indebtedness, for use in the payment of such sums as such sums become due....

⁷ Schedule 1.3 [**Definitions**] of each Loan Agreement defines **Affiliated Loan Documents** as “Any and all documents evidencing, securing and/or governing the **Affiliated Loans**” which, in turn, includes the Defendant.

⁸ Section 8.1 of the Mesa Deed defines an **Event of Default** as having “the meaning assigned to such term in the [Mesa] Loan Agreement.”

2.2 Collection and Application of Rents. Subject to the license granted to Trustor under Section 2.1 above, Beneficiary has the right, power and authority to collect any and all Rents. Trustor hereby appoints Beneficiary its attorney-in-fact to perform, following the occurrence of, and during the continuance of an Event of Default, any and all of the following acts, if and at the times when Beneficiary in its sole discretion may choose:

(a) Demand, receive and enforce payment of any and all Rents; or....

Beneficiary and Trustor agree that the mere recordation of the assignment granted herein entitles Beneficiary immediately to collect and receive rents upon the occurrence of an Event of Default, as defined in Section 8.1....

34. The Mesa Deed, in Article XII entitled “**Governing Law**” in Section 12.1 provides:

In all respects, including, without limitation, matters of construction and performance of this Deed of Trust and the obligations arising hereunder, this Deed of Trust shall be governed by, and construed in accordance with, the internal laws of the State of California applicable to contracts made and performed in such state and any applicable laws of the United States of America; except that with respect to the validity, priority and enforceability of the lien of this Deed of Trust and the provisions hereof which relate to realizing upon the Property, the applicable provisions of this Deed of Trust shall be governed by, and interpreted in accordance with, the laws of the State of Arizona, it being understood that, to the fullest extent permitted by the law of such state, the law of the State of California shall govern the validity and enforceability of the obligations arising under this Deed of Trust, the Loan Documents, and the Obligations. Notwithstanding, should any dispute related to this Deed of Trust involve the need to interpret compliance with state laws, regulations, and rules related to (i) the License, (ii) Healthcare Permits, (iii) contracts with third party payor programs administered by the State of Arizona, or (iv) state healthcare laws, Arizona law shall apply.

FIRST CLAIM FOR RELIEF

(Breach of Contract - Appointment of Receiver)

35. Plaintiff hereby incorporates each and every allegation contained in the previous paragraphs of this Complaint as though fully set forth herein.

36. Upon default, the Loan Documents grant to Plaintiff the right to the appointment of a receiver and the absolute and immediate right to obtain possession of and to collect all the Rents and Profits Collateral.

37. Furthermore, A.R.S. §12-1241 authorizes the Court to “appoint a receiver to protect and preserve property or the rights of parties therein, even if the action includes no other claim for relief.”

38. Because of the Events of Default, Plaintiff believes there is a substantial risk Defendant will not properly collect and remit the Rents and Profits Collateral, will not properly maintain the Properties, and, in general, will not act to protect, safeguard and maintain Plaintiff’s interests, all to the potential irreparable detriment, harm and loss to Plaintiff. Plaintiff is at risk that Defendant will continue to dissipate the Rents and Profits Collateral, may not turnover the income and profits being generated by the Property, and that Defendant may dispose of or harm the value of the Rents and Profits Collateral. Plaintiff is being harmed and will continue to be harmed as long as Plaintiff remains in control of the Rents and Profits Collateral.

39. It is impractical and impossible for Plaintiff to enjoy the rights granted to it under the Loan Documents and applicable Arizona law without the appointment of a receiver who has the power and authority to take possession of, manage, collect and apply the Rents and Profits Collateral.

40. Accordingly, the Court should enter an Order appointing a receiver (the “Receiver”), which Order provides the Receiver with all appropriate powers and duties with respect to the Rents and Profits Collateral, and which requires Defendant, and its agents and employees, and Authorized Representatives, to, among other things:

(a) Turn over to the Receiver the possession of the Rents and Profits Collateral, and the records and books related thereto, wherever located and in whatever mode maintained (including, without limitation, information contained on computers and any and all software relating thereto as well as all banking records and statements); and

(b) Turn over to the Receiver all accounts, including bank accounts, derived security deposit accounts and operating accounts, issues, income and profits derived from the operating business or Rents and Profits Collateral.

41. The Order appointing a Receiver should also prevent Defendant, and its agents or representatives, and Authorized Agents, from, among other things:

(a) Interfering with the Receiver, directly or indirectly, in the management and in the collection of the Rents and Profits Collateral;

(b) Expending, disbursing, transferring, assigning, selling, conveying, devising, pledging, mortgaging, creating a security interest in or disposing of the whole or any part of the Rents and Profits Collateral, and

(c) Doing any act which will, or which will tend to, impair, defeat, divert, prevent or prejudice the preservation of the Rents and Profits Collateral or Plaintiff's interest in the Rents and Profits Collateral.

42. This action is brought under A.R.S. § 12-1241 and Rule 66, Arizona Rules of Civil Procedure.

WHEREFORE, Plaintiff respectfully requests the Court to enter an Order, providing among other things:

A. Appointing a Receiver to:

(i) Take possession of, control, manage and collect all proceeds, issues, income and profits derived from the Rents and Profits Collateral and the Personal Property Collateral related thereto (“collectively, “Receivership Property”);

(ii) Take possession and control of the records, books, ledgers, and all business records thereof, wherever located and in whatever mode maintained (including, without limitation, information contained on computers and any and all software relating thereto as well as all banking records, statements and canceled checks) related to the Receivership Property

(iii) Take possession and control of all accounts, including bank accounts,

security deposit accounts and operating accounts related to the Receivership Property, and, in his business judgment, either (1) become the sole signatory on said accounts or (2) transfer said accounts to new receivership accounts at any financial institution insured by an agency of the United States government.

(iv) Expend and apply money coming into his possession in order to pay normal operating expenses of Defendant, which operating expenses he deems, in his business judgment, that are necessary to operate and preserve the Receivership Property, including payments to Plaintiff to service the Apache Loan; said Defendant's operating expenses are to be submitted by Defendant to the Receiver for payment on a weekly basis, except any such expenses which the Receiver deems to be an emergency; and

(v) Take such other actions as may be necessary or incidental to the foregoing specific powers, directions, and general authorities relating to the business; and

B. Decreeing that Defendant and its respective officers, directors, general and limited partners, agents, property managers, and employees, and all other persons with actual or constructive knowledge of said Order and their agents and employees, including Authorized Representatives, shall take such actions and turn over documents and proceeds to the Receiver;

C. Requiring Defendant to submit to the Receiver on a weekly basis operating expenses which it wishes to have the Receiver pay.

D. Requiring Defendant and its agents and employees to provide an accounting of Rents and Profits from the date this Complaint is filed through the date the Order is entered herein appointing the Receiver; and

E. For such other and further relief as the Court may deem just and proper.

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VERIFICATION

I, Michael Haden, declare:

I am a Senior Vice President and Special Assets Manager of Sunwest Bank, a California banking corporation, which is the Plaintiff in the above-entitled action, and I have been authorized to make this verification on its behalf.

I have read the foregoing Verified Complaint on file herein and know the contents thereof. The same is true of my own knowledge, except as to those matters which are therein stated on information and belief, and, as to those matters, I believe them to be true.

I declare under penalty of perjury under the laws of the State of California, the State of Arizona and the United States of America that the foregoing is true and correct.

Executed at Irvine, California, on December 15, 2021.


MICHAEL HADEN

Ham Declaration

Exhibit K

Stuart B. Rodgers - 025720
LANE & NACH, P.C.
2001 East Campbell, Suite 103
Phoenix, Arizona 85016
Telephone No.: (602) 258-6000
Facsimile No.: (602) 258-6003
Email: stuart.rodgers@lane-nach.com

Attorneys for Receiver, MCA Financial Group, Ltd

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

SUNWEST BANK, a California
banking corporation,

Plaintiff,

v.

MRSC AZ Mesa, DST, a Delaware
statutory trust; John Does I-X,

Defendant.

Case No. CV2021-054363

**NOTICE OF FILING RECEIVER'S
MONTHLY REPORT FOR JUNE 2022**

*(Assigned to the Honorable
Timothy J. Thomason)*

MCA Financial Group, Ltd., by and through its Senior Managing Director, Keith Bierman, having been appointed Receiver in this action pursuant to the Order Appointing Rents Receiver entered on February 7, 2022 ("Order"), hereby submits the attached report describing the Receiver's activities and accounting for income and disbursements made through the end of June 2022.

DATED this 1st day of August, 2022.

LANE & NACH, P.C.

By: /s/ Stuart B. Rodgers
Stuart B. Rodgers
Attorneys for Receiver

FILED this 1st day of
August, 2022 with a **COPY** of the
foregoing e-mailed this
same date to:

Khaled Tarazi
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Attorney for Defendant

By: /s/ Stacy Jara

**MCA Financial Group, Ltd., as Receiver for:
MRSC AZ Mesa DST (“Company”)
In the Superior State Court of Arizona in and for the County of Maricopa,
Assigned to the Honorable Timothy Thomason
Case No. CV2021-054363**

**Third Receiver Report
For the Period of June 1, 2022 to June 30, 2022 (“Reporting Period”)
Report Dated June 26, 2022**

Introduction

MCA Financial Group, Ltd., acting by and through Keith Bierman (“MCA” or the “Receiver”) submits this third report (the “Third Receiver Report”) as Receiver for the Rents derived from the assisted living and memory care facility located in Mesa, AZ (Mesa Facility), as defined in the *Order Appointing Receiver* dated February 7, 2022 (the “Order”). The Mesa Facility is owned by MRSC AZ Mesa DST (the “Company”), together with Sunwest Bank, the senior secured lender to the Company (the “Plaintiff”) are referred to herein as the “Parties.”

Current Status

The Company owns and operates an assisted living facility located in Mesa AZ. SAL Management Group, LLC (“SAL”), a management company that specializes in managing assisted living facilities, and was in place and actively managing the Mesa Facility upon entry of the Order.

MCA is not operating the Mesa Facility and is only managing the banking and disbursement approval process as authorized in the Order. MCA has taken control of certain bank accounts used by the Company to collect the Rents and make payments necessary for the continued operation of the Mesa Facility. After evaluation of the banking structure and flow of funds, the Receiver determined that it was necessary to keep the current bank account structure in place due largely to the fact that the deposits of Rents by residents and 3rd party payors (mostly Medicare and insurance companies) were automatically being deposited into the existing accounts. The Receiver risked a temporary but meaningful decline in the normal deposit volume of the Rents due to potential communication issues that could occur if new deposit instructions were sent to the many tenants and third-party payors instructing them to redirect their deposits. A listing of the bank accounts is provided below:

<u>Entity</u>	<u>Account Number</u>	<u>Bank</u>
MRSC AZ Mesa DST	x1918	Sunwest
MRSC AZ Mesa Master Tenant LLC	x1977	Sunwest
MRSC AZ Mesa Master Tenant LLC	x6863	Sunwest
MRSC AZ Mesa Master Tenant, LLC	x1714	Wells Fargo
MRSC AZ Mesa Master Tenant, LLC	x1722	Wells Fargo

All deposits of Rents are made into and all operating disbursements are made from Wells Fargo account x1714 account above. Debt service payments are made from Sunwest account x1918 and are funded from Wells Fargo account x1714. Funds are transferred from x1714 to Wells Fargo account x1722 to facilitate payment of payroll.

Receiver's Actions:

Upon and since its appointment as Receiver on February 15, 2022, MCA performed the following actions:

- Possession of Bank Accounts. MCA took possession of the Sunwest bank accounts. After entry of the Order, MCA was informed by Wells Fargo Bank that a revised order would be necessary to transfer signatory authority over the Wells Fargo Bank Accounts. Working with the Parties, MCA obtained a revised order that was previously approved by Wells Fargo before being approved by the Court. However, upon presentment of the revised order, Wells Fargo unexpectedly advised MCA that the Wells Fargo accounts would need to be closed and new accounts opened. This would create a risk of a material, but temporary, decline in the Rents being received by payors and tenants because new remittance information would need to be followed by the tenants and payors. After discussing the situation with Sunwest and SAL, it was determined that sufficient controls were in place to monitor the deposit activity within the existing Wells Fargo accounts and that closing and reopening new Wells Fargo accounts would create an unnecessary risk to the cash flow of the Mesa Facility. As such, it was agreed that the existing Wells Fargo accounts would remain in place with continued close monitoring by SAL and MCA.
- Site Inspections. MCA conducted a site inspection of the Mesa Facility, met with the Executive Director of the Mesa Facility as well as the owners of the Company.
- Interface with SAL via teleconference. MCA conducts in regular written and verbal communication with SAL to identify and understand key outstanding issues and work with SAL to verify Rent receipts and implement appropriate disbursement procedures. A detailed accounting of receipts and disbursements for the Reporting Period is presented on **Exhibit 1** attached.
- Interface with Plaintiff. MCA engages in regular written and verbal communications with members of the Plaintiff and Plaintiff's counsel to provide regular updates concerning the status of the bank accounts, cash activity and operations of the facility.
- Interface with the Utah Receiver. MCA engages in regular written and verbal communications with members of the Receiver of the related Utah facilities in to coordinate activities and on-line bank account access.

- Interface with the Defendant. MCA is in regular communication with Gary Langendoen regarding his efforts to sell and/or refinance the facilities. MCA provides information gained through these conversations with Sunwest representatives and their counsel.
- Payments to Subcontractors/Vendors and Payroll. MCA reviewed and approved invoice level detail payments to vendors and labor contractors for each disbursement. MCA also reviewed and approved payrolls due during the Reporting Period. A detailed accounting of receipts and disbursements is presented on **Exhibit 1** attached.
- Retention of Receiver Counsel. MCA retained Stuart Rodgers from the law firm of Lane and Nach, PC to act as receiver counsel.

Next Steps

MCA will continue to review and approve receipts and disbursements and work with the Parties and SAL regarding issues that arise from time to time.

Receiver Fees and Expenses

For the Period June 1, 2022 to June 30, 2022, the Receiver incurred fees of \$3,092.36, of which 50% was allocated to the AJ Facility and 50% was allocated to the Mesa Facility (a sister facility under MCA as Receiver). All of MCA's invoices has been provided directly to the Plaintiff and SAL for their review and payment.

For the Period June 1, 2022 to June 30, 2022, Receiver's Counsel incurred fees and costs of \$108.00. Counsel assisted with the review and filing of the periodic reports.

Cash Basis Income and Disbursements Summary

A summary of the cash receipts and disbursements related to the Receivership for the period June 1 to June 30, and also includes the cumulative period from February 11, 2022 to June 30, 2022 is attached as Exhibit 1.

Respectfully Submitted,



Keith Bierman
MCA Financial Group, Ltd., as Receiver
For MRSC AZ Mesa DST

MCA Financial Group, Ltd As Receiver for MRSC AZ Mesa, DST

EXHIBIT 1 –Cash Basis Income and Disbursements

	Period 2/15/2022 to 3/31/2022	Period 4/1/2022 to 5/31/2022	Period 6/1/2022 to 6/30/2022	Cumulative
<u>Accounting Summary (1)</u>				
Rent Payments From Residents, net	\$ 165,106	\$ 251,001	\$ 134,394	\$ 550,501
Total Cash Inflows	165,106	251,001	134,394	550,501
Payroll and Related Expenses	91,613	139,437	67,581	298,631
Contract Labor	8,983	21,481	11,994	42,458
SAL Management Group LLC	11,748	29,133	9,164	50,045
Utilities	3,061	8,023	6,677	17,761
Supplies	4,229	34,960	11,620	50,808
Services	5,195	5,924	2,179	13,298
Insurance Payments	2,259	31,462	8,432	42,153
Receiver Fees and Retainer	6,493	13,251	3,775	23,519
Bank Fees	89	220	109	417
Total Disbursements	133,668	283,892	121,530	539,090
Loan To Apache Junction (2)		20,000	-	20,000
Interest (Income) Expense	-	(3)	-	(3)
Sunwest Loan Payment	-	15,569	15,569	31,138
Net Cash for Period	<u>\$ 31,437</u>	<u>\$ (28,462)</u>	<u>\$ (2,704)</u>	<u>\$ 270</u>

Notes:

(1) - The table details the cash flows for the Wells Fargo accounts x1714 and x1722, and Sunwest accounts x1918 and x1977.

(2) - The loan occurred to provide funds to cover payroll due to timing of collections. Both Mesa and Apache Junction's assets are cross collateralized by the Sunwest loan.

Ham Declaration

Exhibit L

1561754773136-28-4-2--
crocfers

When recorded, mail to:

Roxann Gallagher
Sacks Tierney P.A.
4250 N. Drinkwater Boulevard, 4th Floor
Scottsdale, Arizona 85251

②
**DEED OF TRUST, ASSIGNMENT OF RENTS,
SECURITY AGREEMENT AND FINANCING STATEMENT**

This Deed of Trust, Assignment of Rents, Security Agreement and Financing Statement (this "Deed of Trust") is made June 27, 2019, by MRC VSL HERITAGE VILLAGE II, LLC, a Delaware limited liability company ("Trustor"), whose address is c/o Madison Realty Companies, 3452 E. Foothill Boulevard, Suite 200, Pasadena, California, 91107, for the benefit of GREAT WESTERN BANK, a South Dakota banking corporation, with a mailing address of 1721 N. Arizona Avenue, Chandler, Arizona 85225 (as "Trustee" and "Beneficiary").

I. **SECURED OBLIGATIONS.** This Deed of Trust is given in consideration of and as security for: (a) the payment of a loan from Beneficiary to Trustor evidenced by that Promissory Note of even date herewith executed by Trustor, MRC VSL Heritage Village, LLC and MRC HV Investors, LLC (collectively, "Borrower") and payable to the order of Beneficiary for the maximum principal amount of \$9,487,500 (the "Note"), together with interest thereon and charges with respect thereto, and any and all advances now or hereafter made by Beneficiary under the terms and conditions of the Note, that certain Loan Agreement, dated the date hereof (the "Loan Agreement"), by Beneficiary and Borrower, or this Deed of Trust, and any and all renewals, replacements, amendments, modifications or extensions of the Note, the Loan Agreement or this Deed of Trust; (b) all of the terms, conditions, agreements, stipulations, covenants, and provisions of this Deed of Trust, the Loan Agreement and any other agreement, document or instrument (and any and all renewals, replacements, amendments, modifications or extensions thereof), including all Loan Documents, given by Borrower to Beneficiary to evidence or to secure the indebtedness secured hereby; and (c) all late charges, default interest, prepayment charges or premiums, loan fees, commitment fees, extension fees, costs to cure, and other fees, costs and expenses of any nature described in the Note or the Loan Agreement and all costs of collecting the indebtedness or other amounts evidenced by the Note or described in this Deed of Trust or the Loan Agreement, including any and all costs and expenditures of a receiver in possession and reasonable attorneys'

First American Title Insurance
National Commercial Services
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Ham Decl Exhibits 172

nces. This Deed of Trust shall also secure the payment and performance of any additional loans that may hereafter be made by Beneficiary to Borrower that are evidenced by a promissory note or notes or other writings stating that they are secured by this Deed of Trust. All of the foregoing payments and performances secured by this Deed of Trust are referred to herein as the "Obligation."

