

MICHAEL K. JEANES  
 Clerk of the Superior Court  
 By Jenela Fierro, Deputy  
 Date 06/20/2012 Time 16:41:25

Description	Amount
CASE# CV2012-009415	
CIVIL NEW COMPLAINT	301.00
TOTAL AMOUNT	301.00
Receipt# 22265696	

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

8 WALTER BITAUT, a married man, )  
 9 )  
 Plaintiff, )  
 10 )  
 v. )  
 11 )  
 YUIN KIM, an unmarried man; ARCADIA )  
 12 COMMONS, LLC, purportedly an Arizona )  
 limited liability company, )  
 13 )  
 Defendants. )  
 14 )

CASE NO. **CV2012-009415**  
**COMPLAINT**

15 Plaintiff, Walter Bitaut, by and through his undersigned counsel and for his Complaint  
 16 against Defendants Yuin Kim (“Kim”) and Arcadia Commons, LLC (“Arcadia”), hereby states and  
 17 alleges as follows:

- 18 1. Plaintiff Bitaut is a resident of Maricopa County, Arizona.
- 19 2. Defendant Kim previously resided in Maricopa County, Arizona in 2006 and currently, upon  
 20 information and belief, resides in Calgary, Alberta.
- 21 3. Defendant Arcadia purports to be an Arizona limited liability company, but upon  
 22 information and belief, the necessary formation documents for Arcadia were never filed and  
 23 approved by the Arizona Corporation Commission.
- 24 4. The relief sought herein exceeds the minimum jurisdictional amount of this Court and both  
 25 jurisdiction and venue are proper in this Court.

- 1 5. In or about November 28, 2006, Defendant Kim executed a Secured Promissory Note (the  
2 "Note") purportedly as the "Manager and authorized Agent" of Arcadia in the principal  
3 amount of \$100,000. A true and correct copy of the Note is attached hereto as Exhibit A.
- 4 6. On November 28, 2006, Defendant Kim executed an Unconditional Guarantee and  
5 Subordination Agreement (the "Guarantee") guaranteeing the obligations of the Maker under  
6 the Note. A true and correct copy of the Guarantee is attached hereto as Exhibit B.
- 7 7. The Note provided that the principal amount of \$100,000 together with interest at the rate  
8 of 18% per annum calculated on 360 day year was to be paid no later than 18 months  
9 following the date of the Note.
- 10 8. The Note further provided that in the event of a default in the timely payment of the amounts  
11 due under the Note, a late charge of 5% of all of the amounts then due together with default  
12 interest thereon equal to 24% of the amounts due would accrue until paid in full.
- 13 9. Demand for payment has been made under the Note and the Guarantee, all cure periods have  
14 expired and to date no payments have been made under the Note or Guarantee and they have  
15 both been in default since May 28, 2008.
- 16 10. Pursuant to the terms of the Note, Defendants covenanted to provide security in the form of  
17 a deed of trust on real property, which Defendants have failed to do.
- 18 11. The Note provides that it should be governed by the internal substantive laws of the State  
19 of Arizona without reference to that state's choice of law principals in the event any legal  
20 proceedings are commenced which arise out of the Note, such proceedings shall be  
21 commenced and thereafter prosecuted in a court of competent jurisdiction located in  
22 Maricopa County, Arizona.
- 23 12. The Guarantee provides that it should also be governed by, construed and enforced in  
24 accordance with the substantive laws of the State of Arizona without reference to that state's  
25 choice of law principals and that Defendant Kim irrevocably submits to the process,  
26 jurisdiction and venue of the courts of the State of Arizona, in and for the County of

- 1 Maricopa with respect to any proceedings arising out of the Note or Guarantee.
- 2 13. The Note and Guarantee were executed and delivered in Maricopa County at a time when
- 3 Defendant Kim was a resident of Maricopa County, Arizona.
- 4 14. Both the Note and the Guarantee provide that Plaintiff is entitled to his reasonable attorneys'
- 5 fees and all other costs and expenses incurred in the enforcement of the Note and Guarantee,
- 6 whether or not a lawsuit is commenced. Plaintiff is also entitled to an award of his court
- 7 costs and attorneys' fees incurred pursuant to the provisions of, *inter alia*, A.R.S. §§ 12-341
- 8 and 12-341.01.
- 9 15. Plaintiff is entitled to an award against Defendants of the amounts due under the Note and
- 10 Guarantee no less than \$228,466 or such greater amount that may be proven at the trial of
- 11 this matter.

12 WHEREFORE, Plaintiff Walter Bitaut respectfully requests that this Court award judgment

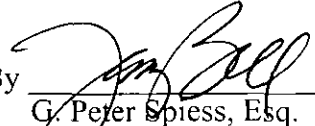
13 in his favor and against Defendants Yuin Kim and Arcadia Commons, LLC as follows:

- 14 A. For an award of damages of no less than \$228,466 or such greater amount as is
- 15 proven at the time of the trial or hearing of this matter;
- 16 B. For an award of attorneys' fees which amount may be proven at the trial or hearing
- 17 of this matter but in no event less than \$2,500 in the event of a default.
- 18 C. For an award of costs incurred in the prosecution of this matter pursuant to the
- 19 provisions of A.R.S. §12-341;
- 20 D. For such other and further relief as the Court deems just under the circumstances.

