

DEED OF TRUST

Terms

Date: August 23, 2017

Grantor: Veramendi PE-Darwin, LLC., a Texas limited liability company

Grantor's Mailing Address:

387 W. Mill Street, Suite 108
New Braunfels, Texas 78130
Attn: Peter James

And

McGinnis Lochridge
600 Congress Avenue, Suite 2100
Austin, Texas 78701
Attn: Phillip H. Schmandt
pschmandt@mcginnislaw.com

Trustee: Robert Camareno, City Manager for the City of New Braunfels, Texas and ex-officio member of New Braunfels Industrial Development Corporation

Trustee's Mailing Address:

City Manager's Office
City of New Braunfels, Texas
424 S. Castell Avenue
New Braunfels, Comal County, Texas 78131-1747

Lender: New Braunfels Industrial Development Corporation

Lender's Mailing Address:

City of New Braunfels, Texas
550 Landa Street
New Braunfels, Comal County, Texas 78130

Obligation:

Note: That certain Promissory Note executed contemporaneously with a Loan Agreement and this instrument for the design and construction of a portion of road that is within the Veramendi Mixed Use Employment and Large Format Retail Planning sub areas identified on the Master Framework Plan as adopted in the *Development Agreement for Proposed Mixed Use Development* and its intersection with the proposed Texas Department of Transportation Loop 337 Expansion Project.

Date: August 23, 2017

Original principal amount: \$1,600,000 [One-Million Six-Hundred Thousand and no/100 Dollars]

Borrower: Veramendi PE-Darwin LLC, a Texas limited liability company

Lender: New Braunfels Industrial Development Corporation

Maturity date: August 23, 2027

Terms of Payment: As provided in the Note.

Property (including any improvements):

See Property Description – Exhibit A attached.

Prior Liens: None

Grantor agrees to protect and preserve the first lien position of this Deed of Trust and will not permit to be created or to exist in respect to the Property or any part thereof any lien or security interest on a parity with, superior to, or inferior to any of the liens or security interests hereof. If default occurs in payment of any part of principal or interest of that \$1.6 Million note or in observance of any covenants of the deed of trust securing it, then the entire debt secured by this deed of trust will immediately become payable at the option of Lender.

Other Exceptions to Conveyance and Warranty: None

For value received and to secure payment of the Obligation, Grantor conveys the Property to Trustee in trust. Grantor warrants and agrees to defend the title to the Property, subject to the Other Exceptions to Conveyance and Warranty. On payment of the Obligation and all other amounts secured by this deed of trust, this deed of trust will have no further effect, and Lender will release it at Grantor's expense.

Clauses and Covenants

A. Grantor's Obligations

Grantor agrees to:

1. keep the Property in good repair and condition; and shall not lease the Property;
2. pay all taxes, assessments, on the Property before delinquency;

3. defend title to the Property, from all claims after the date of the lease, subject to the Other Exceptions to Conveyance and Warranty and preserve the lien's priority as it is established in this deed of trust;

4. maintain all insurance coverages with respect to the Property, revenues generated by the Property, and operations on the Property that Lender reasonably requires ("Required Insurance Coverages"), issued by insurers, and deliver evidence of the Required Insurance Coverages at least ten days before the expiration of the Required Insurance Coverages;

5. obey all laws, ordinances, and restrictive covenants applicable to the Property;

6. to keep the Property in its present condition which is unimproved agricultural land and use the Property as and will not improve or develop same or change the current use without express written consent of Lender;

7. if the lien of this deed of trust is not a first lien, pay or cause to be paid all prior lien notes and abide by or cause to be abided by all prior lien instruments; and

8. notify Lender of any change of address.

9. not to sell the Property or a portion thereof without the prior express written consent of the Lender.

B. Lender's Rights

1. Lender or Lender's mortgage servicer may appoint in writing a substitute trustee, succeeding to all rights and responsibilities of Trustee.