II. LIENS, SECURITY INTERESTS AND ASSIGNMENTS.

2.1 Grant of Lien and Security Interest. For the consideration of \$1.00, or such portion thereof as may hereafter be advanced to or for the benefit of Borrower, Trustor hereby irrevocably conveys, transfers, pledges and assigns to Trustee, in trust, with power of sale, and grants to Beneficiary a first priority security interest in, all of Trustor's present and future right, title and interest in and to all of the following property (all of Trustor's property encumbered by this Deed of Trust is referred to herein severally and collectively as the "Property"):

(a) The land described on Exhibit A hereto (together with all land that from time to time, by lease or otherwise, may be expressly made subject to this Deed of Trust and all estates and development rights hereafter acquired by Trustor for use in connection with such land, the "Real Property"), and all development rights relating thereto;

(b) All present and future tenements, hereditaments, easements, rights, leases (whether written or oral, or for a definite term or month-to-month), together with all income, receipts, revenues, rents, issues and profits, now or hereafter arising therefrom, or from the Real Property, including guaranties of leases, letters of credit, subleases, licenses, benefits, privileges, permits, water, water rights, rights of way, fences and appurtenances belonging or in any way appurtenant to, the Real Property or any portion thereof, or any improvements or development thereon, and all remainders, rents, issues, and profits thereof;

(c) All buildings and above ground and underground improvements, structures, and fixtures now or hereafter erected on, or attached to, the Real Property or any portion thereof (collectively, the "Improvements");

(d) To the extent permitted by law, all present and future licenses, permits, approvals and agreements from or with any governmental or quasi-governmental agency or entity or any other person relevant to the zoning, subdivision, division, development, improvement, use, lease, sale or other disposition of the Real Property or any portion thereof, or any buildings or improvements now or hereafter erected, placed or located on the Real Property or any portion thereof;

(e) To the extent permitted by the applicable agreements, all present and future plans, specifications, drawings, analyses, surveys, reports and other design products, relating to all present and future buildings and tenant and other improvements (including landscaping) constructed on the Real Property or any portion thereof, and all rights in and to all architectural and engineering contracts, construction management agreements, construction contracts, surety bonds, warranties, land use plans, studies, building contracts, soils reports, appraisals, feasibility and market studies, management agreements, consulting agreement, operating agreements, service contracts, development contracts, design and sign design contracts, space planning contracts and

any other agreements with respect to planning, designing, developing, or inspecting the Real Property or any portion thereof and any improvements or construction thereon, including the right to maintain signage with respect to the Real Property or any business conducted thereon, whether or not appurtenant to the Real Property, together with any accounts and funds maintained under, pursuant to, or in connection with any such contracts and agreements[, including, without limitation, any funds payable to Trustor pursuant to the Escrow Agreement];

(f) All of the beneficial interest of Trustor in any holding trust, if title or any interest of Trustor in the Real Property is vested in or held by a trustee, and all rights to further encumber the Real Property or any portion thereof or any interest therein for debt;

(g) To the extent permitted by the applicable agreements, all present and future water service and wastewater capacity reservation agreements and security agreements, and all other present and future contracts, agreements, books and records relating to the development, improvement, use, leasing, sale, disposition, operation and management of the Real Property or any portion thereof, all buildings and other improvements or personal property now or hereafter placed, erected or located on the Real Property, and any accounts and funds maintained under, pursuant to, or in connection with any such contracts and agreements;

(h) All present and future rights (but not the obligations) under or with respect to any declarations of restrictions governing or imposing rights or responsibilities on or with respect to any portion of the Real Property, as may hereafter be amended, modified, supplemented or assigned, including all of Trustor's right, title and interest thereunder;

(i) All adjacent streets (open or proposed), roads, sidewalks, alleys, public places, parking areas, and strips and gores of land now or hereafter appurtenant to or used or useful in connection with the Real Property or any portion thereof, or any buildings or other improvements now or hereafter erected, placed or located on the Real Property or any portion thereof;

(j) To the extent permitted by the applicable agreements, all contracts (including, without limitation, service, supply, maintenance, management, consulting and construction contracts), registrations, franchise agreements, permits, licenses (to the fullest extent assignable by Trustor), plans and specifications, options, deposits (including deposits with any public or private utility with respect to utility services furnished to the Real Property), refunds, credits, retentions, and other agreements, now or hereafter entered into, and all rights therein and thereto, respecting or pertaining to the use, occupation, construction, management or operation of any business or activity conducted by Borrower from the Real Property, and all right, title and interest of Trustor therein and thereunder, including, without limitation, the right, while an Event of Default remains uncured, to receive and collect any sums payable to Trustor thereunder;

(k) All rights Trustor may have, if any, to the use of any trade name or trademark by which the Real Property or any portion thereof, or any improvements or development thereon, are known;

(l) All rights under any policy or policies of insurance (including premium refunds and credits and insurance proceeds) insuring against damage or loss with respect to any

portion of the Property, including all fire, casualty, business interruption, rent loss and flood insurance, whether or not such insurance is required by this Deed of Trust or Beneficiary;

(m) All rights in and to any present and future deposit accounts (general time or demand, provisional or final) or investment or other accounts (including all accounts held jointly with someone else) maintained with Beneficiary, or with another institution into which proceeds of the loan secured hereby have been deposited;

(n) All goods, materials, supplies, machinery, furniture and furnishings, appliances, attachments, equipment, inventory, merchandise, general intangibles, accounts, chattel paper, instruments, promissory notes, drafts, investment property, commercial tort claims, letters of credit, letter-of-credit rights, supporting obligations, documents and other personal property and assets of any type owned by Trustor and located on the Real Property (collectively, the “**Personal Property**”); and

(o) All (i) replacements and substitutions for, (ii) additions to, (iii) proceeds and products of (including all insurance proceeds and condemnation awards (or proceeds of any purchase in lieu thereof) which are or may become payable with respect to), and (iv) books, records and files relating to, all or any portion of the items described in the preceding subsections.

The foregoing descriptions of items constituting the Property shall be construed as cumulative and not limiting, and the terms “include” and “including,” when used in those descriptions, shall mean without limitation by reason of enumeration. Unless the context clearly indicates otherwise, the terms “equipment,” “inventory,” “accounts,” “instruments,” “promissory notes,” “investment property,” “commercial tort claims,” “deposit accounts,” “letter-of-credit rights,” “supporting obligations,” “chattel paper,” “general intangibles,” “proceeds” and “products” shall have the meanings provided for those terms in the Arizona Uniform Commercial Code in effect on the date of this Deed of Trust. The Real Property and the Improvements located thereon are collectively called the “**Premises.**” Capitalized terms used but not defined herein shall have the meanings set forth in the Loan Agreement.

2.2 Assignment of Rents and Leases.

(a) Trustor represents and warrants to Beneficiary that, as of the time of recordation of this Deed of Trust, except for the Master Lease Agreement, dated June 1, 2018 (the “**Facility Lease**”), between Trustor, as landlord, and MRC VSL HV Management II, LLC, as tenant no recorded or unrecorded lease or rental agreement exists that affects any portion of the Real Property.

(b) All of Trustor’s right, title and interest in and to existing and future rents, revenues, income, receipts, issues and profits of the Premises and now or hereafter arising out of any Leases (as defined below) (collectively, “**Rents**”) and the entire right, title and interest of Trustor (including the right to exercise any landlord’s liens and any and all other rights and remedies to which Trustor would be entitled under any Lease or by law) in and under all present and future rental agreements, leases, subleases, licenses and all other agreements pursuant to which Trustor or its predecessor in interest with respect to the Real Property grant to third parties any right to use and occupancy of all or any portion of the Premises (including rights in any security

deposits and advance rentals held for the benefit of Trustor), together with any extensions, renewals and modifications thereof (collectively, and including, the Facility Lease, the "Leases"), are hereby absolutely assigned and transferred to Beneficiary. For the avoidance of doubt, the term "Leases" does not include any leases, master leases, subleases, licenses, concessions, resident agreements or other agreements (whether written or oral, now or hereafter in effect) entered into by Facility Manager. Beneficiary is authorized to give notice of this assignment, and Trustor agrees to execute, and to cause its property managers and affiliates to execute, any and all further instruments that Beneficiary may require to perfect this assignment. Any provision hereof notwithstanding, so long as no Event of Default exists, Trustor shall have a license to collect assigned Rents as the same shall become due. However, during the existence of any Event of Default, all right of Trustor to collect or receive such Rents (including those past due and unpaid) shall terminate, whereupon Beneficiary shall be entitled to demand and receive the payment of such Rents (including those past due and unpaid), and to proceed against any lessee or tenant (or its property) under any of the Leases and/or any guarantors of the obligations of any such lessee or tenant. In such event, Trustor directs and authorizes the lessees and tenants under any of the Leases and any guarantors of the obligations of any such lessees or tenants to make to Beneficiary all payments required under the applicable Leases; Trustor hereby relieves any and all such lessees and tenants from any liability to Trustor that Trustor might otherwise assert by reason of the lessee/tenant's making such payment to Beneficiary. All Rents collected by Beneficiary may be applied for the following purposes in any manner and order that Beneficiary deems advisable:

- (i) To the payment of all taxes and assessments levied against the Property if provision for paying those items has not otherwise been made;
- (ii) To the payment of any amounts due and owing to Beneficiary under the terms of the Obligation;
- (iii) To the payment of construction, development, servicing and operating costs and expenses arising in connection with the Premises;
- (iv) To the payment of any obligations of Trustor under any Lease affecting the Premises, or amounts secured by any other mortgage or deed of trust on the Real Property approved by Beneficiary; and
- (v) Any remainder to Trustor or its designee or other assignee.

Receipt by Beneficiary of Rents shall not constitute a waiver of any other right that Beneficiary may have under this Deed of Trust or the laws of Arizona, nor shall the receipt and application thereof cure any Event of Default or affect any foreclosure proceeding or any sale authorized by this Deed of Trust or the laws of Arizona, unless the Obligation has been fully satisfied.

(c) Except as expressly permitted by the Loan Agreement or this Deed of Trust, Trustor shall not, without Beneficiary's prior written consent: (i) assign any of the Rents; (ii) collect any unreasonably large security deposits or any rent for more than one month in advance; (iii) change the general nature of the occupancy; (iv) initiate or acquiesce in any zoning reclassification; (v) enter into a Lease; (vi) terminate or accept a surrender of any Lease; (vii) amend or modify any Lease to reduce (or effectively reduce by means of rent concessions, rent-

free occupancy periods, or the granting of tenant improvement allowances) the rent or term, or to grant any options or rights of first refusal to purchase the Real Property or any portion thereof; (viii) subordinate, or permit the subordination of, any Lease to the lien of a mortgage or deed of trust that is junior to this Deed of Trust; or (ix) take, fail to take or suffer any action that would impair the security for the Obligation or Beneficiary's interest in the Property or the Rents. Any action taken in violation of the foregoing sentence shall be null and void. Trustor shall fully and timely perform all of the obligations of the landlord under all Leases of any portion of the Real Property and shall enforce, short of termination, the performance by all lessees and tenants of all of their obligations under the Leases.

(d) Beneficiary shall not be obligated to perform or discharge any obligation or duty to be performed or discharged by Trustor under any Lease, and Trustor hereby agrees to indemnify and hold Beneficiary harmless for, from and against any and all such liability arising from any of the Leases or from the assignment contained in this Section (other than for loss caused by Beneficiary's gross negligence or willful misconduct). This Section shall not obligate Beneficiary to manage, care for or repair the Premises or make Beneficiary liable for any loss or damage to any tenant, invitee, employee, licensee or any other person resulting from the failure to properly manage, care for or repair the Premises. Under no circumstance shall Beneficiary have any duty to produce Rents from the Premises. Regardless of whether Beneficiary, in person or by agent, takes actual possession of the Real Property, Beneficiary is not and shall not be deemed to be: (i) a "mortgagee in possession" for any purpose; (ii) responsible for performing any of the obligations of the lessor under any lease; (iii) responsible for any waste committed by lessees or any other parties, any dangerous or defective condition of the Premises, or any negligence in the management, upkeep, repair or control of the Premises (other than for loss caused by Beneficiary's gross negligence or willful misconduct); or (iv) liable in any manner for the Premises or the use, occupancy, enjoyment or operation of all or any part of it.

(e) In the event that Beneficiary exercises its rights to possess and exclude Trustor from the Premises pursuant to Section 4.2, Beneficiary shall have full power and authority to employ such measures as it may deem necessary or advisable, in its sole discretion but subject to applicable laws and regulations, to enforce the payment or security of the Rents, including actions for the recovery of rent, actions in forcible detainer and in distress for rent, and with full power: (i) to cancel or terminate any Lease for any reason that would entitle Trustor to cancel or terminate the same; (ii) subject to any applicable subordination, nondisturbance and attornment agreement or similar agreement executed by Beneficiary and the applicable tenant ("SNDA"), to disaffirm any Lease which is subordinate to the lien of this Deed of Trust; (iii) to extend or modify any then existing Lease and to enter into new Leases, which extensions, modifications and new Leases may provide for terms to expire, or for options to lessees to extend or renew terms to expire, beyond the maturity date of the Note and beyond the date of issuance of a deed(s) to a purchaser(s) at a judicial or nonjudicial foreclosure sale, Trustor agreeing that any such Leases, and the options or other such provisions contained therein, shall be binding upon Trustor and all persons whose interests in the Premises are subject to the lien of this Deed of Trust and upon the purchaser(s) at any foreclosure sale, notwithstanding any redemption, discharge or satisfaction of the Obligation or any judgment in foreclosure rendered thereon, or issuance of any certificate of sale or deed to any purchaser(s); (iv) to undertake and complete all repairs, decorating, renewals, replacements, alterations, additions and improvements to the Premises as Beneficiary may deem necessary or

advisable; (v) to insure the Premises and all risks incidental to Beneficiary's possession, operation and management thereof; and (vi) to receive all of the Rents.

(f) Trustor, as landlord under any existing Leases affecting the Real Property, hereby declares, pursuant to the provisions of, and subject to any conditions or limitations contained in, any such existing Leases or any SNDA executed by Lender and the applicable tenant with respect thereto, that all such existing Leases and any subleases thereunder, as may hereafter be amended or renewed, are and shall hereafter remain subject and subordinate to the lien and other provisions of this Deed of Trust, as may hereafter be amended.

2.3 Assignment of Operating Contracts.

(a) Assignment and Authorization to Exercise Rights. Borrower has entered, or will enter, into various Operating Contracts. As additional security for the payment and performance of the Obligation, to the extent permitted by the Operating Contracts and to the extent of Trustor's interest therein, Trustor hereby assigns, transfers and conveys to Beneficiary, and grants to Beneficiary a security interest in, all of Trustor's present and future right, title and interest in and to or arising under the Operating Contracts. Trustor hereby authorizes Beneficiary, during the existence of any Event of Default, or upon the occurrence of any default by Borrower under any one or more of the Operating Contracts that remains uncured after the expiration of any grace period provided therein, and upon the election by Beneficiary to enforce Trustor's rights under any one or more of the Operating Contracts and to receive the performance of the relevant servicer thereunder. Trustor hereby authorizes such servicers to accept the foregoing assignment and authorizes and directs such servicers, during the existence of any Event of Default by Borrower and election by Beneficiary to do so under the Loan Agreement, to make and render all acts and performances required of the servicers under the terms of any one or more of the Operating Contracts directly to or at the direction of Beneficiary. Trustor hereby relieves any such servicer from any liabilities to Trustor that Trustor might otherwise assert by reason of such servicer's making or rendering performance under any one or more of the Operating Contracts to or at the direction of Beneficiary. For the avoidance of doubt, the Operating Contracts shall not include any contracts entered into by the Facility Manager as the manager of the Premises.

(b) Representations and Warranties. Trustor represents, warrants and covenants that:

(i) As of the date hereof, the existing Operating Contracts are in full force and effect and, except as may have otherwise been disclosed to Beneficiary in writing, have not been supplemented, amended, modified, terminated or canceled in any way. To the best of Trustor's actual knowledge, no breach or default exists under those Operating Contracts.

(ii) The Operating Contracts include all management, supplier and servicing contracts and agreements necessary to effectively operate the Real Property.

(iii) Trustor has full power, right and authority to assign its interests under the Operating Contracts (upon receipt of the consent of the applicable counterparty thereto, as applicable).

(iv) Except for the assignment created hereby and any separate assignment(s) to Beneficiary of any of the Operating Contracts, Trustor has not conveyed, transferred or assigned any of its right, title or interest in any one or more of the existing Operating Contracts or any of its right, title or interest therein, and has not executed any other writing that may prevent Beneficiary from, or limit Beneficiary in, operating under the terms and provisions of this assignment of the Operating Contracts.

(v) Trustor shall make no other assignment of any one or more of the Operating Contracts or of any right or interest therein (except any separate assignment to Beneficiary).

(vi) Trustor, to the extent of its interest therein, shall perform and observe, or cause to be performed and observed, in timely fashion, each of its obligations and agreements under the Operating Contracts in all material respects in accordance with the terms and conditions thereof, and shall use Trustor's commercially reasonable efforts to cause the relevant servicer to do the same with respect to each of such servicer's obligations and agreements thereunder.

(vii) Trustor shall not waive, or take any action or execute any agreement that reasonably would be expected to be interpreted to waive, or in any manner release or discharge the relevant servicer from, any material obligation or agreement under or related to any one or more of the Operating Contracts to be performed or observed by such servicer, or permit any nonperformance thereof, but shall, at its sole cost and expense, to the extent of its interest therein, enforce and secure the performance of all such obligations and agreements to be performed or observed by such servicer.

(c) *Power of Attorney.* Subject to the terms of Section 5.15 below, Trustor hereby makes, constitutes and appoints Beneficiary and Beneficiary's successors and assigns, Trustor's true and lawful attorneys in fact, in Trustor's name, place and stead, or otherwise, during the existence of any Event of Default:

(i) To take all actions and to execute, acknowledge, obtain and deliver any and all writings or other items necessary or deemed advisable as a term, condition or provision of the relevant Operating Contracts or to exercise any of Trustor's rights or to receive and enforce any performance by the servicer under the relevant Operating Contracts .

(ii) To give any notices, instructions or other communications to such servicer or to any other person or entity in connection with the Operating Contracts.

(iii) To demand and receive all performances, labor and materials due under or with respect to the Operating Contracts and to take all lawful steps to enforce such performances and to compromise and settle any claim or cause of action in Trustor arising from or related to the relevant Operating Contracts.

(iv) To file any claim or proceeding, or to take any other action, in the name of Beneficiary, its successors and assigns, Trustor, or otherwise, to enforce any performance due under or related to the relevant Operating Contracts or protect and preserve the right, title and interest of Beneficiary thereunder.

2.4 Uniform Commercial Code Issues.

(a) The filing of one or more financing statements in the records relating to personal property shall in no way derogate or impair Beneficiary's priority or rights on default to exercise either its rights and remedies as a Beneficiary of this Deed of Trust or as a secured party with respect to personal property under the Uniform Commercial Code of the State of Arizona (Sections 47-1101 *et seq.* of the Arizona Revised Statutes) (the "UCC") in connection with the items of the Property covered by the UCC. This Deed of Trust is intended to and shall create a security interest in favor of Beneficiary in those items of the Property which are covered by the UCC, although such items are to be considered fixtures to the fullest extent permitted by law. This Deed of Trust is a "construction mortgage" as defined in Arizona Revised Statutes ("A.R.S.") § 47-9334H.

(b) This Deed of Trust constitutes a security agreement and a financing statement (fixture filing) and it is hereby recited (to the extent required by A.R.S. § 47-9502(B) and (C) because any portion of the Property may constitute fixtures) that this Deed of Trust is to be recorded in the office where a mortgage on the Real Property would be recorded, which is the office of the Recorder of Maricopa County, Arizona.

(c) Trustor hereby certifies, with the understanding that Beneficiary will rely upon such certifications in making the loan secured hereby and determining the proper locations in which to make filings to perfect its security interest in the Property and conduct searches for the liens of potential competing creditors, and in including in Beneficiary's filings the identifying information required by law: (i) Trustor's exact legal name and mailing address are as set forth in the first Section of this Deed of Trust; (ii) Trustor is a limited liability company organized under the laws of Arizona; (iii) Trustor uses no other names (including trade names) other than its name set forth in the first Section of this Deed of Trust, and is not the successor by merger, consolidation, acquisition, change in form, nature or jurisdiction of organization to any other entity; (iv) no effective financing statements are on file in the office of any secretary of state, county recorder or other public office naming Trustor as debtor and describing any of the Property as collateral; and (v) Trustor will not become involved in any merger, acquisition, dissolution or other change in Trustor's business form or name.