21 RESPECTFULLY SUBMITTED this 20<sup>th</sup> day of June, 2012.

22 SPIESS & BELL, PC

23

24 By  \_\_\_\_\_

25 G. Peter Spiess, Esq.  
James O. Bell, Esq.  
5050 N. 40<sup>th</sup> Street, Suite 220  
Phoenix, AZ 85018  
Attorneys for Plaintiff

# EXHIBIT A

## SECURED PROMISSORY NOTE

\$100,000.00

Phoenix, Arizona  
November 29, 2006

FOR VALUE RECEIVED, the undersigned, Arcadia Commons, LLC, an Arizona limited liability company ("Maker") promises to pay to Walter Bitaut ("Holder"), or to order, at 14816 South 7<sup>th</sup> Way, Phoenix, Arizona 85048, or at such other place as Holder may from time to time designate in writing, in lawful money of the United States of America, the aggregate principal sum of One Hundred Thousand and No/100 Dollars (\$100,000.00), together with interest thereon, as more fully provided below. All payments due under this Note shall be made in immediately available funds and shall be deemed timely paid only if actually received at the address set forth above on or before 5:00 P.M. local Arizona time on the date specified as the due date for such payment.

Interest shall accrue from and after the date hereof on the unpaid principal balance outstanding at an interest rate equal to eighteen percent (18%) per annum. Interest shall be calculated on the basis of a three hundred sixty (360) day year and the actual days elapsed. Interest payable from time to time, at any time, or in the aggregate during the term of this Note shall in no event exceed the maximum contract rate permitted under the Applicable Usury Law (as hereinafter defined).

The term of this Note is eighteen calendar months (the "Term") and all unpaid principal and accrued interest, together with any other amounts due hereunder, if any, shall be paid no later than the earlier of (i) that date (the "Maturity Date") which is eighteen calendar months from the date first set forth above, (ii) the sale, transfer or conveyance by Maker of the Property or any portion thereof, or (iii) the sale, transfer or conveyance of any interest in Maker greater than forty percent (40%) in any single transaction or in the aggregate.

Maker may make prepayments of principal and interest amounts outstanding under this Note in whole or in part at any time without penalty or premium. All prepayments shall be accompanied by a payment of all then accrued and unpaid interest. All amounts payable hereunder shall be paid in lawful money of the United States.

This Note is secured by a Deed of Trust in second position (the "Deed of Trust") of even date herewith and executed by Maker as the trustor in favor of Holder as the beneficiary, encumbering certain real property located in Maricopa County, Arizona and as more particularly described in the Deed of Trust (the "Property"). In addition, Maker shall cause Yui Kim (the "Guarantor") to execute a guaranty of Maker's obligations under this Note and the Deed of Trust as of the date of this Note (the "Guaranty"). This Note, the Deed of Trust and the Guaranty are collectively referred to herein as the "Loan Documents".

Time is of the essence in the performance of all obligations under the Loan Documents. If Maker fails to pay any installment or other money due hereunder or under the Deed of Trust in a timely manner, or if a non-monetary default occurs under the terms of any of the Loan Documents, or any other non-monetary Event of Default occurs (as the term "Event of Default" is defined either herein or in the Deed of Trust or the Guaranty), and any such Event of Default is not cured within

the applicable cure period, if any, Holder or its successor holder hereof may at its option, without further notice or demand to Maker or the Guarantors, declare this Note immediately due and payable, whereupon this Note shall become immediately due and payable and Maker will immediately pay to Holder the entire unpaid principal balance of this Note, all accrued and unpaid interest, and all other sums owing in connection with this Note or the Deed of Trust.

An "Event of Default" shall exist under this Note if any one or more of the following events shall occur:

- (a) The failure by Maker to pay in a timely manner any part of the indebtedness evidenced by this Note or any other agreement or instrument evidencing or securing this Note or otherwise executed and delivered by Maker in connection with the indebtedness evidenced by this Note including, without limitation, the Deed of Trust, as and when such payment shall become due and payable, whether by lapse of time, declaration, acceleration or otherwise;
- (b) The failure by Maker to perform any other term, condition, or covenant contained in this Note or the Deed of Trust;
- (c) The filing of an involuntary petition under the United States Bankruptcy Code or any other federal or state bankruptcy statute, as now in effect or as hereafter amended, against Maker, or if Maker shall allow the appointment of a receiver, trustee, conservator or liquidator of all or any part of the collateral securing this Note under the Deed of Trust or otherwise (the "Collateral"), or if any of the Collateral be levied upon by virtue of any execution, attachment, tax levy or other writ, or if liens be filed or recorded against the Collateral, and such involuntary petition, appointment, levy, or filing, as the case may be, shall not be released, stayed, bonded or insured against in favor of Maker, satisfied or vacated within sixty (60) days after the occurrence thereof;
- (d) The abandonment of all or any part of the Collateral;
- (e) The breach of any warranty, representation or certification given in connection with this Note or any other Loan Document;
- (f) The filing by Maker or any Guarantor of a petition under the United States Bankruptcy Code or any other federal or state bankruptcy statute, as now in effect or as hereafter amended, or if Maker shall make an assignment for the benefit of its creditors or be unable, whether or not admitted, to pay its debts as they become due;
- (g) The filing of any foreclosure or forfeiture proceeding with respect to any other lien on the Collateral, whether junior or senior to any security securing this Note.

