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Attorneys for Plaintiff,
Shannon P. Sorensen, Trustee of the
Shannon P. Sorensen 2011 Irrevocable Trust

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SANTA BARBARA – ANACAPA DIVISION

SHANNON P. SORENSEN as TRUSTEE OF
THE SHANNON P. SORENSEN 2011
IRREVOCABLE TRUST,

Plaintiff,

v.

SIMON K. HODSON, an individual; DOES 1-
10, inclusive,

Defendants.

ELECTRONICALLY FILED
Superior Court of California
County of Santa Barbara
Darrel E. Parker, Executive Officer
12/23/2021 1:54 PM
By: Narzralli Baksh, Deputy

Case No.21CV05018

COMPLAINT FOR:

- 1. BREACH OF CONTRACT**
- 2. BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING**

1 Plaintiff Shannon P. Sorensen, as Trustee of the Shannon P. Sorensen 2011 Irrevocable
2 Trust, alleges the following against Defendants Simon K. Hodson and Does 1-10:

3 **PARTIES**

4 1. At all times relevant to this Complaint, Plaintiff Shannon P. Sorensen, as Trustee
5 of the Shannon P. Sorensen 2011 Irrevocable Trust, resided in the County of Santa Barbara,
6 California.

7 2. At all times relevant to this Complaint, Defendant Simon K. Hodson resided in the
8 County of Santa Barbara, California.

9 3. Plaintiff is unaware of the true names and capacities of the Defendants sued herein
10 as Does 1-10, inclusive (“Doe Defendants”), and therefore Plaintiff sues the Doe Defendants by
11 such fictitious names. Plaintiff will seek to amend this Complaint to show the true names and
12 capacities of Does 1-10, inclusive, when their true names and capacities have been ascertained.
13 Plaintiff alleges on information and belief that each Doe Defendant is in some manner responsible
14 for the acts and/or omissions herein alleged, and that the damages herein alleged were directly and
15 proximately caused by such conduct.

16 4. Plaintiff alleges on information and belief that at all times relevant to this
17 Complaint, Defendants, and each of them, acted as the agents, servants, employees and co-
18 conspirators of each other, and acted within the purpose, scope and authorization of such agency,
19 service, employment and conspiracy. In addition, each of the Defendants ratified and approved
20 the acts of each of the other Defendants acting for or on behalf of the former.

21 **JURISDICTION AND VENUE**

22 5. Plaintiff alleges on information and belief that at all times relevant to this
23 Complaint, Plaintiff’s causes of action against Defendants arose in the County of Santa Barbara,
24 including but not limited to the formation and performance of the agreements alleged herein, such
25 that this Court has jurisdiction over this action and provides the appropriate venue.

26 6. Venue is also proper in this Court as one or more of the Defendants resides in the
27 County of Santa Barbara.

1	a. April 4, 2012:	\$1,000,000.00
2	b. June 29, 2012:	\$543,574.35
3	c. January 3, 2013:	\$144,592.52
4	d. February 22, 2013:	\$145,345.49
5	e. December 17, 2013:	\$36,724.91
6	f. February 10, 2014:	\$79,835.26
7	g. September 5, 2014:	\$84,849.44
8	h. September 11, 2014:	\$84,849.44
9	i. October 22, 2014:	\$250,000.00
10	j. November 20, 2014:	\$100,000.00
11	k. December 19, 2014:	\$212,123.61
12	l. March 31, 2015:	\$127,273.92
13	m. June 11, 2015:	\$127,293.92

14 15. On or about August 19, 2015, Plaintiff and Defendant Hodson memorialized
15 Plaintiff's above-referenced loans to Hodson in a document titled "Schedule A: Amounts and
16 Dates of Loan Advanced to Borrower" ("August 19, 2015 Schedule A").

17 16. Plaintiff attaches a true and correct copy of the August 19, 2015 Schedule A as
18 **Exhibit B** and incorporates its contents by reference herein.

19 17. On October 6, 2015, Plaintiff further loaned \$29,697.28 to Defendant Hodson.

20 18. In sum, Plaintiff loaned the following amounts to Defendant Hodson:

21	a. April 4, 2012:	\$1,000,000.00
22	b. June 29, 2012:	\$543,574.35
23	c. January 3, 2013:	\$144,592.52
24	d. February 22, 2013:	\$145,345.49
25	e. December 17, 2013:	\$36,724.91
26	f. February 10, 2014:	\$79,835.26
27	g. September 5, 2014:	\$84,849.44
28	h. September 11, 2014:	\$84,849.44

- 1 i. October 22, 2014: \$250,000.00
- 2 j. November 20, 2014: \$100,000.00
- 3 k. December 19, 2014: \$212,123.61
- 4 l. March 31, 2015: \$127,273.92
- 5 m. June 11, 2015: \$127,293.92
- 6 n. October 6, 2015: \$29,697.28

7 19. On February 1, 2021, Plaintiff and Defendant Hodson executed an Amended and
8 Restated Promissory Note (the “Note”) in the amount of \$4,669,305.00, which was comprised of
9 the total outstanding principal and interest up to that date.