(d) In the event Beneficiary proceeds under the UCC against any personal property encumbered by this Deed of Trust and provided reasonable notice if required pursuant to the UCC, unless the Property is perishable or threatens to decline speedily in value, ten days' notice to Trustor or any other "debtor" described in the UCC shall constitute commercially reasonable notice. Beneficiary shall also be entitled to proceed as to both the Real Property and all personal or mixed Property and all fixtures in accordance with Beneficiary's rights and remedies with respect to the Real Property as provided by A.R.S. §§ 47-9604(A) and (B).

2.5 Further Assurances; After-Acquired Property. At any time, and from time to time, upon written request by Beneficiary, Trustor will make, execute and deliver, or cause to be made, executed and delivered, to Beneficiary and, where appropriate, cause to be recorded and/or filed and from time to time thereafter to be re-recorded and/or refiled at such time and in such offices and places as shall reasonably be deemed desirable by Beneficiary, any and all such other and further mortgages, deeds to secure debt, deeds of trust, security agreements, financing

statements, continuation statements, instruments of further assurance, certificates and other documents as may, in the reasonable opinion of Beneficiary, be necessary or desirable in order to effectuate, complete or perfect, or to continue and preserve (a) the obligations of Trustor under this Deed of Trust or any of the other Loan Documents and (b) the security interest created by this Deed of Trust upon and security title in and to all of the Property, whether now owned or hereafter acquired by Trustor. Upon any failure by Trustor so to do within 30 days following Beneficiary's request therefore, Beneficiary may make, execute, record, file, re-record and/or refile any and all such mortgages, deeds to secure debt, security agreements, financing statements, continuation statements, instruments, certificates and documents for and in the name of Trustor, and Trustor hereby appoints Beneficiary the agent and attorney-in-fact of Trustor so to do, which appointment is coupled with an interest and shall be irrevocable so long as the Obligation remains unsatisfied. The security title of this Deed of Trust, and the security interest created hereby will automatically attach, without further act, to all of Trustor's after-acquired property attached to and/or used in the operation of the Premises or any part thereof.

III. PROTECTION OF PROPERTY AND BENEFICIARY'S INTEREST.

3.1 **Warranty of Title.** Trustor represents and warrants that it is the sole owner of good and marketable unencumbered fee simple title to the Real Property, and that it is, or will become, the owner of the other existing Property, and Trustor will forever defend the same against all claims and persons whomsoever, unto Beneficiary, its successors and assigns, subject only to Permitted Encumbrances. All of Trustor's present and future right, title and interest in the Property shall be subject to the lien and other terms and provisions of this Deed of Trust regardless of the time that any such right, title and interest is created, obtained by or conveyed, transferred or assigned to Trustor.

3.2 **Obligation to Maintain Premises; Repairs; Inspection by Beneficiary.**

(a) From and after completion of construction of the Improvements, Trustor shall care for and keep and maintain the Premises, or cause the Premises to be cared for, kept and maintained, in good order, condition and repair (ordinary wear and tear excepted), and will at all times make or cause to be made such repairs, maintenance, renewals, and replacements as shall be necessary to maintain the Premises and abutting grounds, sidewalks, roads, parking and landscape areas in good condition and repair, all to the same extent as a prudent owner would make. Trustor shall not substantially alter the Premises, except in accordance with the Plans and as may be required by applicable laws, ordinances, orders, decrees, rules, regulations or requirements of any governmental authority, and any requirements, terms or conditions contained in any restrictions, restrictive covenants, easements, licenses or leases, building codes, fire safety and air quality codes, flood protection laws and ordinances, laws or regulations concerning accessibility (including the Americans With Disabilities Act), zoning ordinances or stipulations, subdivision plats, master plans, development plans, or other instruments or documents now or in the future affecting any portion of the Real Property or the Improvements (collectively, "**Legal Requirements**"). Trustor will, or will cause Facility Manager to, regularly inspect and promptly repair and replace the Improvements when needed. All replacements of items of the Property will be of a value equal to or greater than the value of the item or items replaced. Trustor shall not commit, or permit to occur, any waste upon the Premises. Trustor shall, or shall cause Facility Manager to, keep the Improvements and Personal Property free of termites, dry rot, fungus and all

harmful or destructive insects and shall keep the landscaping of the Premises in good condition, watered and free from weeds, and all plants, trees, and shrubs pruned and in good condition. Trustor shall, or shall cause Facility Manager to, keep the Premises free of rubbish and unsightly, unsafe and unhealthful conditions.

(b) Trustor shall, or shall cause Facility Manager to, comply with all Legal Requirements now or in the future affecting the Premises or requiring any alteration or improvements to be made thereof, but shall not otherwise construct, or make structural alterations to, any Improvements on the Real Property (except in accordance with the Plans) without Beneficiary's prior written consent. To the best of Trustor's knowledge after due inquiry and investigation, the building plans and specifications for the Improvements on the Real Property comply with all applicable zoning, building, fire safety and accessibility laws, ordinances, codes, rules and regulations and other laws and regulations applicable thereto, and such plans and specifications and improvements have been, or will be, approved by all appropriate authorities. To the best of Trustor's knowledge, no notice of any violations of ordinances, codes, rules, regulations, orders, restrictive covenants or statutes applicable to the Premises has been received, and no governmental authorities or insurance underwriters have required any changes to any plans and specifications as submitted to Beneficiary. All appropriate governmental authorities will have issued, as and when required, all required permits for the construction and operation of the improvements on the basis of the plans and specifications so approved. To Trustor's knowledge, the Real Property, the Improvements and their use fully comply and shall continue to comply with environmental, air quality, zoning, planning, building and other governmental laws, ordinances, rules, regulations and requirements and Trustor has received no notice to the contrary. Without Beneficiary's prior written consent, Trustor will not (i) initiate any zoning reclassification of the Premises, (ii) seek any variance under existing zoning ordinances applicable to the Premises, (iii) use or permit the use of the Premises in a manner that would result in such use becoming a nonconforming use under applicable zoning ordinances or other applicable laws, rules or regulations, or (iv) impose, release or modify any restrictive covenants upon the Premises. To the best of Trustor's knowledge, as of the date hereof, no action or proceeding is pending before any court, quasi-judicial body or administrative agency relating thereto except as disclosed prior to the date hereof to Beneficiary.

(c) If the Property, or any portion thereof, shall be damaged or destroyed by a Casualty or become subject to any Condemnation, the provisions of Section 6.4 of the Loan Agreement shall apply with respect thereto.

(d) Subject to the rights of Facility Manager and tenants and residents of the Premises, Beneficiary shall have the right to enter upon the Property in accordance with Section 6.5 of the Loan Agreement.

3.3 **Insurance.** Trustor shall obtain and maintain, or cause to be obtained and maintained, in full force and effect at all times with respect to the Property, insurance policies as required pursuant to Section 6.3 of the Loan Agreement, the provisions of which are incorporated by reference as if fully set forth herein.

3.4 **Payment of Taxes, Assessments and Other Liens or Charges.** Trustor shall pay or cause to be paid to the proper officials or persons all Taxes and Other Charges, and Trustor shall

cause to be paid and discharged any Lien against the Property (other than Permitted Encumbrances), in each case in accordance with Section 6.2 of the Loan Agreement. Trustor may contest in good faith the validity or amount of any tax, assessment, Lien or governmental charge by appropriate proceedings provided by law, including payment of the tax, assessment, Lien or charge under protest, if required, provided that: Trustor conducts such contest in accordance with Section 6.2 of the Loan Agreement. Trustor shall not consent to, or vote in favor of, the inclusion of any portion of the Real Property in a special improvement, assessment, community facilities or similar district without Beneficiary's prior written consent. Trustor shall provide Beneficiary with prompt notice of any notification that Trustor may receive from any governmental authority or other person of any intent or proposal to form such a district that may include any portion of the Real Property, and Beneficiary shall have the right to object to the same, and to otherwise appear and participate in hearings and other proceedings, in its own name or in Trustor's name. Trustor shall pay or cause to be paid when due all charges for water, water delivery, gas, electric power and light, telephone, sewer, waste removal, bills for repairs, and all other claims, encumbrances and expenses incident to the ownership and occupancy of the Real Property.

3.5 Impounds.

(a) At any time requested by Beneficiary, Trustor shall deposit or cause to be deposited with Beneficiary, in monthly installments, sufficient funds (as determined by Beneficiary) to enable Beneficiary to pay one month before delinquency all taxes, assessments, and insurance premiums due with respect to the Premises. Each such installment shall be equal to the amount of estimated taxes and assessments, and premiums for insurance, next due (as estimated by Beneficiary), less all installments already paid therefor, divided by the number of months that will elapse before one month prior to the date when such taxes, assessments or premiums shall become delinquent. If amounts paid to Beneficiary under provisions of this Section are insufficient to discharge the obligation of Trustor for such taxes, assessments or premiums as the same become due, Trustor shall pay or cause to be paid to Beneficiary upon demand such additional sums as may be required to fully pay and discharge those items. Notwithstanding the foregoing, Beneficiary hereby agrees to temporarily waive the requirement for real estate tax, assessments and insurance premium impounds at the inception of the loan secured hereby, with such waiver to remain effective as long as no Event of Default exists.

(b) To the extent sufficient deposits are received by Beneficiary and used to pay taxes, assessments and premiums pursuant to this Section 3.5, such payments shall satisfy Trustor's obligations to pay such taxes, assessments and premiums pursuant to Sections 3.3 and 3.4. Any excess funds remaining after payment of all items before delinquency may be remitted to Trustor or, if an Event of Default then exists, credited to the Obligation.

(c) Nothing in this Section 3.5 shall release Trustor from, or shift to Beneficiary, the obligation to pay taxes, assessments and insurance premiums as the same become due and payable, or be construed to cause Beneficiary to become a trustee of amounts deposited with Beneficiary. Deposits made under this Section 3.5 may be commingled with Beneficiary's general corporate funds, and Beneficiary shall hold those deposits without the payment of interest. All amounts paid and deposited hereunder are hereby assigned to Beneficiary as additional security for the Obligation. If any Event of Default occurs and is continuing, Beneficiary may, at its sole option, apply all or any portion of such deposits to the cure or partial cure of the Event of Default

without waiver of or prejudice to the rights of Beneficiary arising by virtue of such Event of Default, or to the payment of principal and interest on the Obligation, in lieu of applying such deposits for any other purposes.

3.6 Replacement or Addition of Tangible Personal Property or Improvements Subject to Encumbrance. All tangible Personal Property shall be kept on the Real Property and shall not be removed therefrom without the prior written consent of Beneficiary, except for items (i) sold in the ordinary course of business, or (ii) consumed or worn out in ordinary usage and replaced as described in Section 3.2. After completion of construction of the Improvements in accordance with the Plans, Trustor shall provide written notice to, and obtain the consent of, Beneficiary prior to replacing, adding or installing any tangible Personal Property or Improvements (i) that are or will be subject to a security interest (other than Permitted Encumbrances) held by a seller or any other person under the UCC, or (ii) with a value greater than \$100,000, in each case other than Permitted Encumbrances or any Personal Property or Improvements permitted to be replaced, added or installed by the terms of the Facility Lease. In the event any such Personal Property or Improvements are subject to a security interest (other than Permitted Encumbrances) held by a seller or other party, whether or not Trustor shall have given to Beneficiary the notice described above, Beneficiary may, at its option, at any time, pay the balance due to satisfy such security interest, and the amount so paid, together with any hazard insurance premiums paid by Beneficiary with respect to that property, shall be a lien on the Property, shall be added to the Obligation and shall be payable on demand, together with interest from the date of advance until paid at the Default Interest Rate. The foregoing amounts shall also be guaranteed by any guarantee(s) now or hereafter relating to the Obligation. Beneficiary shall have the right to acquire by assignment from the holder of any such security interest any and all contract rights, accounts, chattel paper, negotiable instruments, or other evidence of Trustor's indebtedness for such Personal Property or Improvements and, upon acquiring any such interest by assignment, Beneficiary shall have the right to enforce the security interest as assignee thereof in accordance with the laws of Arizona. Whether or not Trustor gives notice as described above, and whether or not Beneficiary pays or takes an assignment of any such security interest, Trustor shall pay prior to delinquency, and shall not permit any default to occur in the payment of, any moneys due under the security agreement covering such Personal Property or Improvements. Should the lien and security interest of this Deed of Trust be subject to a prior security interest with respect to any of the Property, all of Trustor's right, title and interest in and to any deposits made in connection with the transaction creating the prior security interest are hereby assigned to Beneficiary, together with the rights and benefits previously or hereafter obtained by reason of any payments made with respect thereto. As used in this Section 3.6, the term "security interest" shall include a lease of the applicable Personal Property.

3.7 Actions or Proceedings Affecting Property; Duty to Appear. Trustor agrees to appear in and prosecute or defend any action or proceeding that may affect the priority of this Deed of Trust or the security, rights or powers of Beneficiary hereunder or that seeks to impose liability on Trustor or Beneficiary because of any act or omission of Trustor, and Trustor shall pay all costs and expenses (including the cost of searching title) and attorneys' fees incurred in such action or proceeding. Beneficiary may appear in and defend any action or proceeding purporting to affect the security or priority hereof or the rights or powers of Beneficiary. Beneficiary may, if Beneficiary reasonably determines that Trustor is failing or will fail to do so, pay, purchase, contest or compromise any adverse claim, encumbrance, charge or lien (other than Permitted

Encumbrances) which Beneficiary reasonably determines to be prior or superior to the lien of this Deed of Trust. All amounts paid, suffered or incurred by Beneficiary in exercising the authority granted in this Section 3.7, including reasonable attorneys' fees, shall be added to the Obligation, shall be a lien on the Property and shall be due and payable by Trustor to Beneficiary on demand, together with interest from the date of advance until paid at the Default Interest Rate. The foregoing amounts shall also be guaranteed by any guarantee(s) now or hereafter relating to the Obligation.

3.8 Sale, Lease or Conveyance by Trustor.

(a) Except upon the terms expressly permitted by the Loan Agreement, Trustor shall not Transfer all or any portion of the Property, voluntarily, involuntarily or by operation of law, without the prior written consent of Beneficiary, which Beneficiary may withhold in its sole, absolute and exclusive discretion.

(b) If the ownership of the Property or any portion thereof becomes vested in any person other than Trustor, Beneficiary may deal with such successor(s) in interest with reference to the Obligation and this Deed of Trust in the same manner as with Trustor, without in any way vitiating or discharging Trustor's liability hereunder or for payment of the Obligation. However, the foregoing sentence shall in no way constitute or imply Beneficiary's consent to any transfer of the ownership of the Property or any portion thereof and Trustor's violation of the provisions of this Section 3.8 shall entitle Beneficiary to accelerate the Obligation (and to collect any applicable prepayment premium due upon acceleration under the Note).

3.9 Due on Encumbrance – Consent by Beneficiary Subject to Trustor's right to contest as provided herein and in the Loan Agreement, if applicable, Beneficiary may, at its option, declare a default under this Deed of Trust in accordance with the terms and provisions of the Loan Agreement in the event that the Real Property is subjected to a lien or interest (other than Permitted Encumbrances) in favor of a related or a third party person or entity, including, without limitation, a property or homeowner's association, taxing authority, governmental or quasi-governmental agency or vendor of perishable or agricultural goods, without Beneficiary's prior written consent. This shall include a lien or interest created consensually or by operation of law, or arising from a default under any applicable declarations or covenants affecting the Real Property. It is intended that this due on encumbrance clause be triggered by any lien or interest (other than Permitted Encumbrances) affecting the Real Property which has not been consented to by Beneficiary in advance and in writing, and which arises after the effective date of Beneficiary's loan policy of title insurance (obtained as of the date of Loan closing as such Loan may be modified or extended), or after Loan closing, as applicable. Provided, however, that this option shall not be exercised by Beneficiary if such exercise is prohibited by applicable federal or state law, or if such Lien is permitted pursuant to the terms and provisions of the Loan Agreement.

3.10 Changes or Modification of Applicable Tax Laws. In the event of the imposition after the date of this Deed of Trust of any law of the United States of America, the State of Arizona or any other domestic or foreign governmental authority claiming to have jurisdiction, deducting from the value of real property for the purposes of taxation or assessment any lien thereon or changing in any way the taxation of mortgages, deeds of trust or of debts secured by mortgages or deeds of trust or the manner of the collection of any such taxes, and imposing a tax or assessment,

either directly or indirectly on this Deed of Trust or the Note, the sums evidenced or secured thereby or the interest payable thereon, Trustor shall pay the entire tax or assessment in addition to all other payments required hereunder and shall pay any such tax or assessment thereafter levied or assessed against the Premises. The provisions of this Section shall not apply to changes in federal and state income tax laws.

3.11 **Substitute Performance.** Should Trustor fail to pay or perform any portion of the Obligation and such failure is or becomes an Event of Default, then Beneficiary, without obligation to do so and without releasing Trustor from any portion of the Obligation, may pay or perform the same in such manner and to such extent as Beneficiary, in its sole good faith discretion, may deem necessary on a conservative basis to protect the security hereof. Beneficiary shall be authorized to enter upon the Premises for such purposes, subject to the rights of Facility Manager and tenants and residents. All expenses or charges that Beneficiary may incur in accordance with the foregoing in connection with the care or preservation of the Premises or any part thereof at any time, or the payment of any taxes, assessments, insurance premiums (including premiums for so-called "forced placed" insurance coverage protecting only the interest of Beneficiary in the Property), or encumbrances levied upon or attaching to the Premises or any portion thereof or interest therein, or any cost of redemption thereon, or any sums of money, charges, expenses or fees which Beneficiary may pay pursuant to any provision hereof or of the Loan Agreement, shall be added to the Obligation, shall be payable by Trustor on demand, and shall bear interest at the Default Interest Rate from the date of advance until paid. The foregoing amounts shall also be guaranteed by any guarantee(s) now or hereafter relating to the Obligation.

IV. **DEFAULT AND REMEDIES.**

4.1 **Acceleration and Exercise of Remedies.** At any time while an Event of Default exists, Beneficiary may declare the Obligation to be immediately due and payable and may exercise any one or more of the rights and remedies described herein and in the other Loan Documents.

4.2 **Beneficiary's Right to Possession.** Subject to the rights of Facility Manager and tenants and residents of the Premises, during the existence of any Event of Default, Beneficiary shall, at its option, be entitled to the immediate possession of the Property, with the right to manage the same as a mortgagee in possession, and to collect and apply all revenues, income, receipts, issues and profits of Trustor derived from the Premises (collectively, the "Profits") and any Rents to the payment of the Obligation. Trustor and all persons claiming under Trustor shall, upon demand, immediately deliver possession of the Property to Beneficiary or its assigns. Beneficiary shall not be liable to Trustor for any obligation or charge in dealing with the Property as a mortgagee in possession (other than for loss caused by Beneficiary's gross negligence or willful misconduct). Nothing in this Section shall impose upon Beneficiary: (a) any duty, obligation or responsibility for the control, care, management or repair of the Property, or for complying with or enforcing any of the terms and conditions of any lease agreement; or (b) any responsibility or liability for any waste committed on the Property by the tenants or by any other persons, for any dangerous or defective condition of the Property, or for any negligence in the management, upkeep, repair or control of the Property, resulting in loss, injury or death to any tenant, licensee, employee or other person, except, in each case, due to the gross negligence or willful misconduct

of Beneficiary or any Person acting on its behalf pursuant to the authority granted to Beneficiary hereunder.