which foreclosure or forfeiture proceeding is not dismissed or released within thirty (30) days:

(h) The transfer of the Collateral, voluntarily or involuntarily, in violation of the terms of any of the Loan Documents;

(i) The failure of Maker to pay, before delinquent, any taxes, assessments, fees, charges, expenses or encumbrances created, levied, or assessed upon or relating to the Collateral (without any requirement for notice by Maker that such payment is due);

(j) Any repudiation by Maker of any obligation under this Note or under the Loan Documents;

(k) Any Event of Default (as defined therein) shall occur under the Deed of Trust; or,

(l) Any Event of Default (as defined therein) shall occur under the Guaranty;

(m) Any default, event of default or "Event of Default" (as defined therein) shall occur under any deed of trust or other security instrument which is junior or senior to the Deed of Trust or any other instrument securing the Maker's obligations hereunder.

*In the event any sum due hereunder is not actually received by Holder when due (whether by acceleration or otherwise), the unpaid principal balance hereof together with such unpaid delinquent sum shall, without further notice to Maker, accrue interest from the date such payment was due until paid in full at a rate (the "Default Rate") equal to the lesser of: (i) twenty four percent (24%) per annum; or (ii) the maximum contract rate permitted under the Applicable Usury Law (as hereinafter defined). Holder's entitlement to, and receipt of, interest at the Default Rate shall not in any way limit any rights of Holder under this Note (including the right of acceleration), the Guaranty, or the Deed of Trust.*

*If any installment of principal under this Note is not received by Holder when due, Maker shall pay to Holder a late charge of five percent (5%) of the amount of the overdue amount in order to defray part of the increased costs of administration and collection of this Note resulting from such late payment. Maker agrees that the late charge is a fair estimate of the additional costs Holder will incur as a result of such late payment and that the late charge is not intended to, nor is it, an unreasonable or punitive amount. Holder's right to the late charge described in this paragraph shall be in addition to all other rights of Holder under this Note, the Deed of Trust or the Guaranty, including without limitation the right to receive the Default Rate of interest.*

Payments received with respect to this Note shall be applied first to costs and expenses of Holder incurred in collecting amounts owed to it under this Note or the Deed of Trust and to enforce its rights or obligations under this Note or the Deed of Trust, then to late charges payable hereunder.

then to accrued and unpaid interest, and then to principal and other sums owing hereunder or under the Deed of Trust, or in such other order and manner as Holder may determine.

If Maker is in default hereunder and Holder undertakes to collect this Note or to otherwise enforce its rights under this Note or the Deed of Trust, Maker will pay to Holder, in addition to any indebtedness due and unpaid, all costs and expenses of collection including, without limitation, Holder's reasonable attorneys' fees, whether or not legal proceedings are instituted.

Every person or entity at any time liable for the payment of the indebtedness evidenced hereby (including, but not by way of limitation, Maker, endorsers, guarantors, or sureties under this Note) severally waives: demand; presentment for payment; protest; notice of presentment for payment; notice of dishonor and nonpayment of this Note and any and all lack of diligence or delays in collection which may occur; and each and every other notice of any kind respecting this Note except as provided herein or in the Deed of Trust. Every such person or entity further consents that Holder may renew or extend the time of payment of any part or the whole of the indebtedness and may amend or modify this Note or the Deed of Trust, release or substitute collateral, release any guarantor, surety or Maker of this Note, at any time and from time to time, without limit as to the number or aggregate period of such renewals, extensions, amendments, modifications, releases or substitutions, at the request of any other person or entity liable therefor. Any such renewals, extensions, amendments, modifications, releases or substitutions may be made without notice to any person or entity liable for the payment of the indebtedness evidenced hereby, and shall not affect the obligation of Maker, endorsers, guarantors or sureties under this Note. The obligations of Maker hereunder are joint and several, and recovery may be made against all property of Maker, including separate and community property, if applicable.

This Note is given and accepted as evidence of indebtedness only and not in payment or satisfaction of any indebtedness or obligation.

This Note and all its provisions, conditions, promises and covenants hereof shall be binding in accordance with the terms hereof upon Maker, its successors, transferees and assigns; and the same shall inure to the benefit of Holder, its successors and assigns. No modification, variation, termination, discharge or abandonment hereof and no waiver of any of the provisions or conditions hereof shall be valid unless in writing and signed by Maker and Holder or their successors, transferees or assigns, as the case may be; and a waiver of any right, remedy or recourse on one occasion shall not be construed as continuing or as a bar to or waiver of such right, remedy or recourse on any other occasion. No remedy herein or in the Deed of Trust or in the Guaranty conferred on or reserved to Holder is intended to be exclusive of any other remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or under the Deed of Trust or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power shall be construed to be a waiver of any default or acquiescence therein or a waiver of any right or power; and every such right and power may be exercised from time to time and as often as may be deemed expedient by Holder. Holder's acceptance of any performance due hereunder which does not comply strictly with the terms hereof



shall not be deemed to be a waiver of any right of Holder to strict performance by Maker. Acceptance of past due amounts or partial payments shall not constitute a waiver of full and timely payment of the obligations hereunder. Nothing herein shall be deemed consent to any assignment, merger or consolidation restricted or prohibited by the terms of the Deed of Trust.