10 20. Plaintiff attaches a true and correct copy of the Note as **Exhibit C** and
11 incorporates its contents by reference herein.

12 21. The Note states, *inter alia*:

13 FOR VALUE RECEIVED, Simon K. Hodson (“Borrower”), hereby
14 unconditionally promises to pay, as provided herein, to the order of
15 Shannon P. Sorensen 2011 Irrevocable Trust (“Lender”), in lawful
16 money of the United States of America in immediately available
17 funds, the principal sum of FOUR MILLION SIX HUNDRED
18 SIXTY NINE THOUSAND THREE HUNDRED AND FIVE
19 DOLLARS (\$4,669,305), together with all accrued but unpaid
20 interest on such principal sum (the “Principal Sum”), calculated from
21 the date hereof as provided below, until paid in full. This Promissory
22 Note (the “Note”) hereby amends and restates that certain Promissory
23 Note executed by Borrower in favor of Lender in the face amount of
24 \$5,000,000 and dated March 28, 2012 (the “Original Note”). Some
of the advances intended to be made under the Original Note had not
been advanced and therefor the Principal Sum set forth herein
evidences the total amounts actually advanced under the Original
Note and all accrued interest thereon calculated through January 31,
2021. Since this Note completely restates the Original Note, Lender
shall have no obligation to advance any further installments of
principal set forth in the Original Note and Lender has no further right
to exercise the option set forth in Section 4 of the Original Note.

25 (Exh. C, p. 1.)

26 22. The Note sets forth a maturity date of November 24, 2021 (“Maturity Date”), at
27 which point the entire Principal Sum (as defined in the Note, *supra*), along with all applicable
28 interest and fees, becomes due.

1 23. Prior to the Maturity Date, Plaintiff contacted Defendant Hodson and requested
2 payment by the Maturity Date.

3 24. The Note matured on November 24, 2021 and Defendant Hodson did not satisfy
4 any portion of the Principal Sum.

5 25. To date, Defendant Hodson has not satisfied any portion of the Principal Sum of
6 the Note.

7 **FIRST CAUSE OF ACTION**

8 **Breach of Contract**

9 **(Against Defendants Simon Hodson and Does 1-10)**

10 26. Plaintiff hereby realleges and incorporates the above paragraphs of this Complaint
11 as if fully set forth herein.

12 27. On or about February 1, 2021, Defendant Hodson executed the Note.

13 28. Under the Note, Defendant Hodson unconditionally promised to pay to the order
14 of Shannon P. Sorensen 2011 Irrevocable Trust the Principal Sum of \$4,669,305, together with
15 applicable interest and fees, by the Maturity Date. (Exh. C, p. 1.)

16 29. Plaintiff did all or substantially all of the significant things that the Note required
17 Plaintiff to do, except those conditions and actions that Defendants' conduct waived, excused, or
18 rendered impossible or impracticable.

19 30. Defendants have materially breached the Note by not satisfying any portion of the
20 Principal Sum through the date of Plaintiff's filing of this Complaint.

21 31. Defendants' breach has damaged Plaintiff in the amount of \$4,894,733.26, plus
22 pre-judgment interest and the reasonable attorney's fees and costs that Plaintiff has incurred, and
23 continues to incur, in attempting to enforce the Note, subject to proof at trial.

24 32. Defendants' material breach of the Note was a substantial factor in causing
25 Plaintiff's harm.

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1 **SECOND CAUSE OF ACTION**

2 **Breach of the Implied Covenant of Good Faith and Fair Dealing**

3 **(Against Defendant Simon Hodson and Does 1-10)**

4 33. Plaintiff hereby realleges and incorporates the above paragraphs of this Complaint
5 as if fully set forth herein.

6 34. Plaintiff did all or substantially all of the significant things required of Plaintiff to
7 do under the Note, except those conditions and actions that Defendants' conduct waived, excused,
8 or rendered impossible or impracticable.

9 35. Defendants frustrated the purpose of and unfairly interfered with Plaintiff's right
10 to secure the benefit of the Note by failing to perform on the Note and failing to pay back any
11 portion of the Principal Sum.

12 36. Defendants' breach has damaged Plaintiff in the amount of \$4,894,733.26, plus
13 pre-judgment interest and the reasonable attorney's fees and costs that Plaintiff has incurred, and
14 continues to incur, in attempting to enforce the Note, subject to proof at trial.