4.3 **Appointment of Receiver.** During the existence of any Event of Default, a receiver may be appointed, with or without notice, whereupon the receiver shall immediately be entitled to possession of all of the Property (subject to the rights of Facility Manager and tenants and residents of the Premises). Beneficiary's right to a receiver shall be absolute and unconditional, and a receiver may be obtained in an independent action, regardless of whether Beneficiary seeks any relief other than the appointment of a receiver; Trustor expressly waives any express or implied legal requirement that might otherwise require the initiation or pendency of an action or proceeding seeking other relief as a condition to the appointment of a receiver. The receiver may be appointed without regard to the adequacy of any security for the Obligation and Trustor shall immediately surrender possession of the Property (subject to the rights of Facility Manager and tenants and residents of the Premises) to the receiver upon his appointment. Subject to the rights of Facility Manager and tenants and residents of the Premises, the receiver shall have the right to take possession of the Property, to collect any Rents and Profits therefrom, to complete the construction or reconstruction of any structures or improvements in progress thereon, to rent or sell the Premises or portions thereof, to operate any business of Trustor thereon, and to exercise such other rights as may be granted by the court pending such proceedings, and up to the time of redemption or issuance of a trustee's or sheriff's deed. Rents and Profits shall be applied to the costs and expenses of the receiver and the receivership, including costs of construction or reconstruction, and the balance shall be applied in the manner described in the Loan Documents. The receiver shall have the power to borrow money from any person, including Beneficiary, for expenses of operating, preserving, maintaining and caring for the Real Property, and completing the construction or reconstruction in progress of any improvements or structures upon the Property, and all such borrowed sums, together with interest thereon, whether expended or not, shall be added to the Obligation. The receiver may expend such borrowed money for the purposes described in this Section during any redemption period and, upon any redemption, any unexpended amounts of such borrowed money shall be credited on the redemption price of the Property. In addition, any costs incurred, or advances made, by Beneficiary in connection with the implementation or operation of the receivership, shall be added to the Obligation, bear interest at the Default Interest Rate, be guaranteed by any guarantee(s) now or hereafter relating to the Obligation and be secured by this Deed of Trust.

4.4 **Sale by Trustee Pursuant to Power of Sale; Judicial Foreclosure.** During the existence of any Event of Default, upon the giving of notice of the time and place of sale in the manner provided by law, the Property may be sold by Trustee in the manner provided by law under the power of sale conferred hereby. The mailing address of Trustor for the purpose of mailing a copy of the notice of sale shall be the address specified above with Trustor's name, unless a subsequent request for notice of sale specifying a different address is recorded in the manner provided by law. In lieu of sale pursuant to the power of sale conferred hereby, this Deed of Trust may, at Beneficiary's election, be judicially foreclosed in the same manner provided by law for the foreclosure of mortgages on real property. Any cure periods provided in this Deed of Trust or the other Loan Documents may, at Beneficiary's sole option, run concurrently with any statutory cure periods.

4.5 **Sale of Property in Whole or in Separate Lots, Parts or Parcels; Right of Beneficiary to Buy.** In the event of a trustee's sale or foreclosure sale, the Property may be sold, at the option of Beneficiary or Trustee, in whole or in separate lots, parts or parcels, and Beneficiary or Trustee may bid and become the purchaser at any such sale. Trustee shall deliver to any such purchaser its deed (or bill of sale, as applicable) conveying the Property so sold, but without any covenant or warranty, express or implied. The recitals in any such deed of any matters or facts shall be conclusive proof of the truthfulness thereof. The proceeds of the sale shall be applied as provided by law. The purchaser at the Trustee's sale shall be entitled to immediate possession of the Property (subject to the rights of Facility Manager and tenants and residents). Title to all insurance policies and the proceeds thereof shall vest in and become the property of the purchaser at any such sale. The power of sale under this Deed of Trust shall not be exhausted by any one or more sales or attempted sales as to all or any portion of the Property remaining unsold, but shall continue in full force and effect until all of the Property shall have been sold by exercise of the power of sale in this Deed of Trust and the Obligation has been fully paid and performed.

4.6 **Effect of Foreclosure on Existing Leases.** Upon any sale of the Real Property under this Deed of Trust, any Lease that is subordinate to the lien of this Deed of Trust shall remain in effect, the purchaser thereby being subrogated to Trustor's interest therein, unless the purchaser elects to treat any such Lease as terminated by virtue of the sale under the prior lien and charge of this Deed of Trust, unless a separate non-disturbance agreement executed by Beneficiary precludes such termination.

4.7 **Attorneys' Fees and Expenses; Failure of Trustor to Vacate.** During the existence of an Event of Default, if any sale proceeding, lawsuit or arbitration is commenced, or any attorney is retained to collect any amounts secured hereby or to enforce any rights granted Beneficiary hereunder (regardless of whether an action is actually commenced), Trustor shall pay Beneficiary's reasonable attorneys' fees and costs (to be determined by the court or arbitrator and not by jury, in the case of litigation or arbitration) incurred in enforcing its rights under the Loan Documents, any guaranty now or hereafter relating to the Obligation and any other agreements which evidence, secure or guarantee all or any portion of the Obligation, and Trustee's reasonable attorneys' fees, Trustee's fees and its costs and expenses in connection with any sale proceedings or lawsuit. In addition, Trustor shall pay a reasonable fee for title searches, foreclosure reports, trustee's sale guaranties, litigation guaranties, publication costs, environmental assessments or appraisal reports made or obtained either (a) in preparation for and in the conduct of any such proceedings or suit, or (b) to evidence to potential bidders at any judicial or nonjudicial sale pursuant to this Deed of Trust the true condition of title to or the value of the Property or any portion thereof. All of the foregoing fees and expenses shall be payable on demand, added to the Obligation and secured by this Deed of Trust, shall be included in any judgment or arbitration award obtained by Beneficiary and shall be paid to Beneficiary as part of any reinstatement tendered hereunder. If Trustor fails to vacate the Real Property following foreclosure or sale, Trustor shall be a tenant at sufferance and subject to an action for forcible entry and detainer, wherein Beneficiary shall be entitled to collect from Trustor, in addition to all other amounts due hereunder, a reasonable rental for the Real Property during the period of such holding over at sufferance. The foregoing amounts shall also be guaranteed by any guarantee(s) now or hereafter relating to the Obligation.

4.8 **Additional Remedies of Beneficiary; No Waiver.**

(a) In addition to any remedies provided herein for breach or default hereof, Beneficiary shall have all other remedies allowed or provided for under or described in the other Loan Documents and all other writings executed or delivered by any Borrower Party in connection with the Obligation, or available under applicable law. Any one or more rights and remedies available to Beneficiary may, at its option, be sought and exercised concurrently or consecutively, and in inconsistent proceedings, whether legal or equitable. Beneficiary's failure to exercise any of its rights upon any default or breach shall not prejudice its rights in the event of any other or subsequent default or breach. Beneficiary's delay in exercising any rights shall not preclude it from exercising the same at any time during the continuance of such default or breach. By accepting any performance or payment of any portion of the Obligation after its due date, Beneficiary shall not waive the agreement contained herein that time is of the essence hereof, nor shall Beneficiary waive its rights to require prompt performance or payment when due of the remainder of the Obligation or to consider failure to so perform or pay a default hereunder.

(b) Without limitation of Beneficiary's rights of enforcement with respect to the Property in accordance with the procedures for foreclosure of real estate, Beneficiary may exercise its rights under the UCC and, in conjunction therewith:

(i) Subject to the rights of the Facility Manager and tenants and residents of the Premises, Beneficiary may enter upon the Real Property to take possession of, assemble and collect any or all Personal Property collateral or to render it unusable in accordance with applicable law;

(ii) Beneficiary may require Trustor to assemble any or all Personal Property collateral and make it available at a place designated by Beneficiary which is mutually convenient to allow Beneficiary to take possession or dispose of such collateral;

(iii) written notice shall be mailed to Trustor as provided herein at least thirty (30) days prior to the date of public sale of the Property or prior to the date on which private sale of the Property will be made shall constitute reasonable notice;

(iv) any sale made under the provisions of this subsection (b) shall be deemed to have been a public sale conducted in a commercially reasonable manner if held contemporaneously with and upon the same notice as required for the sale of the Property under power of sale as provided herein;

(v) in the event of a foreclosure sale, whether made by Trustee at a trustee's sale or under judgment of a court, the Property and the other collateral may, at Beneficiary's option, be sold as a whole;

(vi) Beneficiary need not take possession of the Property or any part thereof prior to the time the sale is conducted, nor shall it be necessary for the Property or any part thereof to be present at the location of the sale;

(vii) with respect to application of proceeds from disposition of the Property, the costs and expenses incident to disposition shall include the reasonable expenses of retaking, holding, preparing for sale or lease, selling, leasing and the like, and reasonable attorneys' fees and legal expenses incurred by Beneficiary;

(viii) any and all statements of fact or other recitals made in any trustee's deed, bill of sale or assignment or other instrument evidencing any foreclosure sale hereunder as to nonpayment of the Obligation or as to the occurrence of any Event of Default, or as to Beneficiary having declared all of such indebtedness to be due and payable, or as to notice of time, place and terms of sale and of the property to be sold having been duly given, or as to any other act or thing having been duly done by Beneficiary, shall be *prima facie* evidence of the truth of the facts so stated and recited;

(ix) Beneficiary may appoint or delegate any one or more persons as its agent to perform any acts necessary or incident to any sale held by Beneficiary, including the sending of notices and the conduct of the sale;

(x) Beneficiary may comply with any applicable state or federal Legal Requirements in connection with the disposition of the Property, and such compliance will not be considered to adversely affect the commercial reasonableness of any disposition of the Property;

(xi) Beneficiary may dispose of the Property without giving any warranties and may specifically disclaim any warranties of title, merchantability, fitness for a specific purpose or the like, but any such disclaimer will not be considered to adversely affect the commercial reasonableness of any disposition of the Property;

(xii) Trustor acknowledges that a private sale of the portion of the Property constituting personal property may result in less proceeds than a public sale; and

(xiii) Trustor acknowledges that the Property may be sold at a loss to Trustor, and that in such event, Beneficiary shall have no liability or responsibility to Trustor for such loss.

(c) If it chooses to do so, Beneficiary may dispose of any personal property separately from the sale of Real Property, in any manner permitted by Article 9 of the UCC, including any public or private sale, or in any other manner permitted by any other applicable law.

(d) Beneficiary may choose to dispose of some or all of the Property, in any combination consisting of both real and personal property, together in one sale to be held in accordance with the law and procedures applicable to Real Property, as permitted by A.R.S. § 47-9604, and Trustor agrees that such a sale of personal property together with Real Property constitutes a commercially reasonable disposition of the personal property.

4.9 **State Law Provisions, Waivers and Agreements.** As between Trustor and Beneficiary:

(a) Beneficiary shall have all rights, benefits and remedies conferred or contemplated by the Arizona Deed of Trust Act (A.R.S. §§ 33-801 *et seq.*). Notwithstanding the foregoing, Beneficiary may, at its option in its sole discretion, elect to foreclose this Deed of Trust judicially as authorized by A.R.S. § 33-807.

(b) In addition to, and not in limitation of, any other remedy provided in or available under this Deed of Trust, Beneficiary shall have all the rights set forth in A.R.S. § 33-702B regarding enforcement of the assignment of rents contained herein.

(c) It is Trustor's intention that the obligations of Trustor to pay and perform the Obligations be governed according to the express, bargained-for terms of this Deed of Trust and the other Loan Documents. The interest rate and terms applicable under the Loan Documents have been negotiated and agreed to by Beneficiary upon that basis. Therefore, except as provided by A.R.S. § 33-814, to the fullest extent allowable under Arizona law, Trustor hereby expressly waives all provisions of Arizona law (including those specifically referenced below) which might otherwise be construed, contrary to the terms of the Loan Documents, to limit the liability of Trustor with respect to the Obligations, and hereby expressly agrees that no such provision of law shall be applicable to such Obligations. To that end, Trustor expressly, to the extent permitted by law:

(i) agrees that, except as provided by A.R.S. § 33-814, the amount of any unpaid or unperformed accelerated Obligations remaining following any sale of collateral (the "**Deficiency**") shall be determined solely by the purchase price (whether cash, credit bid, or otherwise, and net of all costs and expenses of and relating to the sale) actually received for such collateral, and waives all provisions of A.R.S. §§ 12-1566, 33-725 and 33-727 which might otherwise determine the Deficiency by the "fair market value" of the collateral sold or by any other valuation in excess of such actual net purchase price; and

(ii) agrees that, for purposes of A.R.S. § 33-814(B), the 90-day period within which an action for a deficiency judgment may be brought shall not begin until the date of the last trustee's sale or other non-judicial or judicial foreclosure sale of any real property collateral under this Deed of Trust, whether such collateral is located within or outside of Arizona;

(iii) agrees that the phrase "full satisfaction of the obligation" in A.R.S. § 33-814(D) shall be construed to refer solely to the obligation of Trustor to repay that portion of the Obligations that is equal to the value of the Property at the time of foreclosure, and not to (1) any other portion of the Obligations or any separate and independent obligations of Trustor which are created by this Deed of Trust (including any covenants, agreements or indemnities which are expressly stated to survive any foreclosure hereof) or which are created under or evidenced or secured by the Loan Documents or any other document executed in connection herewith, regardless of whether such other portion of the Obligations or separate and independent obligations are secured hereby by virtue of any cross collateralization or cross default provisions or otherwise, or (2) any separate and independent obligations of any other Person which is directly, indirectly or contingently liable with respect to the Obligations (all such separate and independent obligations being referred to herein as the "**Separate Obligations**");

(iv) agrees that, notwithstanding any application of A.R.S. § 33-814(D) to limit or bar, following a trustee's sale or sales of the entire Property, any action against Trustor with respect to that portion of the Obligations that is equal to the value of the

Property at the time of foreclosure, such Section shall not be applicable to, or in any way limit or impede any action with respect to, such Separate Obligations or any collateral which might now or hereafter be given by Trustor as security therefor; and

(v) waives all rights of redemption Trustor might otherwise have under Arizona law with respect to the Property or any other collateral, whether by statute, by subrogation, or otherwise, including any rights under A.R.S. §§ 12-1281 through 12-1283.

The statutes referred to above in this section and elsewhere in this Deed of Trust shall include any further statutes amending, supplementing or supplanting same. The waivers and agreements contained in this section and elsewhere in this Deed of Trust are given by Trustor knowingly, intelligently and voluntarily, upon advice of counsel, to induce Beneficiary to accept certain terms of the Loan Documents which are more favorable to Trustor than would be acceptable to Beneficiary in the absence thereof, and accordingly are intended to be broadly and liberally construed in favor of Beneficiary.

V. GENERAL PROVISIONS.

5.1 Additional Documents. Trustor agrees to execute and deliver to Beneficiary, upon demand, any additional agreements, instruments or documents that Beneficiary deems reasonably necessary on a conservative basis and that are consistent with Trustor's rights and obligations under this Deed of Trust to secure to Beneficiary any right or interest granted or intended to be granted to Beneficiary under this Deed of Trust. In the event any rights, easements or other hereditaments shall hereafter become appurtenant to any part of the Property, they shall become subject to the lien of this Deed of Trust.

5.2 No Offset. Except as otherwise provided herein or in the other Loan Documents, all sums comprising the Obligation shall be paid without notice, demand, offset, deduction, counterclaim, defense, abatement, suspension, diminution or reduction. Trustor's obligation to do so shall not be released, discharged or otherwise diminished by reason of: (a) any damage to or destruction of, or any condemnation or similar taking of, the Premises or any portion thereof; (b) any restriction or prevention of, or interference with, the use of the Premises or any portion thereof; (c) any title defect or encumbrance, or any eviction from the Premises or any portion thereof by the holder of superior title or otherwise; (d) except by operation of law or pursuant to a final unappealable order by a court of proper jurisdiction, any bankruptcy, insolvency, reorganization, composition, dissolution, liquidation or similar proceeding relating to Trustor or Beneficiary, or any action taken with respect to this Deed of Trust by any trustee or receiver of Trustor or Beneficiary; (e) any claim that Trustor may now or in the future have against Beneficiary; (f) any default or failure on the part of Beneficiary to perform or comply with any of the terms of this Deed of Trust or any other Loan Document; or (g) any other similar occurrence. Beneficiary's acceptance of any payment in an amount less than the amount then due and owing under the Loan Documents shall be deemed an acceptance on account only, and shall not in any way constitute an accord and satisfaction or a waiver, or impair Beneficiary's ability to treat an Event of Default as continuing to exist.

5.3 Reconveyance of Property. Upon written request of Beneficiary stating that the entire Obligation has been paid and performed, and payment of Trustee's fees, Trustee shall

reconvey the Property without warranty. The recitals in such reconveyance of any matters or facts shall be conclusive proof of the truthfulness thereof absent manifest error. The grantee in such reconveyance may be described as "the person or persons legally entitled thereto." In lieu of execution of a reconveyance by Trustee, Beneficiary may execute a release and reconveyance on behalf of Trustee, whereupon title shall be vested in Trustor or other persons legally entitled thereto, and this Deed of Trust shall thereafter be of no further force or effect. Beneficiary (or Trustee, if Beneficiary elects not to charge a fee) may charge a reasonable release fee upon the discharge of the Obligation and release of this Deed of Trust.

5.4 **Partial Reconveyance by Trustee; Dedications and Easements.**

(a) At any time or from time to time, without liability therefor and without notice, upon written request of Beneficiary and presentation of this Deed of Trust and the Note, without affecting the personal liability of any person for payment or performance of any portion of the Obligation or the lien or priority of this Deed of Trust, Trustee may reconvey any part of the Property; consent to any rezoning or the making of any map or plat thereof, join in granting any easement or dedication thereon or in creating any covenants, conditions or restrictions affecting the use or occupancy of the Premises, or join in any extension agreement or agreement subordinating the lien or charge hereof.

(b) So long as no Event of Default then exists, and Trustor obtains any required written joinders or consents from any other parties who have interests in any relevant portions of the Real Property, Beneficiary shall not unreasonably withhold its consent to, approval of or joinder (on a quitclaim basis only, without creating potential liability for Beneficiary) in any customary and standard roadway or utility easements or similar dedications that are reasonably necessary to complete the improvements, or to otherwise properly develop the Real Property, or to satisfy any customary and standard Legal Requirements. To the extent any such easements or dedications are granted or made without receipt by Trustor of consideration therefor, Beneficiary shall provide appropriate partial releases from the lien of this Deed of Trust without charge to Trustor except for the reimbursement of any Beneficiary costs and expenses in connection therewith.

5.5 **Acceptance of Trust; Trustee Resignation; Notification of Sale.** Trustee accepts the trust created hereby, which shall be irrevocable by Trustor, when this Deed of Trust, executed and acknowledged, is recorded as provided by law. Trustee may resign at any time by giving notice thereof to Beneficiary as provided by law. Trustee is not obligated to notify any party hereto of pending sale under any other deed of trust or of any action or proceeding in which Trustor, Beneficiary or Trustee shall be a party, unless brought by Trustee.

5.6 **Successor Trustee.** Beneficiary may, from time to time, by instrument in writing, substitute a successor or successors to any Trustee named herein or acting hereunder, in the manner provided by law. Such writing, upon recordation, shall be conclusive proof of proper substitution of such successor Trustee or Trustees, who shall, without conveyance from the predecessor Trustee, succeed to all its title.

5.7 **Additional Security.** The taking or acceptance of this Deed of Trust by Beneficiary shall in no event be considered to constitute a waiver of, or in any way affect or impair,

any other security that Beneficiary may have, acquire simultaneously herewith, or hereafter acquire for the Obligation, nor shall the taking at any time by Beneficiary of any such additional security be construed to constitute a waiver of, or in any way affect or impair, the security of this Deed of Trust. Beneficiary may resort to its several securities for the payment of the Obligation in such order and manner as it may deem appropriate. Trustor, and any party hereafter claiming an interest in any portion of the Property by or through Trustor (other than Beneficiary), hereby waive any benefits under the doctrine of marshaling in the event of judicial or nonjudicial foreclosure under this Deed of Trust.