2. The lien created by this deed of trust shall maintain first lien status. Grantor will protect and preserve the first lien status created by this deed of trust.

3. Subject to the foregoing subordination, Lender may apply any proceeds received under the property insurance policies covering the Property either to reduce the Obligation or to repair or replace damaged or destroyed improvements covered by the policy.

4. If Grantor fails to perform any of Grantor's obligations, Lender may perform those obligations and be reimbursed by Grantor on demand for any amounts so paid, including attorney's fees, plus interest on those amounts from the dates of payment at the rate stated in the Note for matured, unpaid amounts. The amount to be reimbursed will be secured by this deed of trust.

5. If there is a default on the Obligation or if Grantor fails to perform any of Grantor's obligations and the default continues after any required notice of the default and the time allowed to cure, Lender may subject to the foregoing subordination-

a. declare the unpaid principal balance and earned interest on the Obligation immediately due;

b. direct Trustee to foreclose this lien, in which case Lender or Lender's agent will cause notice of the foreclosure sale to be given as provided by the Texas Property Code as then in effect; and

c. purchase the Property at any foreclosure sale by offering the highest bid and then have the bid credited on the Obligation.

6. Lender may remedy any default without waiving it and may waive any default without waiving any prior or subsequent default.

C. Trustee's Rights and Duties

If directed by Lender to foreclose this lien, Trustee will-

1. either personally or by agent give notice of the foreclosure sale as required by the Texas Property Code as then in effect;

2. sell and convey all or part of the Property "AS IS" to the highest bidder for cash with a general warranty binding Grantor, subject to the Prior Liens and to the Other Exceptions to Conveyance and Warranty and without representation or warranty, express or implied, by Trustee;

3. from the proceeds of the sale, pay, in this order-

a. expenses of foreclosure, including a reasonable commission to Trustee;

b. to Lender, the full amount of principal, interest, attorney's fees, and other charges due and unpaid;

c. any amounts required by law to be paid before payment to Grantor; and

d. to Grantor, any balance; and

4. be indemnified, held harmless, and defended by Lender against all costs, expenses, and liabilities incurred by Trustee for acting in the execution or enforcement of the trust created by this deed of trust, which includes all court and other costs, including attorney's fees, incurred by Trustee in defense of any action or proceeding taken against Trustee in that capacity.

D. General Provisions

1. If any of the Property is sold under this deed of trust, Grantor must immediately surrender possession to the purchaser. If Grantor fails to do so, Grantor will become a tenant at sufferance of the purchaser, subject to an action for forcible detainer.

2. Recitals in any trustee's deed conveying the Property will be presumed to be true.

3. Proceeding under this deed of trust, filing suit for foreclosure, or pursuing any other remedy will not constitute an election of remedies.

4. Subject to the foregoing subordination, this lien will remain superior to liens later created even if the time of payment of all or part of the Obligation is extended or part of the Property is released.

5. If any portion of the Obligation cannot be lawfully secured by this deed of trust, payments will be applied first to discharge that portion.

6. Grantor assigns to Lender all amounts payable to or received by Grantor from condemnation of all or part of the Property, from private sale in lieu of condemnation, and from damages caused by public works or construction on or near the Property. After deducting any expenses incurred, including attorney's fees and court and other costs, Lender will either release any remaining amounts to Grantor or apply such amounts to reduce the Obligation. Lender will not be liable for failure to collect or to exercise diligence in collecting any such amounts. Grantor will immediately give Lender notice of any actual or threatened proceedings for condemnation of all or part of the Property.

7. Grantor will be in default of this Deed of Trust, Note and Loan Agreement if Grantor or any person directly liable for the Obligation does any it executes an assignment for the benefit of creditors, or takes any action in furtherance of an assignment that is related to the Property; admits in writing its inability to pay or, fails to pay, its debts, and as debtor, files a petition seeking protection of bankruptcy law or has a bankruptcy action filed against Grantor, or similar relief is sought in a lawsuit filed in either state or federal court.