If any one or more of the provisions contained in this Note shall be held invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby; provided that where the provisions of any invalidating law may be waived, they are waived by Maker to the fullest extent possible.

This Note has been delivered in Phoenix, Arizona. This Note shall be governed by the internal substantive laws of the State of Arizona (without reference to choice of law principles) and, to the extent they preempt the laws of such state, the laws of the United States. In the event any legal proceedings are instituted which arise out of the provisions of this Note or the Deed of Trust, such proceedings shall be commenced and thereafter prosecuted in a court of competent jurisdiction located in Maricopa County, Arizona.

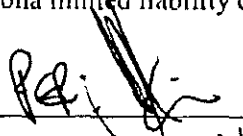
It is the intent of Maker and Holder to comply with all applicable usury laws ("Applicable Usury Law"). Accordingly, it is agreed that notwithstanding any provisions to the contrary in this Note or the Deed of Trust, in no event shall this Note or the Deed of Trust require the payment or permit the collection of interest in excess of the maximum contract rate permitted by the Applicable Usury Law. If (a) any such excess of interest otherwise would be contracted for, charged or received from Maker or otherwise in connection with this Note, (b) the maturity of the indebtedness evidenced by this Note is accelerated in whole or in part, or (c) all or part of the principal or interest of this Note shall be prepaid, so that under any of such circumstances the amount of interest contracted for, charged or received in connection with this Note would exceed the maximum contract rate permitted by the Applicable Usury Law, then in any such event (1) the provisions of this paragraph shall govern and control, (2) neither Maker nor any other person or entity now or hereafter liable for the payment hereof will be obligated to pay the amount of such interest to the extent that it is in excess of the maximum contract rate permitted by the Applicable Usury Law, (3) any such excess which may have been collected shall be either applied as a credit against the then unpaid principal amount hereof or refunded to Maker, at the Holder's option, and (4) the effective rate of interest will be automatically reduced to the maximum amount of interest permitted by the Applicable Usury Law. Maker agrees to pay an effective rate of interest equal to the interest rate stated above (including the Default Rate, if applicable) and any charges in the nature of interest paid or to be paid in connection with this Note, but in no event shall such interest amount exceed the maximum contract rate permitted under the Applicable Usury Law.

Any notice required or permitted to be given hereunder shall be in writing and shall be given in the manner described in the Deed of Trust.

As used herein the term "Maker" shall include the undersigned Maker and any other person or entity, who may subsequently become liable for the payment hereof. The term "Holder" shall include Holder as well as any other person or entity to whom this Note or any interest in this Note is conveyed, transferred or assigned.

**"MAKER"**

Arcadia Commons, LLC, an  
Arizona limited liability company

By: 

Printed Name: YOUNG KIM  
As its Manager and authorized agent

# EXHIBIT B

## UNCONDITIONAL GUARANTY AND SUBORDINATION AGREEMENT

THIS UNCONDITIONAL GUARANTY AND SUBORDINATION AGREEMENT ("Guaranty") is made and entered into as of the 28 day of November, 2006, by and between Yuin Kim ("Guarantor"), and Walter Bitaut ("Lender").

### WITNESSETH:

WHEREAS, Lender is contemplating lending to Arcadia Commons, LLC, an Arizona limited liability company ("Borrower"), the sum of One Hundred Thousand and No/100 Dollars (\$100,000.00) (the "Loan") for the purchase of certain real property located at 3233 North 7<sup>th</sup> Street, Phoenix, Arizona (the "Property");

WHEREAS, the Loan is evidenced by a secured promissory note of even date herewith executed by Borrower as the Maker to the order of Lender as the Holder, as such promissory note may from time to time be modified, extended, renewed, replaced or restated (the "Note");

WHEREAS, Borrower's obligations under the Note are to be secured by a Deed of Trust of even date herewith encumbering the Property;

WHEREAS, Lender is willing to make the Loan to Borrower only if Guarantor agrees (a) to unconditionally guarantee the full, timely and faithful performance of and compliance with all the covenants and conditions on Borrower's part to be performed under the Note and the Deed of Trust together with such other instruments, agreements and documents Borrower may execute in connection with the Loan, and any and all modifications, renewals, extensions and replacements thereof (collectively, the "Loan Documents"), and (b) to subordinate all of Guarantor's liens, security interests, claims and rights of any kind that Guarantor may now have or hereafter acquire against Borrower and Borrower's assets and property, of any and all kind, now or hereafter existing ("Borrower's Property") resulting from Borrower's present and future indebtedness to Guarantor or Guarantor's interest in Borrower; and Guarantor is willing to so agree; and

WHEREAS, Guarantor will benefit from the execution and delivery of the Loan Documents and the making of the Loan by virtue of Guarantor's interest in Borrower as set forth in paragraph 4.1(a) hereof;

NOW, THEREFORE, in order to induce Lender to make the Loan, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and confessed by Guarantor, Guarantor hereby unconditionally covenants and agrees with Lender as follows:

### ARTICLE I

#### GUARANTEE

1.1 Guarantor unconditionally guarantees the full, timely and faithful performance and compliance by Borrower of and with all the terms, covenants and conditions of the Loan Documents (collectively, the "Obligations"), including, but not limited to, the payment when due of any and all

sums that may become due to Lender from Borrower thereunder. Guarantor further agrees to pay all expenses (including, without limitation, reasonable attorneys' fees and legal expenses) incurred by Lender in endeavoring to collect the Obligations, or any part thereof, or in securing the performance thereof, or in enforcing this Guaranty.