5.8 **Construction of Agreement; Definitions.** This Deed of Trust shall apply to the parties according to the context hereof, without regard to the number or gender of words or expressions used herein. The captions of the Sections in this Deed of Trust are for convenience and reference only, and in no way define, limit or describe the scope or intent of this Deed of Trust or the provisions of such Sections. This Deed of Trust shall be construed as a whole, in accordance with the fair meaning of its language, and, as each party has been represented by legal counsel of its choice or deliberately chosen not to be so represented, in the negotiation of this Deed of Trust, neither this Deed of Trust nor any provision thereof shall be construed for or against either party by reason of the identity of the party drafting the same. As used in this Deed of Trust, the term(s): (a) "include" or "including" shall mean without limitation by reason of enumeration; (b) "herein," "hereunder," "hereof," "hereinafter" or similar terms refer to this Deed of Trust as a whole rather than to any particular Section; (c) "person" includes a corporation, trust, partnership, limited liability company, unincorporated association, governmental authority or other entity, as well as a natural person; (d) "Beneficiary" shall mean the holder at any time, including pledgees, of the Note or other writings secured hereby, whether or not named as Beneficiary herein; and (e) "Trustor" shall include all persons or entities named in this Deed of Trust as Trustors, severally and collectively, and any subsequent owner of all or any portion of the Property, and their liability under this Deed of Trust shall be joint and several (however, the foregoing shall in no way constitute or imply Beneficiary's consent to any transfer of the ownership of the Property or any portion thereof). All references in this Deed of Trust to "legal fees," "attorneys' fees" or terms of similar import shall, unless prohibited by applicable law, include allocated costs of in-house counsel. Unless the context of this Deed of Trust otherwise clearly requires, references to the plural include the singular, to the singular include the plural and to the part include the whole. Any exhibit, schedule and addendum attached hereto is hereby incorporated herein and made a part hereof for all purposes, and references in this Deed of Trust to such exhibits, schedules and addenda shall be deemed to include this reference and incorporation.

5.9 **Recording; Time of the Essence; Binding Effect.** Trustor expressly authorizes the recording of this Deed of Trust and any UCC-1 financing statement naming Trustor as debtor and Beneficiary as secured party upon the delivery of the same to Beneficiary and to the Maricopa County, Arizona recorder or other applicable filing office authorized to record the same pursuant to A.R.S. § 33-421 or other applicable law. Time is of the essence hereof. Without limitation of the restrictions on transfer described in Section 3.8, this Deed of Trust applies to, inures to the benefit of, and binds all parties hereto, their heirs, personal representatives, legatees, devisees, successors and assigns.

5.10 **Governing Law; Waiver of Right to Jury Trial.**

(a) As between Trustor and Beneficiary only, this Deed of Trust shall be governed by and construed according to the substantive laws and judicial decisions of, the State of Arizona (regardless of Arizona conflict of laws principles or the location, residence, domicile or place of business of Trustor or any present or future principal thereof) and applicable federal laws, rules and regulations.

(b) The waiver of the right to a jury trial set forth in Section 3.05 of the Note and in Section 13.8 of the Loan Agreement shall also apply to claims, disputes, demands, actions and causes of action arising under this Deed of Trust.

5.11 **Notices.** All notices required or permitted to be given hereunder shall be given as provided in the Loan Agreement, unless otherwise provided by applicable law.

5.12 **Amendment.** This Deed of Trust cannot be amended or changed except by a written agreement signed by Trustor and Beneficiary.

5.13 **Severability; Enforceability.**

(a) Each covenant, provision and condition of this Deed of Trust shall be interpreted so as to be valid and effective under applicable law. If any such covenant, provision or condition is held to be void or invalid, the same shall not affect the remainder hereof, which shall be valid and effective as though the void or invalid covenant, provision or condition had not been contained herein.

(b) Should this instrument be or ever become ineffective as a deed of trust, then it shall be construed and enforceable as a realty mortgage (with Trustor as the mortgagor and Beneficiary as the mortgagee).

(c) If the lien of this instrument is invalid or unenforceable (either as a deed of trust or as a realty mortgage) as to any part of the Obligation, or if the lien is invalid or unenforceable as to any portion of the Property, the unsecured or partially secured portion of the Obligation shall be completely paid prior to the payment of the remaining secured or partially secured portion of the Obligation. All payments made on the Obligation, whether voluntary or pursuant to foreclosure or some other enforcement action or procedure taken hereunder, shall be considered to have been first applied to the full payment of that portion of the Obligation which is not secured or fully secured by the lien of this instrument.

5.14 **No Merger.** If the interests of Beneficiary and Trustor under this Deed of Trust shall at any time become vested in Beneficiary, by reason of foreclosure or otherwise, the lien of this Deed of Trust shall not be destroyed or terminated by application of the doctrine of merger and, in such event, Beneficiary shall continue to have and enjoy all of the rights and privileges of Beneficiary as to the separate estates, unless otherwise consented to in writing by Beneficiary.

5.15 **Power of Attorney.** The powers of attorney granted by Trustor to Beneficiary in Section 2.3(c) above are powers coupled with an interest and shall be irrevocable and unaffected by the disability of the principal so long as any portion of the Obligation remains unpaid or unperformed. Beneficiary shall have no obligation to exercise any of the rights and powers described therein in any event. For purposes of A.R.S. § 14-5501.E, Trustor acknowledges that

these powers of attorney form a part of a contract (this Deed of Trust) and are security for money or for the performance of a valuable act. Beneficiary hereby discloses that it may exercise the powers of attorney for Beneficiary's benefit, and such authority need not be exercised for Trustor's best interest.

5.16 **Counterparts.** This Deed of Trust may be executed and/or acknowledged in one or more counterparts, each of which may be executed and/or acknowledged by one or more of the signatory parties hereto. Signature and acknowledgment pages may be detached from the counterparts and attached to a single copy of this Deed of Trust to form one legally effective document.

[Signature pages follow.]

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of Los Angeles

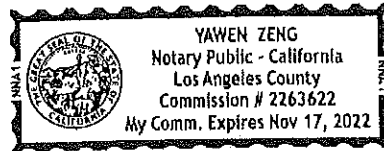
On 6/26/2019 before me, Yawen Zeng, a Notary Public
(insert name and title of the officer)

personally appeared Gary Langendoen,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Yawen Zeng (Seal)



http://recorder.maricopa.gov/recdocrdata/verifycert.aspx?id=305692 [20190494942] 29 Pages

EXHIBIT A

LEGAL DESCRIPTION

PARCEL NO. 1:

LOTS 1, 7, 8 and 9, INCLUSIVE, OF HERITAGE VILLAGE ASSISTED LIVING, ACCORDING TO THE PLAT OF RECORD IN THE OFFICE OF THE COUNTY RECORDER OF MARICOPA COUNTY, ARIZONA, RECORDED IN BOOK 1281 OF MAPS, PAGE 26.

PARCEL NO. 2:

THOSE BENEFICIAL EASEMENT RIGHTS AS SET FORTH AND CREATED UNDER THAT CERTAIN RECIPROCAL ACCESS AND PARKING EASEMENT AGREEMENT RECORDED SEPTEMBER 14, 2017 AS 2017-0679940 AND SEPTEMBER 15, 2017 AS 2017-0682502 IN THE OFFICE OF THE COUNTY RECORDER OF MARICOPA COUNTY, ARIZONA.

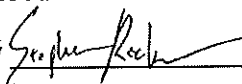
<http://recorder.maricopa.gov/recdocdata/verifycert.aspx?id=305692> [20190494942] 29 Pages

20190494942
OFFICIAL RECORDS OF
MARICOPA COUNTY RECORDER
STEPHEN RICHER



The foregoing instrument is an
electronically prepared
full, true and correct copy
of the original record in this
office.

Attest: 03/19/2024 12:32:06 PM

By  Recorder

To Verify this purchase visit
<http://recorder.maricopa.gov/recdocdata/verifycert.aspx?id=305692>

Ham Declaration

Exhibit M

1561754773136-29-4-4--
crocfers

When recorded, mail to:

R. Jeffrey Sands
HJ Sims Investments, LLC
2150 Post Road, Suite 301
Fairfield, CT 06824

^(A)
**SECOND DEED OF TRUST, ASSIGNMENT OF RENTS,
SECURITY AGREEMENT AND FINANCING STATEMENT**

This Second Deed of Trust, Assignment of Rents, Security Agreement and Financing Statement (this "Second Deed of Trust") is made June 27, 2019, by MRC VSL HERITAGE VILLAGE II, LLC, a Delaware limited liability company ("Trustor"), whose address is c/o Madison Realty Companies, 3452 E. Foothill Boulevard, Suite 200, Pasadena, California, 91107, for the benefit of MADISON FUNDING I, LLC, a Connecticut limited liability company, with a mailing address of 2150 Post Road, Suite 301, Fairfield, CT 06824 (as "Trustee" and "Beneficiary").

I. SECURED OBLIGATIONS. This Second Deed of Trust is given in consideration of and as security for: (a) the payment of a loan from Beneficiary to Trustor evidenced by that Promissory Note of even date herewith executed by Trustor, MRC VSL HERITAGE VILLAGE, LLC; MRC VSL HERITAGE VILLAGE II, LLC; MRC VSL HV MANAGEMENT, LLC; and MRC VSL HV MANAGEMENT II, LLC (collectively, "Borrower") and payable to the order of Beneficiary for the maximum principal amount of \$5,115,000 (the "Note"), together with interest thereon and charges with respect thereto, and any and all advances now or hereafter made by Beneficiary under the terms and conditions of the Note, that certain Loan Agreement, dated the date hereof (the "Loan Agreement"), by Beneficiary and Borrower, or this Second Deed of Trust, and any and all renewals, replacements, amendments, modifications or extensions of the Note, the Loan Agreement or this Second Deed of Trust; (b) all of the terms, conditions, agreements, stipulations, covenants, and provisions of this Second Deed of Trust, the Loan Agreement and any other agreement, document or instrument (and any and all renewals, replacements, amendments, modifications or extensions thereof), including all Loan Documents, given by Borrower to Beneficiary to evidence or to secure the indebtedness secured hereby; and (c) all late charges, default interest, prepayment charges or premiums, loan fees, commitment fees, extension fees, costs to cure, and other fees, costs and expenses of any nature described in the Note or the Loan Agreement and all costs of collecting the indebtedness or other amounts evidenced by the Note or

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National Commercial Services
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described in this Second Deed of Trust or the Loan Agreement, including any and all costs and expenditures of a receiver in possession and reasonable attorneys' fees. This Second Deed of Trust shall also secure the payment and performance of any additional loans that may hereafter be made by Beneficiary to Borrower that are evidenced by a promissory note or notes or other writings stating that they are secured by this Second Deed of Trust. All of the foregoing payments and performances secured by this Second Deed of Trust are referred to herein as the "Obligation."

II. LIENS, SECURITY INTERESTS AND ASSIGNMENTS.

2.1 Grant of Second Priority Lien and Security Interest. For the consideration of \$1.00, or such portion thereof as may hereafter be advanced to or for the benefit of Borrower, Trustor hereby irrevocably conveys, transfers, pledges and assigns to Trustee, in trust, with power of sale, and grants to Beneficiary a second priority security interest in, all of Trustor's present and future right, title and interest in and to all of the following property (all of Trustor's property encumbered by this Second Deed of Trust is referred to herein severally and collectively as the "Property"):

(a) The land described on Exhibit A hereto (together with all land that from time to time, by lease or otherwise, may be expressly made subject to this Second Deed of Trust and all estates and development rights hereafter acquired by Trustor for use in connection with such land, the "Real Property"), and all development rights relating thereto;

(b) All present and future tenements, hereditaments, easements, rights, leases (whether written or oral, or for a definite term or month-to-month), together with all income, receipts, revenues, rents, issues and profits, now or hereafter arising therefrom, or from the Real Property, including guaranties of leases, letters of credit, subleases, licenses, benefits, privileges, permits, water, water rights, rights of way, fences and appurtenances belonging or in any way appurtenant to, the Real Property or any portion thereof, or any improvements or development thereon, and all remainders, rents, issues, and profits thereof;

(c) All buildings and above ground and underground improvements, structures, and fixtures now or hereafter erected on, or attached to, the Real Property or any portion thereof (collectively, the "Improvements");

(d) To the extent permitted by law, all present and future licenses, permits, approvals and agreements from or with any governmental or quasi-governmental agency or entity or any other person relevant to the zoning, subdivision, division, development, improvement, use, lease, sale or other disposition of the Real Property or any portion thereof, or any buildings or improvements now or hereafter erected, placed or located on the Real Property or any portion thereof;

(e) To the extent permitted by the applicable agreements, all present and future plans, specifications, drawings, analyses, surveys, reports and other design products, relating to all present and future buildings and tenant and other improvements (including landscaping) constructed on the Real Property or any portion thereof, and all rights in and to all architectural and engineering contracts, construction management agreements, construction contracts, surety bonds, warranties, land use plans, studies, building contracts, soils reports, appraisals, feasibility

and market studies, management agreements, consulting agreement, operating agreements, service contracts, development contracts, design and sign design contracts, space planning contracts and any other agreements with respect to planning, designing, developing, or inspecting the Real Property or any portion thereof and any improvements or construction thereon, including the right to maintain signage with respect to the Real Property or any business conducted thereon, whether or not appurtenant to the Real Property, together with any accounts and funds maintained under, pursuant to, or in connection with any such contracts and agreements;

(f) All of the beneficial interest of Trustor in any holding trust, if title or any interest of Trustor in the Real Property is vested in or held by a trustee, and all rights to further encumber the Real Property or any portion thereof or any interest therein for debt;

(g) To the extent permitted by the applicable agreements, all present and future water service and wastewater capacity reservation agreements and security agreements, and all other present and future contracts, agreements, books and records relating to the development, improvement, use, leasing, sale, disposition, operation and management of the Real Property or any portion thereof, all buildings and other improvements or personal property now or hereafter placed, erected or located on the Real Property, and any accounts and funds maintained under, pursuant to, or in connection with any such contracts and agreements;

(h) All present and future rights (but not the obligations) under or with respect to any declarations of restrictions governing or imposing rights or responsibilities on or with respect to any portion of the Real Property, as may hereafter be amended, modified, supplemented or assigned, including all of Trustor's right, title and interest thereunder;

(i) All adjacent streets (open or proposed), roads, sidewalks, alleys, public places, parking areas, and strips and gores of land now or hereafter appurtenant to or used or useful in connection with the Real Property or any portion thereof, or any buildings or other improvements now or hereafter erected, placed or located on the Real Property or any portion thereof;

(j) To the extent permitted by the applicable agreements, all contracts (including, without limitation, service, supply, maintenance, management, consulting and construction contracts), registrations, franchise agreements, permits, licenses (to the fullest extent assignable by Trustor), plans and specifications, options, deposits (including deposits with any public or private utility with respect to utility services furnished to the Real Property), refunds, credits, retentions, and other agreements, now or hereafter entered into, and all rights therein and thereto, respecting or pertaining to the use, occupation, construction, management or operation of any business or activity conducted by Borrower from the Real Property, and all right, title and interest of Trustor therein and thereunder, including, without limitation, the right, while an Event of Default remains uncured, to receive and collect any sums payable to Trustor thereunder;

(k) All rights Trustor may have, if any, to the use of any trade name or trademark by which the Real Property or any portion thereof, or any improvements or development thereon, are known;

(l) All rights under any policy or policies of insurance (including premium refunds and credits and insurance proceeds) insuring against damage or loss with respect to any portion of the Property, including all fire, casualty, business interruption, rent loss and flood insurance, whether or not such insurance is required by this Second Deed of Trust or Beneficiary;

(m) All rights in and to any present and future deposit accounts (general time or demand, provisional or final) or investment or other accounts (including all accounts held jointly with someone else) maintained with Beneficiary, or with another institution into which proceeds of the loan secured hereby have been deposited;

(n) All goods, materials, supplies, machinery, furniture and furnishings, appliances, attachments, equipment, inventory, merchandise, general intangibles, accounts, chattel paper, instruments, promissory notes, drafts, investment property, commercial tort claims, letters of credit, letter-of-credit rights, supporting obligations, documents and other personal property and assets of any type owned by Trustor and located on the Real Property (collectively, the "**Personal Property**"); and

(o) All (i) replacements and substitutions for, (ii) additions to, (iii) proceeds and products of (including all insurance proceeds and condemnation awards (or proceeds of any purchase in lieu thereof) which are or may become payable with respect to), and (iv) books, records and files relating to, all or any portion of the items described in the preceding subsections.

Notwithstanding the foregoing, the liens and security interests created by this Second Deed of Trust shall be, until such time as all first lien obligations in favor of Great Western Bank (the "**First Lien Obligations**") have been satisfied in full, a second priority lien, subordinate in all respects (including the exercise of remedies with respect to the Property covered hereby) to the prior lien of the applicable mortgage encumbering the Property and securing the First Lien Obligations on and subject to the terms and conditions set forth in the Intercreditor Agreement between Great Western Bank and the Trustee (the "**Intercreditor Agreement**"). Notwithstanding anything herein to the contrary, the lien and security interest granted hereunder and the exercise of any rights or remedies by Trustee and Beneficiary hereunder are subject to the provisions of the Intercreditor Agreement. In the event of any conflict or inconsistency between the terms of the Intercreditor Agreement and this Deed of Trust, the terms of the Intercreditor Agreement shall govern.

The foregoing descriptions of items constituting the Property shall be construed as cumulative and not limiting, and the terms "include" and "including," when used in those descriptions, shall mean without limitation by reason of enumeration. Unless the context clearly indicates otherwise, the terms "equipment," "inventory," "accounts," "instruments," "promissory notes," "investment property," "commercial tort claims," "deposit accounts," "letter-of-credit rights," "supporting obligations," "chattel paper," "general intangibles," "proceeds" and "products" shall have the meanings provided for those terms in the Arizona Uniform Commercial Code in effect on the date of this Second Deed of Trust. The Real Property and the Improvements located thereon are collectively called the "**Premises**." Capitalized terms used but not defined herein shall have the meanings set forth in the Loan Agreement.

2.2 Assignment of Rents and Leases.

(a) Trustor represents and warrants to Beneficiary that, as of the time of recordation of this Second Deed of Trust, except for the Master Lease Agreement, [dated September 8, 2017] (the "Facility Lease"), between Trustor, as landlord, and [MRC VSL HV Management, LLC], as tenant no recorded or unrecorded lease or rental agreement exists that affects any portion of the Real Property.

(b) All of Trustor's right, title and interest in and to existing and future rents, revenues, income, receipts, issues and profits of the Premises and now or hereafter arising out of any Leases (as defined below) (collectively, "Rents") and the entire right, title and interest of Trustor (including the right to exercise any landlord's liens and any and all other rights and remedies to which Trustor would be entitled under any Lease or by law) in and under all present and future rental agreements, leases, subleases, licenses and all other agreements pursuant to which Trustor or its predecessor in interest with respect to the Real Property grant to third parties any right to use and occupancy of all or any portion of the Premises (including rights in any security deposits and advance rentals held for the benefit of Trustor), together with any extensions, renewals and modifications thereof (collectively, and including, the Facility Lease, the "Leases"), are hereby absolutely assigned and transferred to Beneficiary. For the avoidance of doubt, the term "Leases" does not include any leases, master leases, subleases, licenses, concessions, resident agreements or other agreements (whether written or oral, now or hereafter in effect) entered into by Facility Manager. Beneficiary is authorized to give notice of this assignment, and Trustor agrees to execute, and to cause its property managers and affiliates to execute, any and all further instruments that Beneficiary may require to perfect this assignment. Any provision hereof notwithstanding, so long as no Event of Default exists, Trustor shall have a license to collect assigned Rents as the same shall become due. However, during the existence of any Event of Default, all right of Trustor to collect or receive such Rents (including those past due and unpaid) shall terminate, whereupon Beneficiary shall be entitled to demand and receive the payment of such Rents (including those past due and unpaid), and to proceed against any lessee or tenant (or its property) under any of the Leases and/or any guarantors of the obligations of any such lessee or tenant. In such event, Trustor directs and authorizes the lessees and tenants under any of the Leases and any guarantors of the obligations of any such lessees or tenants to make to Beneficiary all payments required under the applicable Leases; Trustor hereby relieves any and all such lessees and tenants from any liability to Trustor that Trustor might otherwise assert by reason of the lessee/tenant's making such payment to Beneficiary. All Rents collected by Beneficiary may be applied for the following purposes in any manner and order that Beneficiary deems advisable:

- (i) To the payment of all taxes and assessments levied against the Property if provision for paying those items has not otherwise been made;
- (ii) To the payment of any amounts due and owing to Beneficiary under the terms of the Obligation;
- (iii) To the payment of construction, development, servicing and operating costs and expenses arising in connection with the Premises;

(iv) To the payment of any obligations of Trustor under any Lease affecting the Premises, or amounts secured by any other mortgage or Second Deed of Trust on the Real Property approved by Beneficiary; and

(v) Any remainder to Trustor or its designee or other assignee.