15 **PRAYER FOR RELIEF**

16 **WHEREFORE**, Plaintiff prays for judgment against Defendants, and each of them,
17 jointly and severally, and that the Court award Plaintiff as follows:

18 **ON THE FIRST CAUSE OF ACTION**

19 1. For compensatory damages in the amount of \$4,894,733.26, plus the interest that
20 continues to accrue thereon per the terms of the Note, pre-judgment interest, and the reasonable
21 attorney's fees and costs that Plaintiff has incurred, and continues to incur, in attempting to
22 enforce the Note, subject to proof at trial.

23 **ON THE SECOND CAUSE OF ACTION**

24 1. For compensatory damages in the amount of \$4,894,733.26, plus the interest that
25 continues to accrue thereon per the terms of the Note, pre-judgment interest, and the reasonable
26 attorney's fees and costs that Plaintiff has incurred, and continues to incur, in attempting to
27 enforce the Note, subject to proof at trial.

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ON ALL CAUSES OF ACTION

1. For compensatory damages in the amount of \$4,894,733.26.
2. For interest per the terms of the Note.
3. For statutory pre-judgment interest.
4. For attorney's fees and costs of suit.
5. For such other relief as the Court may deem just and proper.

DATED: December 23, 2021

CHORA YOUNG & MANASSERIAN LLP

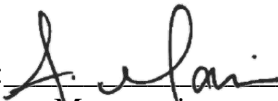
By: 
Armen Manasseryan,
Attorneys for Plaintiff,
Shannon P. Sorensen, Trustee of the
Shannon P. Sorensen 2011 Irrevocable Trust

Exhibit A

PROMISSORY NOTE

\$5,000,000

March 28 2012

FOR VALUE RECEIVED, Simon K. Hodson ("Borrower"), hereby unconditionally promises to pay, as provided herein, to the order of Shannon P. Sorensen 2011 Irrevocable Trust, a _____ company ("Lender"), in lawful money of the United States of America in immediately available funds, the principal sum of FIVE MILLION DOLLARS (\$5,000,000) (or so much thereof as shall be advanced by Lender to Borrower and is outstanding hereunder), together with all accrued but unpaid interest as provided below.

Subject to all of the terms and conditions of this Promissory Note (this "Note"), Lender shall disburse the principal sum in installments in the amounts and on the dates set forth in the Schedule A attached hereto. Lender shall have no obligation to advance any installment of principal if an Event of Default has occurred and Lender has accelerated the maturity date of this Note pursuant to Section 4. If Lender fails to fund any installment of principal within ten (10) days of the date it is due, Lender shall have no right to exercise the Option set forth in Section 3, but shall continue to be obligated to fund the installments of principal that are due to be funded by Lender pursuant to Schedule A.

Unless Lender elects to convert this Note into equity interests by timely exercising the Option set forth in Section 3, all outstanding principal and all accrued but unpaid interest shall be due and payable on the Maturity Date or such earlier date as this Note becomes due and payable as set forth in Section 4 below.

This Note is made upon and is subject to the following terms and conditions:

1. **Definitions.** As used in this Note, capitalized terms not otherwise defined shall have the following meanings:

"Applicable Interest Rate" shall mean six percent (6%) per annum, compounded annually.

"Business Day" shall mean a day of the week (but not a Saturday, Sunday or holiday) on which the offices of commercial lenders in the State of California are open to the public for carrying on substantially all of such lenders' business functions. Unless specifically referenced in this Note as a Business Day, all references to "days" shall be to calendar days.

"Event of Default" shall mean (i) an Insolvency Event, (ii) default in the payment of any principal or interest or other amounts payable to Lender on this Note within ten (10) days of the date such payment is due, or (iii) any material breach of this Note (other than by reason of a non-payment of principal or interest) by Borrower, which breach is not cured within thirty (30) days of the date Borrower is notified in writing of the breach.

"Insolvency Event" means (i) any insolvency or bankruptcy case or proceeding (including any case under the United States Bankruptcy Code), or any receivership, liquidation, reorganization or other similar case or proceeding, relative to Borrower or his respective assets,



or (ii) any assignment for the benefit of creditors or any other marshaling of assets and liabilities of Borrower; provided that in the case of an involuntary proceeding against Borrower, an Insolvency Event shall not be deemed to have occurred until thirty (30) days after any such filing, provided that Borrower is at all times diligently attempting to have such proceedings discharged, stayed or dismissed.

"Loan" shall mean the indebtedness of Borrower evidenced by this Note.

"Maturity Date" shall mean the one year anniversary of the date of this Note.

"Maximum Legal Rate" shall mean the maximum nonusurious interest rate, if any, that at any time or from time to time may be contracted for, taken, reserved, charged or received on the indebtedness evidenced by the Note, under the laws of the State of California.