8. Interest on the debt secured by this deed of trust will not exceed the maximum amount of nonusurious interest that may be contracted for, taken, reserved, charged, or received under law. Any interest in excess of that maximum amount will be credited on the principal of the debt or, if that has been paid, refunded. On any acceleration or required or permitted prepayment, any such excess will be canceled automatically as of the acceleration or prepayment or, if already paid, credited on the principal of the debt or, if the principal of the debt has been paid, refunded. This provision overrides any conflicting provisions in this and all other instruments concerning the debt.

9. In no event may this deed of trust secure payment of any debt that may not lawfully be secured by a lien on real estate or create a lien otherwise prohibited by law.

10. When the context requires, singular nouns and pronouns include the plural.

11. The term *Note* includes all extensions, modifications, and renewals of the Note and all amounts secured by this deed of trust.

12. Grantor represents to Lender that no part of the Property is exempt as homestead from forced sale under the Texas Constitution or other laws.

All real estate constituting Grantor's homestead exempt from forced sale under the Texas Constitution or other laws consists of the following: none.

13. Grantor warrants to Lender and agrees that the proceeds of the Note will be used only for what is permitted in the Loan Agreement.

14. Grantor agrees to furnish on Lender's request evidence satisfactory to Lender that all taxes and assessments on the Property have been paid when due.

15. Grantor agrees not to grant any lien or security interest in the Property or to permit any junior encumbrance to be recorded or any claim to otherwise become an encumbrance against the Property. If an involuntary encumbrance is filed against the Property, Grantor agrees, within thirty days, to remove the involuntary encumbrance.

16. This deed of trust binds, benefits, and may be enforced by the successors in interest of all parties.

17. If Grantor and Borrower are not the same person, the term *Grantor* includes Borrower.

18. Grantor agrees to pay reasonable attorney's fees, trustee's fees, and court and other costs of enforcing Lender's rights under this deed of trust if this deed of trust is placed in the hands of an attorney for enforcement.

19. If any provision of this deed of trust is determined to be invalid or unenforceable, the validity or enforceability of any other provision will not be affected.

E. Partial Release of Property

1. Lender and Grantor agree as set forth in the Loan Agreement and herein, that Grantor may seek a partial release of the Property that is the subject of this Deed of Trust. Grantor may request a partial release of the Property provided that the conditions set forth in the Loan Agreement are satisfied as set forth herein. Borrower shall not be in default or in event of default of the Loan Agreement, Note or Deed of Trust. In the event, that Borrower desires a partial release of the secured property or Property, no such proposed partial release of Deed of Trust will in no way impair or affect the validity, priority, standing of the Deed of Trust as to the remainder of the Property. In the event, Borrower desires to replace the Property with an alternative tract or, Borrower shall at its own cost have the alternative tract appraised and surveyed, with both appraiser and surveyor acceptable to Lender. Borrower shall also pay all other costs associated with the alternative tract including but not limited to title company charges, filing and any other reasonable charges. A new deed of trust for the alternative tract would have to be accepted and filed prior to the release of this instrument. In the event, that Borrower desires to have a portion of the Property released, the Borrower is responsible for the same requirements set forth above for an

alternative tract, for the remaining tract. The remaining tract or alternative tract has to be in configuration approved by Lender, with public access, utility availability, and easements and other factors to make the remaining or alternative tract a stand-alone, fully developable, and usable tract for first class residential and /or mixed use development, all acceptable to Lender. Further, the alternative tract or remaining tract of shall be appraised or valued at 150% the fair market value of the Note principal and interest. Acceptability of Grantor's request to Lender will be in Lender's sole discretion.