Receipt by Beneficiary of Rents shall not constitute a waiver of any other right that Beneficiary may have under this Second Deed of Trust or the laws of Arizona, nor shall the receipt and application thereof cure any Event of Default or affect any foreclosure proceeding or any sale authorized by this Second Deed of Trust or the laws of Arizona, unless the Obligation has been fully satisfied.

(c) Except as expressly permitted by the Loan Agreement or this Second Deed of Trust, Trustor shall not, without Beneficiary's prior written consent: (i) assign any of the Rents; (ii) collect any unreasonably large security deposits or any rent for more than one month in advance; (iii) change the general nature of the occupancy; (iv) initiate or acquiesce in any zoning reclassification; (v) enter into a Lease; (vi) terminate or accept a surrender of any Lease; (vii) amend or modify any Lease to reduce (or effectively reduce by means of rent concessions, rent-free occupancy periods, or the granting of tenant improvement allowances) the rent or term, or to grant any options or rights of first refusal to purchase the Real Property or any portion thereof; (viii) subordinate, or permit the subordination of, any Lease to the lien of a mortgage or Second Deed of Trust that is junior to this Second Deed of Trust; or (ix) take, fail to take or suffer any action that would impair the security for the Obligation or Beneficiary's interest in the Property or the Rents. Any action taken in violation of the foregoing sentence shall be null and void. Trustor shall fully and timely perform all of the obligations of the landlord under all Leases of any portion of the Real Property and shall enforce, short of termination, the performance by all lessees and tenants of all of their obligations under the Leases.

(d) Beneficiary shall not be obligated to perform or discharge any obligation or duty to be performed or discharged by Trustor under any Lease, and Trustor hereby agrees to indemnify and hold Beneficiary harmless for, from and against any and all such liability arising from any of the Leases or from the assignment contained in this Section (other than for loss caused by Beneficiary's gross negligence or willful misconduct). This Section shall not obligate Beneficiary to manage, care for or repair the Premises or make Beneficiary liable for any loss or damage to any tenant, invitee, employee, licensee or any other person resulting from the failure to properly manage, care for or repair the Premises. Under no circumstance shall Beneficiary have any duty to produce Rents from the Premises. Regardless of whether Beneficiary, in person or by agent, takes actual possession of the Real Property, Beneficiary is not and shall not be deemed to be: (i) a "mortgagee in possession" for any purpose; (ii) responsible for performing any of the obligations of the lessor under any lease; (iii) responsible for any waste committed by lessees or any other parties, any dangerous or defective condition of the Premises, or any negligence in the management, upkeep, repair or control of the Premises (other than for loss caused by Beneficiary's gross negligence or willful misconduct); or (iv) liable in any manner for the Premises or the use, occupancy, enjoyment or operation of all or any part of it.

(e) In the event that Beneficiary exercises its rights to possess and exclude Trustor from the Premises pursuant to Section 4.2, Beneficiary shall have full power and authority

to employ such measures as it may deem necessary or advisable, in its sole discretion, to enforce the payment or security of the Rents, including actions for the recovery of rent, actions in forcible detainer and in distress for rent, and with full power: (i) to cancel or terminate any Lease for any reason that would entitle Trustor to cancel or terminate the same; (ii) subject to any applicable subordination, nondisturbance and attornment agreement or similar agreement executed by Beneficiary and the applicable tenant ("SNDA"), to disaffirm any Lease which is subordinate to the lien of this Second Deed of Trust; (iii) to extend or modify any then existing Lease and to enter into new Leases, which extensions, modifications and new Leases may provide for terms to expire, or for options to lessees to extend or renew terms to expire, beyond the maturity date of the Note and beyond the date of issuance of a deed(s) to a purchaser(s) at a judicial or nonjudicial foreclosure sale, Trustor agreeing that any such Leases, and the options or other such provisions contained therein, shall be binding upon Trustor and all persons whose interests in the Premises are subject to the lien of this Second Deed of Trust and upon the purchaser(s) at any foreclosure sale, notwithstanding any redemption, discharge or satisfaction of the Obligation or any judgment in foreclosure rendered thereon, or issuance of any certificate of sale or deed to any purchaser(s); (iv) to undertake and complete all repairs, decorating, renewals, replacements, alterations, additions and improvements to the Premises as Beneficiary may deem necessary or advisable; (v) to insure the Premises and all risks incidental to Beneficiary's possession, operation and management thereof; and (vi) to receive all of the Rents.

(f) Trustor, as landlord under any existing Leases affecting the Real Property, hereby declares, pursuant to the provisions of, and subject to any conditions or limitations contained in, any such existing Leases or any SNDA executed by Lender and the applicable tenant with respect thereto, that all such existing Leases and any subleases thereunder, as may hereafter be amended or renewed, are and shall hereafter remain subject and subordinate to the lien and other provisions of this Second Deed of Trust, as may hereafter be amended.

2.3 Assignment of Operating Contracts.

(a) Assignment and Authorization to Exercise Rights. Borrower has entered, or will enter, into various Operating Contracts. As additional security for the payment and performance of the Obligation, to the extent permitted by the Operating Contracts, Trustor hereby assigns, transfers and conveys to Beneficiary, and grants to Beneficiary a security interest in, all of Trustor's present and future right, title and interest in and to or arising under the Operating Contracts. Trustor hereby authorizes Beneficiary, during the existence of any Event of Default, or upon the occurrence of any default by Borrower under any one or more of the Operating Contracts that remains uncured after the expiration of any grace period provided therein, and upon the election by Beneficiary to enforce Trustor's rights under any one or more of the Operating Contracts and to receive the performance of the relevant servicer thereunder. Trustor hereby authorizes such servicers to accept the foregoing assignment and authorizes and directs such servicers, during the existence of any Event of Default by Borrower and election by Beneficiary to do so under the Loan Agreement, to make and render all acts and performances required of the servicers under the terms of any one or more of the Operating Contracts directly to or at the direction of Beneficiary. Trustor hereby relieves any such servicer from any liabilities to Trustor that Trustor might otherwise assert by reason of such servicer's making or rendering performance under any one or more of the Operating Contracts to or at the direction of Beneficiary.

(b) Representations and Warranties. Trustor represents, warrants and covenants that:

(i) As of the date hereof, the existing Operating Contracts are in full force and effect and, except as may have otherwise been disclosed to Beneficiary in writing, have not been supplemented, amended, modified, terminated or canceled in any way. To the best of Trustor's actual knowledge, no breach or default exists under those Operating Contracts.

(ii) The Operating Contracts include all management, supplier and servicing contracts and agreements necessary to effectively develop the Real Property.

(iii) Trustor has full power, right and authority to assign its interests under the Operating Contracts (upon receipt of the consent of the applicable counterparty thereto, as applicable).

(iv) Except for the assignment created hereby and any separate assignment(s) to Beneficiary of any of the Operating Contracts, Trustor has not conveyed, transferred or assigned any of its right, title or interest in any one or more of the existing Operating Contracts or any of its right, title or interest therein, and has not executed any other writing that may prevent Beneficiary from, or limit Beneficiary in, operating under the terms and provisions of this assignment of the Operating Contracts.

(v) Trustor shall make no other assignment of any one or more of the Operating Contracts or of any right or interest therein (except any separate assignment to Beneficiary).

(vi) Trustor shall perform and observe, in timely fashion, each of its obligations and agreements under the Operating Contracts in all material respects in accordance

with the terms and conditions thereof, and shall use Trustor's commercially reasonable efforts to cause the relevant servicer to do the same with respect to each of such servicer's obligations and agreements thereunder.

(vii) Trustor shall not waive, or take any action or execute any agreement that reasonably would be expected to be interpreted to waive, or in any manner release or discharge the relevant servicer from, any material obligation or agreement under or related to any one or more of the Operating Contracts to be performed or observed by such servicer, or permit any nonperformance thereof, but shall, at its sole cost and expense, enforce and secure the performance of all such obligations and agreements to be performed or observed by such servicer.

(c) Power of Attorney. Subject to the terms of Section 5.16 below, Trustor hereby makes, constitutes and appoints Beneficiary and Beneficiary's successors and assigns, Trustor's true and lawful attorneys in fact, in Trustor's name, place and stead, or otherwise, during the existence of any Event of Default:

(i) To take all actions and to execute, acknowledge, obtain and deliver any and all writings or other items necessary or deemed advisable as a term, condition or provision of the relevant Operating Contracts or to exercise any of Trustor's rights or to receive and enforce any performance by the servicer under the relevant Operating Contracts .

(ii) To give any notices, instructions or other communications to such servicer or to any other person or entity in connection with the Operating Contracts.

(iii) To demand and receive all performances, labor and materials due under or with respect to the Operating Contracts and to take all lawful steps to enforce such performances and to compromise and settle any claim or cause of action in Trustor arising from or related to the relevant Operating Contracts.

(iv) To file any claim or proceeding, or to take any other action, in the name of Beneficiary, its successors and assigns, Trustor, or otherwise, to enforce any performance due under or related to the relevant Operating Contracts or protect and preserve the right, title and interest of Beneficiary thereunder.

2.4 Uniform Commercial Code Issues.

(a) The filing of one or more financing statements in the records relating to personal property shall in no way derogate or impair Beneficiary's priority or rights on default to exercise either its rights and remedies as a Beneficiary of this Second Deed of Trust or as a secured party with respect to personal property under the Uniform Commercial Code of the State of Arizona (Sections 47-1101 *et seq.* of the Arizona Revised Statutes) (the "UCC") in connection with the items of the Property covered by the UCC. This Second Deed of Trust is intended to and shall create a security interest in favor of Beneficiary in those items of the Property which are covered by the UCC, although such items are to be considered fixtures to the fullest extent permitted by law. This Second Deed of Trust is a "construction mortgage" as defined in Arizona Revised Statutes ("A.R.S.") § 47-9334H.

(b) This Second Deed of Trust constitutes a security agreement and a financing statement (fixture filing) and it is hereby recited (to the extent required by A.R.S. § 47-9502(B) and (C) because any portion of the Property may constitute fixtures) that this Second Deed of Trust is to be recorded in the office where a mortgage on the Real Property would be recorded, which is the office of the Recorder of Maricopa County, Arizona.

(c) Trustor hereby certifies, with the understanding that Beneficiary will rely upon such certifications in making the loan secured hereby and determining the proper locations in which to make filings to perfect its security interest in the Property and conduct searches for the liens of potential competing creditors, and in including in Beneficiary's filings the identifying information required by law: (i) Trustor's exact legal name and mailing address are as set forth in the first Section of this Second Deed of Trust; (ii) Trustor is a limited liability company organized under the laws of Arizona; (iii) Trustor uses no other names (including trade names) other than its name set forth in the first Section of this Second Deed of Trust, and is not the successor by merger, consolidation, acquisition, change in form, nature or jurisdiction of organization to any other entity; (iv) no effective financing statements are on file in the office of any secretary of state, county recorder or other public office naming Trustor as debtor and describing any of the Property as collateral; and (v) Trustor will not become involved in any merger, acquisition, dissolution or other change in Trustor's business form or name.

(d) In the event Beneficiary proceeds under the UCC against any personal property encumbered by this Second Deed of Trust and provided reasonable notice if required pursuant to the UCC, unless the Property is perishable or threatens to decline speedily in value, ten days' notice to Trustor or any other "debtor" described in the UCC shall constitute commercially reasonable notice. Beneficiary shall also be entitled to proceed as to both the Real Property and all personal or mixed Property and all fixtures in accordance with Beneficiary's rights and remedies with respect to the Real Property as provided by A.R.S. §§ 47-9604(A) and (B).

2.5 Further Assurances; After-Acquired Property. At any time, and from time to time, upon written request by Beneficiary, Trustor will make, execute and deliver, or cause to be made, executed and delivered, to Beneficiary and, where appropriate, cause to be recorded and/or filed and from time to time thereafter to be re-recorded and/or refiled at such time and in such offices and places as shall reasonably be deemed desirable by Beneficiary, any and all such other and further mortgages, deeds to secure debt, deeds of trust, security agreements, financing statements, continuation statements, instruments of further assurance, certificates and other documents as may, in the reasonable opinion of Beneficiary, be necessary or desirable in order to effectuate, complete or perfect, or to continue and preserve (a) the obligations of Trustor under this Second Deed of Trust or any of the other Loan Documents and (b) the security interest created by this Second Deed of Trust upon and security title in and to all of the Property, whether now owned or hereafter acquired by Trustor. Upon any failure by Trustor so to do within 30 days following Beneficiary's request therefore, Beneficiary may make, execute, record, file, re-record and/or refile any and all such mortgages, deeds to secure debt, security agreements, financing statements, continuation statements, instruments, certificates and documents for and in the name of Trustor, and Trustor hereby appoints Beneficiary the agent and attorney-in-fact of Trustor so to do, which appointment is coupled with an interest and shall be irrevocable so long as the Obligation remains unsatisfied. The security title of this Second Deed of Trust, and the security interest

created hereby will automatically attach, without further act, to all of Trustor's after-acquired property attached to and/or used in the operation of the Premises or any part thereof.

III. PROTECTION OF PROPERTY AND BENEFICIARY'S INTEREST.

3.1 Warranty of Title. Trustor represents and warrants that it is the sole owner of good and marketable unencumbered fee simple title to the Real Property, and that it is, or will become, the owner of the other existing Property, and Trustor will forever defend the same against all claims and persons whomsoever, unto Beneficiary, its successors and assigns, subject only to Permitted Encumbrances. All of Trustor's present and future right, title and interest in the Property shall be subject to the lien and other terms and provisions of this Second Deed of Trust regardless of the time that any such right, title and interest is created, obtained by or conveyed, transferred or assigned to Trustor.

3.2 Obligation to Maintain Premises; Repairs; Inspection by Beneficiary.

(a) From and after completion of construction of the Improvements, Trustor shall care for and keep and maintain the Premises, or cause the Premises to be cared for, kept and maintained, in good order, condition and repair (ordinary wear and tear excepted), and will at all times make or cause to be made such repairs, maintenance, renewals, and replacements as shall be necessary to maintain the Premises and abutting grounds, sidewalks, roads, parking and landscape areas in good condition and repair, all to the same extent as a prudent owner would make. Trustor shall not substantially alter the Premises, except in accordance with the Plans and as may be required by applicable laws, ordinances, orders, decrees, rules, regulations or requirements of any governmental authority, and any requirements, terms or conditions contained in any restrictions, restrictive covenants, easements, licenses or leases, building codes, fire safety and air quality codes, flood protection laws and ordinances, laws or regulations concerning accessibility (including the Americans With Disabilities Act), zoning ordinances or stipulations, subdivision plats, master plans, development plans, or other instruments or documents now or in the future affecting any portion of the Real Property or the Improvements (collectively, "Legal Requirements"). Trustor will, or will cause Facility Manager to, regularly inspect and promptly repair and replace the Improvements when needed. All replacements of items of the Property will be of a value equal to or greater than the value of the item or items replaced. Trustor shall not commit, or permit to occur, any waste upon the Premises. Trustor shall, or shall cause Facility Manager to, keep the Improvements and Personal Property free of termites, dry rot, fungus and all harmful or destructive insects and shall keep the landscaping of the Premises in good condition, watered and free from weeds, and all plants, trees, and shrubs pruned and in good condition. Trustor shall, or shall cause Facility Manager to, keep the Premises free of rubbish and unsightly, unsafe and unhealthful conditions.

(b) Trustor shall, or shall cause Facility Manager to, comply with all Legal Requirements now or in the future affecting the Premises or requiring any alteration or improvements to be made thereof, but shall not otherwise construct, or make structural alterations to, any Improvements on the Real Property (except in accordance with the Plans) without Beneficiary's prior written consent. To the best of Trustor's knowledge after due inquiry and investigation, the building plans and specifications for the Improvements on the Real Property comply with all applicable zoning, building, fire safety and accessibility laws, ordinances, codes,

rules and regulations and other laws and regulations applicable thereto, and such plans and specifications and improvements have been, or will be, approved by all appropriate authorities. To the best of Trustor's knowledge, no notice of any violations of ordinances, codes, rules, regulations, orders, restrictive covenants or statutes applicable to the Premises has been received, and no governmental authorities or insurance underwriters have required any changes to any plans and specifications as submitted to Beneficiary. All appropriate governmental authorities will have issued, as and when required, all required permits for the construction and operation of the improvements on the basis of the plans and specifications so approved. To Trustor's knowledge, the Real Property, the Improvements and their use fully comply and shall continue to comply with environmental, air quality, zoning, planning, building and other governmental laws, ordinances, rules, regulations and requirements and Trustor has received no notice to the contrary. Without Beneficiary's prior written consent, Trustor will not (i) initiate any zoning reclassification of the Premises, (ii) seek any variance under existing zoning ordinances applicable to the Premises, (iii) use or permit the use of the Premises in a manner that would result in such use becoming a nonconforming use under applicable zoning ordinances or other applicable laws, rules or regulations, or (iv) impose, release or modify any restrictive covenants upon the Premises. To the best of Trustor's knowledge, as of the date hereof, no action or proceeding is pending before any court, quasi-judicial body or administrative agency relating thereto except as disclosed prior to the date hereof to Beneficiary.

(c) If the Property, or any portion thereof, shall be damaged or destroyed by a Casualty or become subject to any Condemnation, the provisions of Section 5.6 of the Loan Agreement shall apply with respect thereto.

(d) Subject to the rights of Facility Manager and tenants and residents of the Premises, Beneficiary shall have the right to enter upon the Property in accordance with Section 5.4 of the Loan Agreement.

3.3 Insurance. Trustor shall obtain and maintain, or cause to be obtained and maintained, in full force and effect at all times with respect to the Property, insurance policies as required pursuant to Section 6.3 of the Loan Agreement, the provisions of which are incorporated by reference as if fully set forth herein.

3.4 Payment of Taxes, Assessments and Other Liens or Charges. Trustor shall pay or cause to be paid to the proper officials or persons all Taxes and Other Charges, and Trustor shall cause to be paid and discharged any Lien against the Property (other than Permitted Encumbrances). Trustor may contest in good faith the validity or amount of any tax, assessment, Lien or governmental charge by appropriate proceedings provided by law, including payment of the tax, assessment, Lien or charge under protest, if required. Trustor shall not consent to, or vote in favor of, the inclusion of any portion of the Real Property in a special improvement, assessment, community facilities or similar district without Beneficiary's prior written consent. Trustor shall provide Beneficiary with prompt notice of any notification that Trustor may receive from any governmental authority or other person of any intent or proposal to form such a district that may include any portion of the Real Property, and Beneficiary shall have the right to object to the same, and to otherwise appear and participate in hearings and other proceedings, in its own name or in Trustor's name. Trustor shall pay or cause to be paid when due all charges for water, water delivery, gas, electric power and light, telephone, sewer, waste removal, bills for repairs, and all

other claims, encumbrances and expenses incident to the ownership and occupancy of the Real Property.

3.5 Impounds.

(a) At any time requested by Beneficiary, Trustor shall deposit or cause to be deposited with Beneficiary, in monthly installments, sufficient funds (as determined by Beneficiary) to enable Beneficiary to pay one month before delinquency all taxes, assessments, and insurance premiums due with respect to the Premises. Each such installment shall be equal to the amount of estimated taxes and assessments, and premiums for insurance, next due (as estimated by Beneficiary), less all installments already paid therefor, divided by the number of months that will elapse before one month prior to the date when such taxes, assessments or premiums shall become delinquent. If amounts paid to Beneficiary under provisions of this Section are insufficient to discharge the obligation of Trustor for such taxes, assessments or premiums as the same become due, Trustor shall pay or cause to be paid to Beneficiary upon demand such additional sums as may be required to fully pay and discharge those items. Notwithstanding the foregoing, Beneficiary hereby agrees to temporarily waive the requirement for real estate tax, assessments and insurance premium impounds at the inception of the loan secured hereby, with such waiver to remain effective as long as no Event of Default exists.