1.2 If Borrower defaults in the performance of any of its Obligations, then within (a) five (5) days of the receipt of written notice from or on behalf of Lender to the effect that there exists such a default and identifying the Obligations which Borrower has failed to pay or perform, or (b) such unexpired grace period, if any, as Borrower may then have remaining under the Loan Documents to cure such default before it becomes an Event of Default (as the term "Event of Default" is defined under the Loan Documents), whichever period is longer, Guarantor, as demanded by Lender, will pay such Obligations (including any amount which Lender affirmatively elects to accelerate as a result of Borrower's default) to Lender at 14816 South 7<sup>th</sup> Way, Phoenix, Arizona 85048 or such other address as Lender may by notice direct, or will provide Lender with evidence of the performance of the Obligations which Borrower has failed to perform. If Guarantor fails to pay any sums due Lender hereunder within the period applicable pursuant to the terms of the preceding sentence, then, as to Guarantor, such sums shall bear interest at the Default Rate (the term "Default Rate" shall have the same meaning as ascribed to such term in the Note) in lieu of the interest rate otherwise applicable thereto under the Loan Documents. Further, if Guarantor shall fail to pay any amount or perform any obligation properly due Lender hereunder, Lender may institute and pursue an action or proceeding to judgment or final decree and may enforce any such judgment or final decree against Guarantor and collect in the manner provided by law out of Guarantor's property, wherever situated, the monies adjudged or decreed to be payable.

## ARTICLE II

### SUBORDINATION

2.1 Guarantor subordinates all of Guarantor's liens, security interests, claims and rights of any kind that Guarantor may now have or hereafter acquire against Borrower and/or Borrower's Property resulting from Borrower's present and future indebtedness to Guarantor (the "Subordinated Indebtedness"), and agrees that all liens, security interests, claims and rights of any kind that Guarantor may now have or hereafter acquire against Borrower and Borrower's Property resulting from the Subordinated Indebtedness shall be subordinate, inferior and subject to the claims and rights of Lender against Borrower and/or Borrower's Property under the terms of any of the Loan Documents, whether direct or contingent or whether now or hereafter created. Guarantor grants to Lender a security interest in the Subordinated Indebtedness, which shall be collected, enforced and received by the holder(s) thereof for Lender and be paid over to Lender on account of the Obligations, but without reducing or affecting in any manner the liability of Guarantor under any of the other provisions of this Guaranty; provided, however, that unless an Event of Default has occurred and is continuing, Guarantor may retain for Guarantor's own account reasonable salaries or fees for services actually rendered to Borrower. Notwithstanding anything herein to the contrary, if any portion of the Subordinated Indebtedness becomes due and payable prior to its stated maturity, Lender shall be entitled to receive full performance of the Obligations before the holder(s) thereof are entitled to receive any payment with respect to the Subordinated Indebtedness.

2.2 Guarantor will not take any action which will either (i) force the sale of Borrower's Property in order to satisfy the Subordinated Indebtedness or (ii) affect in any manner any of Lender's

liens, security interests, claims or rights of any kind that Lender may now have or hereafter acquire against Borrower and/or Borrower's Property. Guarantor will refrain from taking any action which is in any way inconsistent with or in derogation of this subordination or of the rights of Lender hereunder and covenants to perform such further acts as necessary or appropriate to give effect to this subordination. Without limiting the generality of the foregoing, Guarantor will not assign any portion of the Subordinated Indebtedness, except expressly subject to the terms of this Guaranty; and Guarantor shall cause all evidence of the Subordinated Indebtedness to set forth the provisions hereof or to bear a legend that it is subject hereto.

### ARTICLE III

#### GENERAL COVENANTS AND WAIVERS OF GUARANTOR; REMEDIES AND RIGHTS OF LENDER

3.1 Neither failure to give, nor defect in, any notice to Guarantor concerning default in the performance of the Obligations, an Event of Default or any event which might mature into an Event of Default shall extinguish or in any way affect the obligations of Guarantor hereunder or the rights of Lender hereunder. Neither demand on, nor the pursuit of any remedies against, Borrower or any other guarantor or surety for the Obligations ("Obligor") shall be required as a condition precedent to, and neither the pendency nor the prior termination of any action, suit or proceeding against Borrower or any other Obligor (whether for the same or a different remedy) shall bar or prejudice, the making of a demand on Guarantor by Lender and the commencement against Guarantor, before or after such demand, of any action, suit or proceeding, at law or in equity, for the specific performance of any covenant or agreement contained in the Loan Documents or for the enforcement of any other appropriate legal or equitable remedy.