BORROWER:

**Veramendi PE – Darwin, LLC,
a Texas limited liability company**

By: Veramendi Development Company, LLC,
a Texas limited liability company
Its: Manager

By: ASA Properties, LLC,
a Texas limited liability company
Its: Manager

By: 
Peter James, President

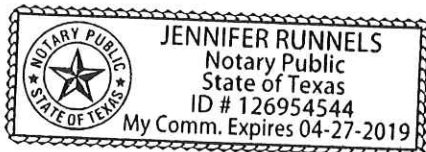
STATE OF TEXAS

COUNTY OF Comal

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CORPORATE ACKNOWLEDGMENT

This instrument was acknowledged before me on this the 23rd day of August 2017, by Peter James, on behalf of ASA Properties, LLC, the sole manager of Veramendi Development Company, LLC, the sole manager of Veramendi PE – Darwin, LLC, on behalf of Veramendi PE – Darwin, LLC known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed it as an act of the Veramendi PE-Darwin, LLC for the purposes and consideration expressed in the instrument, and in the capacity stated in it.



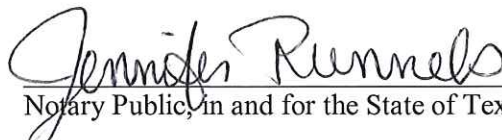

Notary Public, in and for the State of Texas

Exhibit A

Description of Real Property

42 acres

(57.95 acre Tract save and except a 14.98 acre portion as described below)



410 N. Seguin Ave.
New Braunfels, TX 78130
HMTNB.COM
830.625.8555 • FAX: 830.625.8556
TBPE FIRM F-10961

METES AND BOUNDS DESCRIPTION
FOR A
57.95 ACRE TRACT OF LAND

Being a 57.95 acre tract of land out of the J.M. Veramendi Survey No. 1, Abstract No. 2, Comal County, Texas, being a portion of the remainder tract of a called 2086 acre tract of land, described in Document Number 201006024825, Official Public Records, Comal County, Texas, said 57.95 acre tract of land being more particularly described as follows:

BEGINNING at a 1/2" iron pin found in concrete in the Southwesterly right-of-way line of River Road for the North corner of a called 9.839 acre tract, recorded in Document Number 200406026508, Official Public Records, Comal County, Texas and an Easterly corner of said 2086 acre tract;

THENCE along the Northwesterly and Southwesterly lines of said 9.839 acre tract, the following two (2) calls:

1. S 50°30'55" W a distance of 600.79 feet to a fence corner post for an interior corner;
2. S 36°25'04" E passing fence corner posts at distances of 643.71 feet and 648.49 feet, and continuing in all a total distance of 649.11 feet to a 1/2" iron pin (with cap stamped "HMT") set in the Northwesterly right-of-way line of Loop 337, for the Southwesterly corner of said 9.839 acre tract and the Southeast corner of said 57.95 acre tract, from which a TXDOT Disk found bears N 79°25'45" E a distance of 364.00 feet;

THENCE along the Northwesterly right-of-way line of Loop 337, the following five (5) calls:

1. S 79°25'45" W a distance of 43.91 feet to a TXDOT Disk found for a corner;
2. S 73°40'57" W a distance of 200.90 feet to a TXDOT Disk found for a corner, from which a Mag Nail found bears S 50°38' W a distance of 0.15 feet;
3. S 79°23'54" W a distance of 699.82 feet to a TXDOT Disk found for a corner, from which a Mag Nail found bears N 81°00' W a distance of 0.29 feet;
4. S 76°34'51" W a distance of 200.22 feet to a TXDOT Disk found for a corner, from which a Mag Nail found bears N 89°38' W a distance of 0.32 feet;
5. S 79°25'12" W a distance of 281.13 feet to a TXDOT Disk found for the Southwest corner of the herein described tract, from which a TXDOT Disk found bears S 79°25'12" W a distance of 979.82 feet;

THENCE across said 2086 acre tract the following eleven (11) calls:

1. N 10°34'29" W a distance of 352.19 feet to a 1/2" iron pin (with cap stamped "HMT") set for a corner;
2. N 48°00'24" W a distance of 196.39 feet to a 1/2" iron pin (with cap stamped "HMT") set for a corner;
3. N 73°57'14" W a distance of 156.81 feet to a 1/2" iron pin (with cap stamped "HMT") set for a corner;