(b) To the extent sufficient deposits are received by Beneficiary and used to pay taxes, assessments and premiums pursuant to this Section 3.5, such payments shall satisfy Trustor's obligations to pay such taxes, assessments and premiums pursuant to Sections 3.3 and 3.4. Any excess funds remaining after payment of all items before delinquency may be remitted to Trustor or, if an Event of Default then exists, credited to the Obligation.

(c) Nothing in this Section 3.5 shall release Trustor from, or shift to Beneficiary, the obligation to pay taxes, assessments and insurance premiums as the same become due and payable, or be construed to cause Beneficiary to become a trustee of amounts deposited with Beneficiary. Deposits made under this Section 3.5 may be commingled with Beneficiary's general corporate funds, and Beneficiary shall hold those deposits without the payment of interest. All amounts paid and deposited hereunder are hereby assigned to Beneficiary as additional security for the Obligation. If any Event of Default occurs and is continuing, Beneficiary may, at its sole option, apply all or any portion of such deposits to the cure or partial cure of the Event of Default without waiver of or prejudice to the rights of Beneficiary arising by virtue of such Event of Default, or to the payment of principal and interest on the Obligation, in lieu of applying such deposits for any other purposes.

(d) At Beneficiary's request, Trustor shall cause to be furnished to Beneficiary a tax reporting service contract reasonably satisfactory in nature and duration, and with a company reasonably satisfactory to Beneficiary, with respect to the Property.

3.6 Replacement or Addition of Tangible Personal Property or Improvements Subject to Encumbrance. All tangible Personal Property shall be kept on the Real Property and shall not be removed therefrom without the prior written consent of Beneficiary, except for items (i) sold in the ordinary course of business, or (ii) consumed or worn out in ordinary usage and replaced as described in Section 3.2. After completion of construction of the Improvements in

accordance with the Plans, Trustor shall provide written notice to, and obtain the consent of, Beneficiary prior to replacing, adding or installing any tangible Personal Property or Improvements (i) that are or will be subject to a security interest (other than Permitted Encumbrances) held by a seller or any other person under the UCC, or (ii) with a value greater than \$100,000, in each case other than Permitted Encumbrances or any Personal Property or Improvements permitted to be replaced, added or installed by the terms of the Facility Lease. In the event any such Personal Property or Improvements are subject to a security interest (other than Permitted Encumbrances) held by a seller or other party, whether or not Trustor shall have given to Beneficiary the notice described above, Beneficiary may, at its option, at any time, pay the balance due to satisfy such security interest, and the amount so paid, together with any hazard insurance premiums paid by Beneficiary with respect to that property, shall be a lien on the Property, shall be added to the Obligation and shall be payable on demand, together with interest from the date of advance until paid at the Default Interest Rate. The foregoing amounts shall also be guaranteed by any guarantee(s) now or hereafter relating to the Obligation. Beneficiary shall have the right to acquire by assignment from the holder of any such security interest any and all contract rights, accounts, chattel paper, negotiable instruments, or other evidence of Trustor's indebtedness for such Personal Property or Improvements and, upon acquiring any such interest by assignment, Beneficiary shall have the right to enforce the security interest as assignee thereof in accordance with the laws of Arizona. Whether or not Trustor gives notice as described above, and whether or not Beneficiary pays or takes an assignment of any such security interest, Trustor shall pay prior to delinquency, and shall not permit any default to occur in the payment of, any moneys due under the security agreement covering such Personal Property or Improvements. Should the lien and security interest of this Second Deed of Trust be subject to a prior security interest with respect to any of the Property, all of Trustor's right, title and interest in and to any deposits made in connection with the transaction creating the prior security interest are hereby assigned to Beneficiary, together with the rights and benefits previously or hereafter obtained by reason of any payments made with respect thereto. As used in this Section 3.6, the term "security interest" shall include a lease of the applicable Personal Property.

3.7 Actions or Proceedings Affecting Property; Duty to Appear. Trustor agrees to appear in and prosecute or defend any action or proceeding that may affect the priority of this Second Deed of Trust or the security, rights or powers of Beneficiary hereunder or that seeks to impose liability on Trustor or Beneficiary because of any act or omission of Trustor, and Trustor shall pay all costs and expenses (including the cost of searching title) and attorneys' fees incurred in such action or proceeding. Beneficiary may appear in and defend any action or proceeding purporting to affect the security or priority hereof or the rights or powers of Beneficiary. Beneficiary may, if Beneficiary reasonably determines that Trustor is failing or will fail to do so, pay, purchase, contest or compromise any adverse claim, encumbrance, charge or lien (other than Permitted Encumbrances) which Beneficiary reasonably determines to be prior or superior to the lien of this Second Deed of Trust. All amounts paid, suffered or incurred by Beneficiary in exercising the authority granted in this Section 3.7, including reasonable attorneys' fees, shall be added to the Obligation, shall be a lien on the Property and shall be due and payable by Trustor to Beneficiary on demand, together with interest from the date of advance until paid at the Default Interest Rate. The foregoing amounts shall also be guaranteed by any guarantee(s) now or hereafter relating to the Obligation.

3.8 Sale, Lease or Conveyance by Trustor.

(a) Except upon the terms expressly permitted by the Loan Agreement, Trustor shall not Transfer all or any portion of the Property, voluntarily, involuntarily or by operation of law, without the prior written consent of Beneficiary, which Beneficiary may withhold in its sole, absolute and exclusive discretion.

(b) If the ownership of the Property or any portion thereof becomes vested in any person other than Trustor, Beneficiary may deal with such successor(s) in interest with reference to the Obligation and this Second Deed of Trust in the same manner as with Trustor, without in any way vitiating or discharging Trustor's liability hereunder or for payment of the Obligation. However, the foregoing sentence shall in no way constitute or imply Beneficiary's consent to any transfer of the ownership of the Property or any portion thereof and Trustor's violation of the provisions of this Section 3.8 shall entitle Beneficiary to accelerate the Obligation (and to collect any applicable prepayment premium due upon acceleration under the Note).

3.9 Due on Encumbrance – Consent by Beneficiary Subject to Trustor's right to contest as provided herein and in the Loan Agreement, if applicable, Beneficiary may, at its option, declare immediately due and payable all sums secured by this Second Deed of Trust in the event that the Real Property is subjected to a lien or interest (other than Permitted Encumbrances) in favor of a related or a third party person or entity, including, without limitation, a property or homeowner's association, taxing authority, governmental or quasi-governmental agency or vendor of perishable or agricultural goods, without Beneficiary's prior written consent. This shall include a lien or interest created consensually or by operation of law, or arising from a default under any applicable declarations or covenants affecting the Real Property. It is intended that this due on encumbrance clause be triggered by any lien or interest (other than Permitted Encumbrances) affecting the Real Property which has not been consented to by Beneficiary in advance and in writing, and which arises after the effective date of Beneficiary's loan policy of title insurance (obtained as of the date of Loan closing as such Loan may be modified or extended), or after Loan closing, as applicable. Provided, however, that this option shall not be exercised by Beneficiary if such exercise is prohibited by applicable federal or state law.

3.10 Changes or Modification of Applicable Tax Laws. In the event of the imposition after the date of this Second Deed of Trust of any law of the United States of America, the State of Arizona or any other domestic or foreign governmental authority claiming to have jurisdiction, deducting from the value of real property for the purposes of taxation or assessment any lien thereon or changing in any way the taxation of mortgages, deeds of trust or of debts secured by mortgages or deeds of trust or the manner of the collection of any such taxes, and imposing a tax or assessment, either directly or indirectly on this Second Deed of Trust or the Note, the sums evidenced or secured thereby or the interest payable thereon, Trustor shall pay the entire tax or assessment in addition to all other payments required hereunder and shall pay any such tax or assessment thereafter levied or assessed against the Premises. The provisions of this Section shall not apply to changes in federal and state income tax laws.

3.11 Substitute Performance. Should Trustor fail to pay or perform any portion of the Obligation and such failure is or becomes an Event of Default, then Beneficiary, without obligation to do so and without releasing Trustor from any portion of the Obligation, may pay or perform the same in such manner and to such extent as Beneficiary, in its sole good faith discretion, may deem necessary on a conservative basis to protect the security hereof. Beneficiary shall be authorized

to enter upon the Premises for such purposes, subject to the rights of Facility Manager and tenants and residents. All expenses or charges that Beneficiary may incur in accordance with the foregoing in connection with the care or preservation of the Premises or any part thereof at any time, or the payment of any taxes, assessments, insurance premiums (including premiums for so-called "forced placed" insurance coverage protecting only the interest of Beneficiary in the Property), or encumbrances levied upon or attaching to the Premises or any portion thereof or interest therein, or any cost of redemption thereon, or any sums of money, charges, expenses or fees which Beneficiary may pay pursuant to any provision hereof or of the Loan Agreement, shall be added to the Obligation, shall be payable by Trustor on demand, and shall bear interest at the Default Interest Rate from the date of advance until paid. The foregoing amounts shall also be guaranteed by any guarantee(s) now or hereafter relating to the Obligation.

IV. DEFAULT AND REMEDIES.

4.1 Acceleration and Exercise of Remedies. At any time while an Event of Default exists, Beneficiary may declare the Obligation to be immediately due and payable and may exercise any one or more of the rights and remedies described herein and in the other Loan Documents.

4.2 Beneficiary's Right to Possession. Subject to the rights of Facility Manager and tenants and residents of the Premises, during the existence of any Event of Default, Beneficiary shall, at its option, be entitled to the immediate possession of the Property, with the right to manage the same as a mortgagee in possession, and to collect and apply all revenues, income, receipts, issues and profits of Trustor derived from the Premises (collectively, the "**Profits**") and any Rents to the payment of the Obligation. Trustor and all persons claiming under Trustor shall, upon demand, immediately deliver possession of the Property to Beneficiary or its assigns. Beneficiary shall not be liable to Trustor for any obligation or charge in dealing with the Property as a mortgagee in possession (other than for loss caused by Beneficiary's gross negligence or willful misconduct). Nothing in this Section shall impose upon Beneficiary: (a) any duty, obligation or responsibility for the control, care, management or repair of the Property, or for complying with or enforcing any of the terms and conditions of any lease agreement; or (b) any responsibility or liability for any waste committed on the Property by the tenants or by any other persons, for any dangerous or defective condition of the Property, or for any negligence in the management, upkeep, repair or control of the Property, resulting in loss, injury or death to any tenant, licensee, employee or other person.

4.3 Appointment of Receiver. During the existence of any Event of Default, a receiver may be appointed, with or without notice, whereupon the receiver shall immediately be entitled to possession of all of the Property (subject to the rights of Facility Manager and tenants and residents of the Premises). Beneficiary's right to a receiver shall be absolute and unconditional, and a receiver may be obtained in an independent action, regardless of whether Beneficiary seeks any relief other than the appointment of a receiver; Trustor expressly waives any express or implied legal requirement that might otherwise require the initiation or pendency of an action or proceeding seeking other relief as a condition to the appointment of a receiver. The receiver may be appointed without regard to the adequacy of any security for the Obligation and Trustor shall immediately surrender possession of the Property (subject to the rights of Facility Manager and tenants and residents of the Premises) to the receiver upon his appointment. Subject

to the rights of Facility Manager and tenants and residents of the Premises, the receiver shall have the right to take possession of the Property, to collect any Rents and Profits therefrom, to complete the construction or reconstruction of any structures or improvements in progress thereon, to rent or sell the Premises or portions thereof, to operate any business of Trustor thereon, and to exercise such other rights as may be granted by the court pending such proceedings, and up to the time of redemption or issuance of a trustee's or sheriff's deed. Rents and Profits shall be applied to the costs and expenses of the receiver and the receivership, including costs of construction or reconstruction, and the balance shall be applied in the manner described in the Loan Documents. The receiver shall have the power to borrow money from any person, including Beneficiary, for expenses of operating, preserving, maintaining and caring for the Real Property, and completing the construction or reconstruction in progress of any improvements or structures upon the Property, and all such borrowed sums, together with interest thereon, whether expended or not, shall be added to the Obligation. The receiver may expend such borrowed money for the purposes described in this Section during any redemption period and, upon any redemption, any unexpended amounts of such borrowed money shall be credited on the redemption price of the Property. In addition, any costs incurred, or advances made, by Beneficiary in connection with the implementation or operation of the receivership, shall be added to the Obligation, bear interest at the Default Interest Rate, be guaranteed by any guarantee(s) now or hereafter relating to the Obligation and be secured by this Second Deed of Trust.

4.4 Sale by Trustee Pursuant to Power of Sale; Judicial Foreclosure. During the existence of any Event of Default, upon the giving of notice of the time and place of sale in the manner provided by law, the Property may be sold by Trustee in the manner provided by law under the power of sale conferred hereby. The mailing address of Trustor for the purpose of mailing a copy of the notice of sale shall be the address specified above with Trustor's name, unless a subsequent request for notice of sale specifying a different address is recorded in the manner provided by law. In lieu of sale pursuant to the power of sale conferred hereby, this Second Deed of Trust may, at Beneficiary's election, be judicially foreclosed in the same manner provided by law for the foreclosure of mortgages on real property. Any cure periods provided in this Second Deed of Trust or the other Loan Documents may, at Beneficiary's sole option, run concurrently with any statutory cure periods.

4.5 Sale of Property in Whole or in Separate Lots, Parts or Parcels; Right of Beneficiary to Buy. In the event of a trustee's sale or foreclosure sale, the Property may be sold, at the option of Beneficiary or Trustee, in whole or in separate lots, parts or parcels, and Beneficiary or Trustee may bid and become the purchaser at any such sale. Trustee shall deliver to any such purchaser its deed (or bill of sale, as applicable) conveying the Property so sold, but without any covenant or warranty, express or implied. The recitals in any such deed of any matters or facts shall be conclusive proof of the truthfulness thereof. The proceeds of the sale shall be applied as provided by law. The purchaser at the Trustee's sale shall be entitled to immediate possession of the Property (subject to the rights of Facility Manager and tenants and residents). Title to all insurance policies and the proceeds thereof shall vest in and become the property of the purchaser at any such sale. The power of sale under this Second Deed of Trust shall not be exhausted by any one or more sales or attempted sales as to all or any portion of the Property remaining unsold, but shall continue in full force and effect until all of the Property shall have been sold by exercise of the power of sale in this Second Deed of Trust and the Obligation has been fully paid and performed.

4.6 Effect of Foreclosure on Existing Leases. Upon any sale of the Real Property under this Second Deed of Trust, any Lease that is subordinate to the lien of this Second Deed of Trust shall remain in effect, the purchaser thereby being subrogated to Trustor's interest therein, unless the purchaser elects to treat any such Lease as terminated by virtue of the sale under the prior lien and charge of this Second Deed of Trust, unless a separate non-disturbance agreement executed by Beneficiary precludes such termination.

4.7 Attorneys' Fees and Expenses; Failure of Trustor to Vacate. During the existence of an Event of Default, if any sale proceeding, lawsuit or arbitration is commenced, or any attorney is retained to collect any amounts secured hereby or to enforce any rights granted Beneficiary hereunder (regardless of whether an action is actually commenced), Trustor shall pay Beneficiary's reasonable attorneys' fees and costs (to be determined by the court or arbitrator and not by jury, in the case of litigation or arbitration) incurred in enforcing its rights under the Loan Documents, any guaranty now or hereafter relating to the Obligation and any other agreements which evidence, secure or guarantee all or any portion of the Obligation, and Trustee's reasonable attorneys' fees, Trustee's fees and its costs and expenses in connection with any sale proceedings or lawsuit. In addition, Trustor shall pay a reasonable fee for title searches, foreclosure reports, trustee's sale guaranties, litigation guaranties, publication costs, environmental assessments or appraisal reports made or obtained either (a) in preparation for and in the conduct of any such proceedings or suit, or (b) to evidence to potential bidders at any judicial or nonjudicial sale pursuant to this Second Deed of Trust the true condition of title to or the value of the Property or any portion thereof. All of the foregoing fees and expenses shall be payable on demand, added to the Obligation and secured by this Second Deed of Trust, shall be included in any judgment or arbitration award obtained by Beneficiary and shall be paid to Beneficiary as part of any reinstatement tendered hereunder. If Trustor fails to vacate the Real Property following foreclosure or sale, Trustor shall be a tenant at sufferance and subject to an action for forcible entry and detainer, wherein Beneficiary shall be entitled to collect from Trustor, in addition to all other amounts due hereunder, a reasonable rental for the Real Property during the period of such holding over at sufferance. The foregoing amounts shall also be guaranteed by any guarantee(s) now or hereafter relating to the Obligation.

4.8 Additional Remedies of Beneficiary; No Waiver.

(a) In addition to any remedies provided herein for breach or default hereof, Beneficiary shall have all other remedies allowed or provided for under or described in the other Loan Documents and all other writings executed or delivered by any Borrower Party in connection with the Obligation, or available under applicable law. Any one or more rights and remedies available to Beneficiary may, at its option, be sought and exercised concurrently or consecutively, and in inconsistent proceedings, whether legal or equitable. Beneficiary's failure to exercise any of its rights upon any default or breach shall not prejudice its rights in the event of any other or subsequent default or breach. Beneficiary's delay in exercising any rights shall not preclude it from exercising the same at any time during the continuance of such default or breach. By accepting any performance or payment of any portion of the Obligation after its due date, Beneficiary shall not waive the agreement contained herein that time is of the essence hereof, nor shall Beneficiary waive its rights to require prompt performance or payment when due of the remainder of the Obligation or to consider failure to so perform or pay a default hereunder.

(b) Without limitation of Beneficiary's rights of enforcement with respect to the Property in accordance with the procedures for foreclosure of real estate, Beneficiary may exercise its rights under the UCC and, in conjunction therewith:

(i) Subject to the rights of the Facility Manager and tenants and residents of the Premises, Beneficiary may enter upon the Real Property to take possession of, assemble and collect any or all Personal Property collateral or to render it unusable in accordance with applicable law;

(ii) Beneficiary may require Trustor to assemble any or all Personal Property collateral and make it available at a place designated by Beneficiary which is mutually convenient to allow Beneficiary to take possession or dispose of such collateral;

(iii) written notice shall be mailed to Trustor as provided herein at least thirty (30) days prior to the date of public sale of the Property or prior to the date on which private sale of the Property will be made shall constitute reasonable notice;

(iv) any sale made under the provisions of this subsection (b) shall be deemed to have been a public sale conducted in a commercially reasonable manner if held contemporaneously with and upon the same notice as required for the sale of the Property under power of sale as provided herein;

(v) in the event of a foreclosure sale, whether made by Trustee at a trustee's sale or under judgment of a court, the Property and the other collateral may, at Beneficiary's option, be sold as a whole;

(vi) Beneficiary need not take possession of the Property or any part thereof prior to the time the sale is conducted, nor shall it be necessary for the Property or any part thereof to be present at the location of the sale;

(vii) with respect to application of proceeds from disposition of the Property, the costs and expenses incident to disposition shall include the reasonable expenses of retaking, holding, preparing for sale or lease, selling, leasing and the like, and reasonable attorneys' fees and legal expenses incurred by Beneficiary;

(viii) any and all statements of fact or other recitals made in any trustee's deed, bill of sale or assignment or other instrument evidencing any foreclosure sale hereunder as to nonpayment of the Obligation or as to the occurrence of any Event of Default, or as to Beneficiary having declared all of such indebtedness to be due and payable, or as to notice of time, place and terms of sale and of the property to be sold having been duly given, or as to any other act or thing having been duly done by Beneficiary, shall be *prima facie* evidence of the truth of the facts so stated and recited;

(ix) Beneficiary may appoint or delegate any one or more persons as its agent to perform any acts necessary or incident to any sale held by Beneficiary, including the sending of notices and the conduct of the sale;

(x) Beneficiary may comply with any applicable state or federal Legal Requirements in connection with the disposition of the Property, and such compliance will not be considered to adversely affect the commercial reasonableness of any disposition of the Property;

(xi) Beneficiary may dispose of the Property without giving any warranties and may specifically disclaim any warranties of title, merchantability, fitness for a specific purpose or the like, but any such disclaimer will not be considered to adversely affect the commercial reasonableness of any disposition of the Property;

(xii) Trustor acknowledges that a private sale of the portion of the Property constituting personal property may result in less proceeds than a public sale; and

(xiii) Trustor acknowledges that the Property may be sold at a loss to Trustor, and that in such event, Beneficiary shall have no liability or responsibility to Trustor for such loss.