3.2 The liability of each party named as a Guarantor hereunder is absolute, unconditional, continuing, primary, direct, immediate, and joint and several with Borrower, each other party named as a Guarantor hereunder and each and every other Obligor. Neither (a) the exercise or the failure to exercise by Lender of any rights or remedies conferred on it under the Loan Documents, hereunder or existing at law or otherwise, (b) the exercise or the failure to exercise by Lender of any of its rights or remedies against any Collateral, (c) the commencement of an action at law or the recovery of a judgment at law against Borrower or any other Obligor and the enforcement thereof through levy or execution or otherwise, (d) the taking or institution or any other action or proceeding against Borrower or any other Obligor, nor (e) any delay in taking, pursuing or exercising any of the foregoing actions, rights, powers or remedies by Lender or anyone acting for Lender (even though requested by Guarantor), shall extinguish or affect the obligations of Guarantor hereunder, but Guarantor shall be and remain liable for all Obligations until fully paid, notwithstanding the previous discharge (total or partial) from further liability of Borrower or any other Obligor or the existence of any bar (total, partial or temporary) to the pursuit by Guarantor of any right or claim of indemnity against Borrower or any other Obligor or any right or claim of Guarantor or any other Obligor to be subrogated to the rights or claims of Lender in and to the Collateral resulting from any action, failure or omission to act or delay in acting by Lender, or anyone entitled to act in its place. The obligations hereunder are independent of the obligations of Borrower and may be brought against Guarantor whether or not Borrower be joined in any such action or actions.

3.3 Guarantor hereby expressly waives: (a) notice of the acceptance by Lender of this Guaranty; (b) notice of the existence, creation or nonpayment of all or any of the Obligations; (c)

presentment, protest, demand, notice of dishonor, protest and all other notices whatsoever; (d) all diligence in collection or protection of or realization on the Obligations or any thereof, any obligation hereunder, or any security for or guarantee of any of the foregoing; (e) any rights of notice or consent to amendment, renewal, modification, extension or other change in terms of any of the Loan Documents; and (f) any and all suretyship defenses and defenses in the nature thereof, including, without limitation, the benefits of the provisions of Sections 12-1641, et seq., and 33-814 of the Arizona Revised Statutes, and any other laws of similar import. Guarantor hereby agrees that Lender may enforce Guarantor's obligations hereunder in an action regardless of whether Lender has proceeded against Borrower or any Collateral, including without limitation a trustee's sale of real property. Guarantor waives and agrees not to assert any right to require Lender to pursue any remedy in Lender's power whatsoever.

3.4 If Guarantor at any time becomes insolvent or admits in writing Guarantor's inability to pay Guarantor's debts as they mature, or generally fails to pay Guarantor's debts as they mature, or applies for, consents to or acquiesces in the appointment of a trustee, receiver, liquidator, assignee, sequestrator or other similar official for Guarantor or any of Guarantor's property; or, in the absence of such application, consent or acquiescence, a trustee, receiver, liquidator, assignee, sequestrator or other similar official is appointed for Guarantor, or for a substantial part of Guarantor's property and is not discharged within sixty (60) days; or if any bankruptcy, reorganization, debt arrangement or other proceeding under any bankruptcy or insolvency law or at common law or in equity is instituted by or against Guarantor, or remains for sixty (60) days undismissed, and if any such event shall occur at a time when any of the Obligations may not be then due and payable, then Guarantor, upon Lender's affirmative election to accelerate the Obligations, will pay to Lender forthwith the whole then unpaid amount of the Note (together with any other sums due under the Loan Documents, herein called the "Unpaid Amount"), whether or not then due and payable, as if such Unpaid Amount were then due and payable. Furthermore, in any such event Lender, irrespective of whether any demand shall have been made on Guarantor, Borrower or any other Obligor, by intervention in or initiation of proceedings relative to Guarantor, Guarantor's creditors or Guarantor's property, may file and prove a claim or claims for the whole Unpaid Amount or any portion thereof and file such other papers or documents as may be necessary or advisable in order to have such claim allowed in such proceedings and to collect and receive any monies or other property payable or deliverable on any such claim, and to distribute the same; and any receiver, assignee or trustee in bankruptcy or reorganization is hereby authorized to make such payments to Lender.

3.5 The benefits, remedies and rights provided or intended to be provided hereby for Lender are in addition to and without prejudice to any rights, benefits, remedies or security to which Lender might otherwise be entitled.

3.6 Anything else contained herein to the contrary notwithstanding, Lender, from time to time, without notice to or consent by Guarantor, may take all or any of the following actions without in any manner affecting or impairing the liability of Guarantor hereunder: (a) receive, accept, waive or release a lien or a security interest in any property to secure any of the Obligations or any obligation hereunder; (b) receive or accept the primary or secondary liability of any party or parties, in addition to Guarantor, with respect to any of the Obligations; (c) renew, accelerate, extend or otherwise change the time for payment of the Loan or any installment thereof for any period, including without limitation the increases or decreases in the rate of interest thereon; (d) release or compromise any liability of one or more of the Guarantors hereunder or any liability of any nature of any other party or parties with respect to the Obligations; (e) exchange, enforce, waive, release

and/or apply any Collateral and direct the order or manner of sale thereof as Lender may in its discretion determine; (f) resort to Guarantor for payment of any Obligations, whether or not Lender shall proceed against any other party primarily or secondarily liable on any of the Obligations; and (g) agree to any amendment, modification or alteration of the Loan Documents and/or exercise any of its rights conferred by the Loan Documents or by law.