4. N 22°38'39" W a distance of 138.57 feet to a 1/2" iron pin (with cap stamped "HMT") set for a corner;
5. N 12°04'07" W a distance of 222.85 feet to a 1/2" iron pin (with cap stamped "HMT") set for a corner;
6. N 08°49'26" E a distance of 291.44 feet to a 1/2" iron pin (with cap stamped "HMT") set for a corner;
7. N 55°02'47" E a distance of 18.04 feet to a 1/2" iron pin (with cap stamped "HMT") set for a corner;
8. Along the arc of a curve to the right, with an arc length of 108.79 feet, a radius of 65.00 feet, a central angle of 95°53'37", and having a chord bearing and distance of N 05°02'04" E, 96.53 feet to a 1/2" iron pin (with cap stamped "HMT") set for a corner;
9. N 12°19'12" E a distance of 413.31 feet to a 1/2" iron pin (with cap stamped "HMT") set for the Northwest corner of the herein described tract;
10. N 69°10'24" E a distance of 1194.86 feet to a 1/2" iron pin (with cap stamped "HMT") set for a corner;
11. N 51°59'00" E a distance of 30.02 feet to a 1/2" iron pin (with cap stamped "HMT") set in the Southwesterly right-of-way line of River Road for the North corner of the herein described tract;

THENCE along the Southwesterly right-of-way line of River Road, S 34°57'13" E a distance of 565.09 feet to a 1/2" iron pin (with cap stamped "PAPE DAWSON") found for the North corner of a called 5.00 acre tract recorded in Document Number 201306007573, Official Public Records, Comal County, Texas;

THENCE along the boundary of said 5.00 acre tract, the following three (3) calls:


1. S 55°02'47" W a distance of 450.00 feet to a 1/2" iron pin (with cap stamped "HMT") set for a corner;
2. S 34°57'13" E a distance of 484.00 feet to a 1/2" iron pin (with cap stamped "HMT") set for a corner;
3. N 55°02'47" E a distance of 450.00 feet to a 1/2" iron pin (with cap stamped "PAPE DAWSON") found in the Southwesterly right-of-way line of River Road for the East corner of said 5.00 acre tract and an interior corner of the herein described tract;

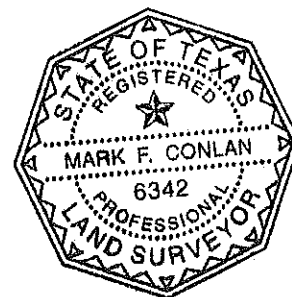
THENCE along the Southwesterly right-of-way line of River Road S 34°57'13" E a distance of 64.39 feet to the POINT OF BEGINNING and containing 57.95 acres of land in Comal County, Texas.

Bearings are based upon the Texas Coordinate System, South Central Zone (4204), NAD 83.

Surveyed this the 1st day of November, 2016.

Reference survey of said 57.95 tract of land prepared this same date.


 Mark F. Conlan
 Registered Professional Land Surveyor No. 6342



S:\Projects\216 - ASA Properties\002 - Veramendi - Title Survey and Metes & Bounds
 - Brisbane 2A & 63 ac Tract\Land Title Survey of App 63 ac tract\MB_57.95 AC_DL_11-3-16.docx

SAVE AND EXCEPT THE 14.98 ACRE TRACT DESCRIBED BELOW:



410 N. Seguin Ave.
New Braunfels, TX 78130
HMTNB.COM
830.625.8555 • FAX: 830.625.8556
TBPE FIRM F-10961

METES AND BOUNDS DESCRIPTION
FOR A
14.98 ACRE TRACT OF LAND

Being a 14.98 acre tract of land out of the J.M. Veramendi Survey No. 1, Abstract No. 2, Comal County, Texas, being a portion of the remainder tract of a called 2086 acre tract of land, described in Document Number 201006024825, Official Public Records, Comal County, Texas, said 14.98 acre tract of land being more particularly described as follows:

BEGINNING at a 1/2" iron pin found in concrete in the Southwesterly right-of-way line of River Road for the North corner of a called 9.839 acre tract, recorded in Document Number 200406026508, Official Public Records, Comal County, Texas and an Easterly corner of said 2086 acre tract;

THENCE along the Northwesterly and Southwesterly lines of said 9.839 acre tract, the following two (2) calls:

1. S 50°30'55" W a distance of 600.79 feet to a fence corner post for an interior corner;
2. S 36°25'04" E passing fence corner posts at distances of 643.71 feet and 648.49 feet, and continuing in all a total distance of 649.11 feet to a 1/2" iron pin (with cap stamped "HMT") set in the Northwesterly right-of-way line of Loop 337, for the Southwesterly corner of said 9.839 acre tract and the Southeast corner of said 14.98 acre tract, from which a TXDOT Disk found bears N 79°25'45" E a distance of 364.00 feet;

THENCE along the Northwesterly right-of-way line of Loop 337, the following five (5) calls:

1. S 79°25'45" W a distance of 43.91 feet to a TXDOT Disk found for a corner;
2. S 73°40'57" W a distance of 200.90 feet to a TXDOT Disk found for a corner, from which a Mag Nail found bears S 50°38' W a distance of 0.15 feet;
3. S 79°23'54" W a distance of 699.82 feet to a TXDOT Disk found for a corner, from which a Mag Nail found bears N 81°00' W a distance of 0.29 feet;
4. S 76°34'51" W a distance of 200.22 feet to a TXDOT Disk found for a corner, from which a Mag Nail found bears N 89°38' W a distance of 0.32 feet;
5. S 79°25'12" W a distance of 281.13 feet to a TXDOT Disk found for the Southwest corner of the, herein described tract, from which a TXDOT Disk found bears S 79°25'12" W a distance of 979.82 feet;

THENCE across said 2086 acre tract the following four (4) calls:

1. N 10°34'29" W a distance of 285.33 feet to a 1/2" iron pin (with cap stamped "HMT") set for a corner;
2. N 69°02'56" E a distance of 364.42 feet to a 1/2" iron pin (with cap stamped "HMT") set for a corner;
3. N 60°04'22" E a distance of 247.44 feet to a 1/2" iron pin (with cap stamped "HMT") set for a corner;

4. N 51°04'29" E a distance of 726.45 feet to a 1/2" iron pin (with cap stamped "PAPE DAWSON") found for the South corner of a called 5.00 acre tract recorded in Document Number 201306007573, Official Public Records, Comal County, Texas;

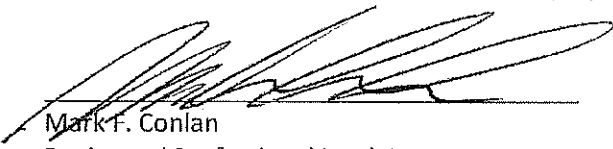
THENCE along the boundary of said 5.00 acre tract, N 55°02'47" E a distance of 450.00 feet to a 1/2" iron pin (with cap stamped "PAPE DAWSON") found in the Southwesterly right-of-way line of River Road for the East corner of said 5.00 acre tract and a Northerly corner of the herein described tract;

THENCE along the Southwesterly right-of-way line of River Road, S 34°57'13" E a distance of 64.39 feet to the POINT OF BEGINNING and containing 14.98 acres of land in Comal County, Texas.

Bearings are based upon the Texas Coordinate System, South Central Zone (4204), NAD 83.

Surveyed this the 21st day of February, 2017.

Reference survey of said 14.98 tract of land prepared this same date.


Mark F. Conlan
Registered Professional Land Surveyor No. 6342

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AFTER RECORDING RETURN TO:

Valeria M. Acevedo, City Attorney

City Attorneys' Office

City of New Braunfels

550 Landa Street

New Braunfels, Texas 78130