(c) If it chooses to do so, Beneficiary may dispose of any personal property separately from the sale of Real Property, in any manner permitted by Article 9 of the UCC, including any public or private sale, or in any other manner permitted by any other applicable law.

(d) Beneficiary may choose to dispose of some or all of the Property, in any combination consisting of both real and personal property, together in one sale to be held in accordance with the law and procedures applicable to Real Property, as permitted by A.R.S. § 47-9604, and Trustor agrees that such a sale of personal property together with Real Property constitutes a commercially reasonable disposition of the personal property.

4.9 State Law Provisions, Waivers and Agreements. As between Trustor and Beneficiary:

(a) Beneficiary shall have all rights, benefits and remedies conferred or contemplated by the Arizona Second Deed of Trust Act (A.R.S. §§ 33-801 *et seq.*). Notwithstanding the foregoing, Beneficiary may, at its option in its sole discretion, elect to foreclose this Second Deed of Trust judicially as authorized by A.R.S. § 33-807.

(b) In addition to, and not in limitation of, any other remedy provided in or available under this Second Deed of Trust, Beneficiary shall have all the rights set forth in A.R.S. § 33-702B regarding enforcement of the assignment of rents contained herein.

(c) It is Trustor's intention that the obligations of Trustor to pay and perform the Obligations be governed according to the express, bargained-for terms of this Second Deed of Trust and the other Loan Documents. The interest rate and terms applicable under the Loan Documents have been negotiated and agreed to by Beneficiary upon that basis. Therefore, except as provided by A.R.S. § 33-814, to the fullest extent allowable under Arizona law, Trustor hereby expressly waives all provisions of Arizona law (including those specifically referenced below) which might otherwise be construed, contrary to the terms of the Loan Documents, to limit the liability of Trustor with respect to the Obligations, and hereby expressly agrees that no such provision of law shall be applicable to such Obligations. To that end, Trustor expressly, to the extent permitted by law:

(i) agrees that, except as provided by A.R.S. § 33-814, the amount of any unpaid or unperformed accelerated Obligations remaining following any sale of collateral (the "Deficiency") shall be determined solely by the purchase price (whether cash, credit bid, or otherwise, and net of all costs and expenses of and relating to the sale) actually received for such collateral, and waives all provisions of A.R.S. §§ 12-1566, 33-725 and 33-727 which might otherwise determine the Deficiency by the "fair market value" of the collateral sold or by any other valuation in excess of such actual net purchase price; and

(ii) agrees that, for purposes of A.R.S. § 33-814(B), the 90-day period within which an action for a deficiency judgment may be brought shall not begin until the date of the last trustee's sale or other non-judicial or judicial foreclosure sale of any real property collateral under this Second Deed of Trust, whether such collateral is located within or outside of Arizona;

(iii) agrees that the phrase "full satisfaction of the obligation" in A.R.S. § 33-814(D) shall be construed to refer solely to the obligation of Trustor to repay that portion of the Obligations that is equal to the value of the Property at the time of foreclosure, and not to (1) any other portion of the Obligations or any separate and independent obligations of Trustor which are created by this Second Deed of Trust (including any covenants, agreements or indemnities which are expressly stated to survive any foreclosure hereof) or which are created under or evidenced or secured by the Loan Documents or any other document executed in connection herewith, regardless of whether such other portion of the Obligations or separate and independent obligations are secured hereby by virtue of any cross collateralization or cross default provisions or otherwise, or (2) any separate and independent obligations of any other Person which is directly, indirectly or contingently liable with respect to the Obligations (all such separate and independent obligations being referred to herein as the "Separate Obligations");

(iv) agrees that, notwithstanding any application of A.R.S. § 33-814(D) to limit or bar, following a trustee's sale or sales of the entire Property, any action against Trustor with respect to that portion of the Obligations that is equal to the value of the Property at the time of foreclosure, such Section shall not be applicable to, or in any way limit or impede any action with respect to, such Separate Obligations or any collateral which might now or hereafter be given by Trustor as security therefor; and

(v) waives all rights of redemption Trustor might otherwise have under Arizona law with respect to the Property or any other collateral, whether by statute, by subrogation, or otherwise, including any rights under A.R.S. §§ 12-1281 through 12-1283.

The statutes referred to above in this section and elsewhere in this Second Deed of Trust shall include any further statutes amending, supplementing or supplanting same. The waivers and agreements contained in this section and elsewhere in this Second Deed of Trust are given by Trustor knowingly, intelligently and voluntarily, upon advice of counsel, to induce Beneficiary to accept certain terms of the Loan Documents which are more favorable to Trustor than would be acceptable to Beneficiary in the absence thereof, and accordingly are intended to be broadly and liberally construed in favor of Beneficiary.

V. GENERAL PROVISIONS.

5.1 Additional Documents. Trustor agrees to execute and deliver to Beneficiary, upon demand, any additional agreements, instruments or documents that Beneficiary deems reasonably necessary on a conservative basis to secure to Beneficiary any right or interest granted or intended to be granted to Beneficiary under this Second Deed of Trust. In the event any rights, easements or other hereditaments shall hereafter become appurtenant to any part of the Property, they shall become subject to the lien of this Second Deed of Trust.

5.2 Estoppel Certificate/Record Inspection. Trustor, within ten days after written request by Beneficiary, will furnish to Beneficiary a written statement, duly acknowledged, of the amount of the Obligation and whether any offsets or defenses exist against the Obligation and such other matters as Beneficiary may reasonably request. Trustor will permit Beneficiary or its representatives from time to time to examine at Trustor's principal place of business in Arizona all books and records and agreements of Trustor pertaining to any portion of the Premises.

5.3 No Offset. Except as otherwise provided herein or in the other Loan Documents, all sums comprising the Obligation shall be paid without notice, demand, offset, deduction, counterclaim, defense, abatement, suspension, diminution or reduction. Trustor's obligation to do so shall not be released, discharged or otherwise diminished by reason of: (a) any damage to or destruction of, or any condemnation or similar taking of, the Premises or any portion thereof; (b) any restriction or prevention of, or interference with, the use of the Premises or any portion thereof; (c) any title defect or encumbrance, or any eviction from the Premises or any portion thereof by the holder of superior title or otherwise; (d) except by operation of law or pursuant to a final unappealable order by a court of proper jurisdiction, any bankruptcy, insolvency, reorganization, composition, dissolution, liquidation or similar proceeding relating to Trustor or Beneficiary, or any action taken with respect to this Second Deed of Trust by any trustee or receiver of Trustor or Beneficiary; (e) any claim that Trustor may now or in the future have against Beneficiary; (f) any default or failure on the part of Beneficiary to perform or comply with any of the terms of this Second Deed of Trust or any other Loan Document; or (g) any other similar occurrence. Beneficiary's acceptance of any payment in an amount less than the amount then due and owing under the Loan Documents shall be deemed an acceptance on account only, and shall not in any way constitute an accord and satisfaction or a waiver, or impair Beneficiary's ability to treat an Event of Default as continuing to exist.

5.4 Reconveyance of Property. Upon written request of Beneficiary stating that the entire Obligation has been paid and performed, and payment of Trustee's fees, Trustee shall reconvey the Property without warranty. The recitals in such reconveyance of any matters or facts shall be conclusive proof of the truthfulness thereof. The grantee in such reconveyance may be described as "the person or persons legally entitled thereto." In lieu of execution of a reconveyance by Trustee, Beneficiary may execute a release and reconveyance on behalf of Trustee, whereupon title shall be vested in Trustor or other persons legally entitled thereto, and this Second Deed of Trust shall thereafter be of no further force or effect. Beneficiary (or Trustee, if Beneficiary elects not to charge a fee) may charge a reasonable release fee upon the discharge of the Obligation and release of this Second Deed of Trust.

5.5 Partial Reconveyance by Trustee; Dedications and Easements.

(a) At any time or from time to time, without liability therefor and without notice, upon written request of Beneficiary and presentation of this Second Deed of Trust and the Note, without affecting the personal liability of any person for payment or performance of any portion of the Obligation or the lien or priority of this Second Deed of Trust, Trustee may reconvey any part of the Property, consent to any rezoning or the making of any map or plat thereof, join in granting any easement or dedication thereon or in creating any covenants, conditions or restrictions affecting the use or occupancy of the Premises, or join in any extension agreement or agreement subordinating the lien or charge hereof.

(b) So long as no Event of Default then exists, and Trustor obtains any required written joinders or consents from any other parties who have interests in any relevant portions of the Real Property, Beneficiary shall not unreasonably withhold its consent to, approval of or joinder (on a quitclaim basis only, without creating potential liability for Beneficiary) in any customary and standard roadway or utility easements or similar dedications that are reasonably necessary to complete the improvements, or to otherwise properly develop the Real Property, or to satisfy any customary and standard Legal Requirements. To the extent any such easements or dedications are granted or made without receipt by Trustor of consideration therefor, Beneficiary shall provide appropriate partial releases from the lien of this Second Deed of Trust without charge to Trustor except for the reimbursement of any Beneficiary costs and expenses in connection therewith.

5.6 Acceptance of Trust; Trustee Resignation; Notification of Sale. Trustee accepts the trust created hereby, which shall be irrevocable by Trustor, when this Second Deed of Trust, executed and acknowledged, is recorded as provided by law. Trustee may resign at any time by giving notice thereof to Beneficiary as provided by law. Trustee is not obligated to notify any party hereto of pending sale under any other Second Deed of Trust or of any action or proceeding in which Trustor, Beneficiary or Trustee shall be a party, unless brought by Trustee.

5.7 Successor Trustee. Beneficiary may, from time to time, by instrument in writing, substitute a successor or successors to any Trustee named herein or acting hereunder, in the manner provided by law. Such writing, upon recordation, shall be conclusive proof of proper substitution of such successor Trustee or Trustees, who shall, without conveyance from the predecessor Trustee, succeed to all its title.

5.8 Additional Security. The taking or acceptance of this Second Deed of Trust by Beneficiary shall in no event be considered to constitute a waiver of, or in any way affect or impair, any other security that Beneficiary may have, acquire simultaneously herewith, or hereafter acquire for the Obligation, nor shall the taking at any time by Beneficiary of any such additional security be construed to constitute a waiver of, or in any way affect or impair, the security of this Second Deed of Trust. Beneficiary may resort to its several securities for the payment of the Obligation in such order and manner as it may deem appropriate. Trustor, and any party hereafter claiming an interest in any portion of the Property by or through Trustor (other than Beneficiary), hereby waive any benefits under the doctrine of marshaling in the event of judicial or nonjudicial foreclosure under this Second Deed of Trust.

5.9 Construction of Agreement; Definitions. This Second Deed of Trust shall apply to the parties according to the context hereof, without regard to the number or gender of words or expressions used herein. The captions of the Sections in this Second Deed of Trust are for convenience and reference only, and in no way define, limit or describe the scope or intent of this Second Deed of Trust or the provisions of such Sections. This Second Deed of Trust shall be construed as a whole, in accordance with the fair meaning of its language, and, as each party has been represented by legal counsel of its choice or deliberately chosen not to be so represented, in the negotiation of this Second Deed of Trust, neither this Second Deed of Trust nor any provision thereof shall be construed for or against either party by reason of the identity of the party drafting the same. As used in this Second Deed of Trust, the term(s): (a) "include" or "including" shall mean without limitation by reason of enumeration; (b) "herein," "hereunder," "hereof," "hereinafter" or similar terms refer to this Second Deed of Trust as a whole rather than to any particular Section; (c) "person" includes a corporation, trust, partnership, limited liability company, unincorporated association, governmental authority or other entity, as well as a natural person; (d) "Beneficiary" shall mean the holder at any time, including pledgees, of the Note or other writings secured hereby, whether or not named as Beneficiary herein; and (e) "Trustor" shall include all persons or entities named in this Second Deed of Trust as Trustors, severally and collectively, and any subsequent owner of all or any portion of the Property, and their liability under this Second Deed of Trust shall be joint and several (however, the foregoing shall in no way constitute or imply Beneficiary's consent to any transfer of the ownership of the Property or any portion thereof). All references in this Second Deed of Trust to "legal fees," "attorneys' fees" or terms of similar import shall, unless prohibited by applicable law, include allocated costs of in-house counsel. Unless the context of this Second Deed of Trust otherwise clearly requires, references to the plural include the singular, to the singular include the plural and to the part include the whole. Any exhibit, schedule and addendum attached hereto is hereby incorporated herein and made a part hereof for all purposes, and references in this Second Deed of Trust to such exhibits, schedules and addenda shall be deemed to include this reference and incorporation.

5.10 Recording; Time of the Essence; Binding Effect. Trustor expressly authorizes the recording of this Second Deed of Trust and any UCC-1 financing statement naming Trustor as debtor and Beneficiary as secured party upon the delivery of the same to Beneficiary and to the Maricopa County, Arizona recorder or other applicable filing office authorized to record the same pursuant to A.R.S. § 33-421 or other applicable law. Time is of the essence hereof. Without limitation of the restrictions on transfer described in Section 3.8, this Second Deed of Trust applies to, inures to the benefit of, and binds all parties hereto, their heirs, personal representatives, legatees, devisees, successors and assigns.

5.11 Governing Law; Waiver of Right to Jury Trial.

(a) As between Trustor and Beneficiary only, this Second Deed of Trust shall be governed by and construed according to the substantive laws and judicial decisions of, the State of Arizona (regardless of Arizona conflict of laws principles or the location, residence, domicile or place of business of Trustor or any present or future principal thereof) and applicable federal laws, rules and regulations.

(b) The waiver of the right to a jury trial set forth in Section 3.05 of the Note and in Section 14.8 of the Loan Agreement shall also apply to claims, disputes, demands, actions and causes of action arising under this Second Deed of Trust.

5.12 Notices. All notices required or permitted to be given hereunder shall be given as provided in the Loan Agreement, unless otherwise provided by applicable law.

5.13 Amendment. This Second Deed of Trust cannot be amended or changed except by a written agreement signed by Trustor and Beneficiary.

5.14 Severability; Enforceability.

(a) Each covenant, provision and condition of this Second Deed of Trust shall be interpreted so as to be valid and effective under applicable law. If any such covenant, provision or condition is held to be void or invalid, the same shall not affect the remainder hereof, which shall be valid and effective as though the void or invalid covenant, provision or condition had not been contained herein.

(b) Should this instrument be or ever become ineffective as a Second Deed of Trust, then it shall be construed and enforceable as a realty mortgage (with Trustor as the mortgagor and Beneficiary as the mortgagee).

(c) If the lien of this instrument is invalid or unenforceable (either as a Second Deed of Trust or as a realty mortgage) as to any part of the Obligation, or if the lien is invalid or unenforceable as to any portion of the Property, the unsecured or partially secured portion of the Obligation shall be completely paid prior to the payment of the remaining secured or partially secured portion of the Obligation. All payments made on the Obligation, whether voluntary or pursuant to foreclosure or some other enforcement action or procedure taken hereunder, shall be considered to have been first applied to the full payment of that portion of the Obligation which is not secured or fully secured by the lien of this instrument.

5.15 No Merger. If the interests of Beneficiary and Trustor under this Second Deed of Trust shall at any time become vested in Beneficiary, by reason of foreclosure or otherwise, the lien of this Second Deed of Trust shall not be destroyed or terminated by application of the doctrine of merger and, in such event, Beneficiary shall continue to have and enjoy all of the rights and privileges of Beneficiary as to the separate estates, unless otherwise consented to in writing by Beneficiary.

5.16 Power of Attorney. The powers of attorney granted by Trustor to Beneficiary in Section 2.3(c) above are powers coupled with an interest and shall be irrevocable and unaffected by the disability of the principal so long as any portion of the Obligation remains unpaid or unperformed. Beneficiary shall have no obligation to exercise any of the rights and powers described therein in any event. For purposes of A.R.S. § 14-5501.E, Trustor acknowledges that these powers of attorney form a part of a contract (this Second Deed of Trust) and are security for money or for the performance of a valuable act. Beneficiary hereby discloses that it may exercise the powers of attorney for Beneficiary's benefit, and such authority need not be exercised for Trustor's best interest.

5.17 **Counterparts.** This Second Deed of Trust may be executed and/or acknowledged in one or more counterparts, each of which may be executed and/or acknowledged by one or more of the signatory parties hereto. Signature and acknowledgment pages may be detached from the counterparts and attached to a single copy of this Second Deed of Trust to form one legally effective document.

[Signature pages follow.]

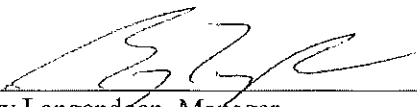
<http://recorder.maricopa.gov/recdcdcddata/Verifycert.aspx?rid=305693> [20190494944] 30 Pages

TRUSTOR:

MRC VSL HERITAGE VILLAGE II, LLC, a
Delaware limited liability company

By: MRC VSL HV Management, LLC, a
Delaware limited liability company, its Manager

By: Madison Realty Companies, LLC, a
Colorado limited liability company, its
Manager

By: 

Gary Langendoen, Manager

<http://recorder.maricopa.gov/recdocdata/verifycert.aspx?id=305693> [20190494944] 30 Pages

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of Los Angeles

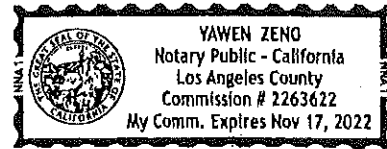
On 6/26/2019 before me, Yawen Zeng, a Notary Public
(Insert name and title of the officer)

personally appeared Gary Langendoen
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature *Yanley* (Seal)



http://recorder.mariocopa.gov/recdocdata/verifycert.aspx?id=305693 [20190494944] 30 Pages

EXHIBIT A

LEGAL DESCRIPTION

PARCEL NO. 1:

LOTS 1, 7, 8 and 9, INCLUSIVE, OF HERITAGE VILLAGE ASSISTED LIVING, ACCORDING TO THE PLAT OF RECORD IN THE OFFICE OF THE COUNTY RECORDER OF MARICOPA COUNTY, ARIZONA, : RECORDED IN BOOK 1281 OF MAPS, PAGE 26.

PARCEL NO. 2:

THOSE BENEFICIAL EASEMENT RIGHTS AS SET FORTH AND CREATED UNDER THAT CERTAIN RECIPROCAL ACCESS AND PARKING EASEMENT AGREEMENT RECORDED SEPTEMBER 14, 2017 AS 2017- 0679940 AND SEPTEMBER 15, 2017 AS 2017-0682502 IN THE OFFICE OF THE COUNTY RECORDER OF MARICOPA COUNTY, ARIZONA.

<http://recorder.maricopa.gov/recdocdata/verifycert.aspx?id=305693> [20190494944] 30 Pages

Exhibit A


2447627

20190494944
OFFICIAL RECORDS OF
MARICOPA COUNTY RECORDER
STEPHEN RICHER



The foregoing instrument is an
electronically prepared
full, true and correct copy
of the original record in this
office.

Attest: 03/19/2024 12:41:51 PM

By  Recorder

To Verify this purchase visit
<http://recorder.maricopa.gov/recdocdata/verifycert.aspx?id=305693>