3.7 No delay on the part of Lender in the exercise of any right or remedy shall operate as a waiver thereof, and no single or partial exercise by Lender of any right or remedy shall preclude other or further exercise thereof or the exercise of any other right or remedy; nor shall any modification or waiver of any of the provisions of this Guaranty be binding on Lender except as expressly set forth in writing, duly signed and delivered on behalf of Lender. No action of Lender permitted hereunder shall in any way affect or impair the rights of Lender and the obligations of Guarantor under this Guaranty.

3.8 If at any time all or any part of any payment theretofore applied by Lender to any of the Obligations is or must be rescinded or returned by Lender for any reason whatsoever (including, without limitation, the insolvency, or bankruptcy of Borrower), such Obligations, for purposes of this Guaranty, to the extent that such payment is or must be rescinded or returned, shall be deemed to have never been performed; and this Guaranty shall continue to be effective or be reinstated, as the case may be, as to such Obligations, all as though such application by Lender had not been made.

3.9 Until all the Obligations have been paid and performed in full, Guarantor shall have no right of subrogation and hereby waives any right to participate in any of the Collateral, including but not limited to any right pursuant to Section 12-1643 of the Arizona Revised Statutes.

3.10 It is not necessary for Lender to inquire into the powers of Borrower or its trustees or agents purporting to act on its behalf and the Obligations are hereby guaranteed notwithstanding the lack of power or authority on the part of Borrower or anyone acting on its behalf to incur the Obligations.

#### ARTICLE IV

##### GUARANTOR'S WARRANTIES

4.1 Guarantor represents and warrants to Lender that:

(a) Guarantor is the legal and beneficial owners of all membership interests of the Borrower, representing 100% of Borrower's members;

(b) The execution, delivery and performance by Guarantor of this Guaranty does not and will not conflict with or contravene any law, rule, regulation, judgment, order or decree of any government, governmental instrumentality or court having jurisdiction over Guarantor or Guarantor's activities or properties or conflict with, or result in any default under any agreement or instrument of any kind to which Guarantor is a party or by which Guarantor or Guarantor's properties may be bound or affected;



(c) Neither the execution and delivery by Guarantor of this Guaranty nor the performance by Guarantor hereunder requires the consent, approval, order or authorization of, or registration with, or the giving of notice to any governmental authority, domestic or foreign;

(d) This Guaranty has been duly executed and delivered by Guarantor and constitutes a legal, valid and binding obligation of Guarantor enforceable against Guarantor in accordance with its terms;

(e) There is no action, litigation or other proceeding pending or, to Guarantor's best knowledge, threatened against Guarantor before any court, arbitrator or administrative agency which may have an adverse effect on Guarantor's assets, businesses, or financial condition or which would prevent, hinder or jeopardize Guarantor's performance under this Guaranty;

(f) Guarantor is fully familiar with all of the covenants, terms and conditions of the Loan Documents and has reviewed such documents personally and with counsel;

(g) Except as may be set forth in the written financial statements presented by Guarantor to Lender, Guarantor is not a party to any contract, agreement, indenture or instrument or subject to any restriction which individually or in the aggregate require any obligations of Guarantor to be performed as of the date hereof or as a result of executing this Guaranty, which might adversely affect Guarantor's financial condition or businesses, or which would in any way jeopardize the ability of Guarantor to perform hereunder; and

(h) Guarantor was not induced to give this Guaranty by the fact that there are or may be other guarantors either to this Guaranty or otherwise. It is understood that this Guaranty is not being given in consideration of any such other guaranty, and, in this regard, Lender may, at its discretion, take, receive, accept, sue upon, release or compromise any such other guaranty of the Obligations obtained or which may be obtained from any other person or entity, without affecting this Guaranty or impairing any rights which Lender may have under this Guaranty.

(i) Guarantor is an unmarried man.

## ARTICLE V

### MISCELLANEOUS PROVISIONS

5.1 All the covenants, stipulations, promises and agreements contained in this Guaranty by or on behalf of Guarantor are for the benefit of Lender, its successors or assigns and shall bind Guarantor, Guarantor's heirs, executors, personal representatives, successors and assigns. Lender, without notice of any kind, may sell, assign or transfer the Loan Documents and/or the Collateral, and in such event each and every immediate and successive assignee or transferee thereof may be given the right by Lender to enforce this Guaranty in full, by suit or otherwise, for its own benefit. Guarantor agrees for the benefit of any such assignee or transferee that Guarantor's obligations hereunder shall not be subject to any reductions, abatement, defense, set-off, counterclaim or recoupment for any reason whatsoever. Whether or not this Guaranty is separately or formally assigned, it shall automatically inure to the benefit of and be enforceable by any assignee of all or any portion of the Note.

5.2 All notices provided for herein shall be in writing and shall be (a) personally delivered or delivered by courier service (e.g., Federal Express) to the party being notified if an individual or to an officer or general partner of the party if a corporation or partnership or to a manager of the party if a manager managed limited liability company or to a member of the party if a member managed limited liability company, (b) transmitted by certified or registered mail, return receipt requested, addressed to the party to whom notice is to be given, or (c) transmitted by telefacsimile to the party to whom notice is to be given at the telefacsimile number for such party designated below. Notice shall be deemed effective upon: (i) the date of receipt if delivered by courier, personal delivery or telefacsimile, or (ii) two (2) days after the deposit of same in a letter box or other means provided for the posting of mail. Failure to give notice to parties designated as also receiving copies of such notices shall not affect the validity of such notice if proper notice is effected with respect to the primary party to receive same. For purposes of this Guaranty, notices shall be provided to the parties as follows:

If to Lender, then as follows:

If by mail, courier or  
overnight service, then to: 14816 South 7<sup>th</sup> Way  
Phoenix, Arizona 85048

If by telefacsimile, then to: 480-283-1772

If to Guarantor, then as follows:

If by mail, courier or  
overnight service, then  
addressed to Yuin Kim at: 4902 East Cordia Way  
Cave Creek, Arizona 85331

If by telefacsimile, then to: \_\_\_\_\_

Any party may change their address or telefacsimile number for notice by giving the other parties at least ten (10) days prior notice of such change in accordance with the provisions of this paragraph.

5.3 Terms used and not otherwise defined herein shall have the same meanings given thereto in the Loan Documents.

5.4 This Guaranty has been delivered and accepted in Phoenix, Arizona. This Guaranty shall in all respects be governed by and construed and enforced in accordance with the internal, substantive laws of the State of Arizona (without reference to choice of law principles). Guarantor: (a) hereby irrevocably submits to the process, jurisdiction and venue of the courts of the State of Arizona, in and for the County of Maricopa, for the purpose of suit, action or other proceedings arising out of or relating to this Guaranty or the subject matter hereof brought by Lender; and (b) without limiting the generality of the foregoing, hereby waives and agrees not to assert by way of motion, defense or otherwise in any such suit, action or proceeding any claim that Guarantor is not personally subject to the jurisdiction of the above-named courts, that such suit, action or proceeding is brought in an inconvenient forum or that the venue of such suit, action or proceeding is improper.

5.5 Any provision of this Guaranty which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or

unenforceability without invalidating the remaining provisions hereof, and no such prohibition or unenforceability shall invalidate or render unenforceable such provision in any other jurisdiction.

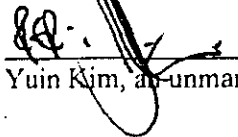
5.6 None of the provisions of this Guaranty shall be limited to any particular period of time, but rather all such provisions shall continue absolutely, unconditionally and irrevocably until all the terms, covenants, conditions and Obligations set forth in the Loan Documents have been fully performed by Borrower; and Guarantor shall not be released from any duty, obligation or liability hereunder so long as there is any claim of Lender against Borrower arising out of the Loan Documents.

5.7 This Agreement may be executed in any number of counterparts, each of which shall have the force and effect of an original. No waiver of any provision of this Guaranty by Lender, no amendment of this Guaranty and no release of any rights against Guarantor shall be effective unless in writing and signed by an authorized officer of Lender.

5.8 Guarantor agrees to pay reasonable attorneys' fees and all other costs and expenses which may be incurred by Lender in the enforcement of this Guaranty or any of the Loan Documents, whether or not suit be brought.

IN WITNESS WHEREOF, the parties hereto have executed this Guaranty made effective as of the 28 day of November, 2006.

**"GUARANTOR"**

  
\_\_\_\_\_  
Yuiin Kim, an unmarried man

STATE OF ARIZONA        )  
  ) ss.  
County of Maricopa        )

The foregoing Guaranty was subscribed before me this \_\_\_\_ day of November, 2006. by Yuiin Kim.

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

My Commission Expires:

FILED  
5/12/16 9:00am  
MICHAEL K. JEANES, Clerk  
By: *[Signature]*  
A. Arnold, Deputy

1 James O. Bell (023584)  
2 **SPIESS & BELL, PC**  
3 5050 N. 40<sup>th</sup> Street, Suite 220  
4 Phoenix, Arizona 85018  
5 (602) 254-8100  
6 jim@spiessbell.com

7 Attorneys for Plaintiff

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

10 WALTER BITAUT, a married man,  
11 Plaintiff,

12 v.

13 YUIN KIM, an unmarried man;  
14 ARCADIA COMMONS, LLC,  
15 purportedly an Arizona limited liability  
16 company,

17 Defendants.

Case No.: CV2012-009415

**STIPULATED JUDGMENT**

18 Pursuant to the Rule 80(D) Memorandum of Settlement Terms  
19 executed by the parties and their respective counsel on March 26, 2014,

20 IT IS HEREBY ORDERED that Judgment in the amount of \$150,000  
21 plus interest at the maximum statutory rate from the date hereof is hereby  
22 granted in favor of plaintiff Walter Bitaut and against defendant Yuin Kim.

23 Dated this 12<sup>th</sup> day of May, 2016.

24 *[Signature]*  
25 \_\_\_\_\_  
26 Superior Court Judge

**Honorable Kerstin G. LeMaire**

1 Approved and stipulated to this  
2 12<sup>th</sup> day of May, 2014 by:

3  
4 SPIESS & BELL, PC

5 By: /s/ James O. Bell  
6 James O. Bell, Esq.  
7 5050 N. 40<sup>th</sup> Street, Suite 220  
8 Phoenix, Arizona 85018  
9 Attorneys for Plaintiff

10 MURPHY KARBER, PLC

11 By: /s/ Richard B. Murphy  
12 Richard B. Murphy  
13 Murphy Karber, PLC  
14 2828 N. Central Ave., Suite 1110  
15 Phoenix, Arizona 85004  
16 Attorneys for Defendant Yui Kim  
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