2. Payments.

2.1 General. All payments to be made under this Note of any nature shall be made to the Lender at the office designated by Lender in writing to Borrower. All payments (including prepayments) on account of principal, interest and fees, if any, shall be made to the Lender without set-off or counterclaim. If any payment hereunder becomes due and payable on a day other than a Business Day, the due date thereof shall be extended to the next succeeding Business Day. All amounts hereunder shall be paid in lawful money of the United States and in cash or by cashier's check or by wire transfer in immediately available funds. All payments shall be deemed made when received by Lender except that any payments made by wire transfer shall be deemed made when Borrower irrevocably executes orders authorizing his bank to transfer immediately available funds to Lender's account pursuant to wire instructions separately communicated in writing by Lender to Borrower.

2.2 Payment of Principal and Interest. Unless Lender timely exercises the Option in the manner set forth in Section 3 all payments of principal and accrued interest shall be due and payable on the Maturity Date or, if earlier, the date this Note becomes due and payable pursuant to Section 4.

2.3 Prepayment. Borrower may not prepay this Note in part or in full without the written consent of Lender, which consent may be given or withheld in Lender's sole discretion.

2.4 Interest Payments. From and after the date of this Note, interest shall accrue on the outstanding principal balance of this Note at the Applicable Interest Rate. Interest on the principal sum of this Note shall be calculated on the basis of a three hundred sixty (360) day year composed of twelve (12) months of thirty (30) days each, except that interest accrued for a period less than a full month shall be calculated based on the actual number of days elapsed.

2.5 Application of Payments. Payments under this Note shall be applied first to costs and charges due in connection with this Note pursuant to Section 5, and then to the payment of interest and finally to the payment of principal.



3. Option to Convert the Outstanding Balance of this Note into Equity Interests.

3.1 Option to Convert. So long as Lender is not in default of its material obligations hereunder and has funded the installments of principal to Borrower within ten (10) days of the date each is due pursuant to Schedule A, then at any time between February 1 and February 28, 2013, Lender may exercise an option (the "Option") to purchase equity interests in any or all of the companies set forth on the Schedule B attached hereto (the "Companies") for an amount equal to the outstanding balance of this Note on the Maturity Date. The Option may be exercised in full but not in part. The percentage interest in each Companies that Lender may acquire upon exercise of the Option shall be based on the entity value for each such Company that is set forth on the Schedule B. Thus, for example, if the outstanding balance of this Note is \$5,300,000 on the Maturity Date, Lender may elect to acquire an equity interest solely in Quantum Nano Impact LLC, and the percentage interest it would acquire in that Company would be equal to the ratio of \$5,300,000 to \$158,000,000. Alternatively, Lender could elect to acquire equity interests Quantum Nano Impact, LLC and/or one or more of the Companies set forth in the Schedule B for a total purchase price of \$5,300,000 with the percentage interest in each Company selected to be based on a fraction, the numerator of which is the portion of the \$5,300,000 purchase price to be applied to the purchase of an equity interest in that Company, and the denominator of which is the entity value for such Company.

3.2 Notice of Election; Lapse. Lender shall exercise the Option by delivering to Borrower written notice of its exercise at any time during the month of February, 2013 (the "Option Exercise Notice"). The Option Exercise Notice shall specify a Business Day no later than thirty (30) days following the Maturity Date upon which Lender and Borrower shall consummate the closing of the purchase of the equity interests in the Companies Lender has elected to invest in (the "Closing"). The Option Exercise Notice shall also designate (i) the percentage equity interest in each Company that Lender will purchase, and (ii) the amount of the Loan balance as of the Maturity Date that will be applied to consummate the purchase of the interest in that Company. If Lender fails to deliver the Option Exercise Notice during the month of February, 2013, Lender shall have no right to exercise the Option and it shall terminate. In such event, Borrower shall pay the outstanding balance of this Note in full on the Maturity Date.

3.3 Cancellation of Note. If Lender timely elects to exercise the Option, then, upon the performance by Borrower of its obligations under this Section 3, and the transfer to Lender of the equity interests purchased pursuant to the Option (the "Purchased Equity Interests"), Borrower shall cease to have any further obligations to Lender under this Note and it shall be marked canceled and returned to Borrower.

3.4 Documentation. Borrower shall cooperate with Lender and Lender's counsel to document the transfer of the Purchased Equity Interests to Borrower on the Closing. In this connection, Borrower (or Borrower's affiliate that actually holds the Purchased Equity Interest) and Lender shall execute and deliver (a) an Equity Interest Purchase Agreement pursuant to which Borrower (or its affiliate) shall sell, and Lender

shall purchase, the Purchased Equity Interest, (b) an Assignment Agreement pursuant to which Borrower (or its affiliate) shall formally assign the Purchased Equity Interest to Lender, and (c) an amendment to the governing documents of the Company that is the issuer of the Purchased Equity Interest admitting Lender as an equity owner of the company having the designated percentage interest therein pursuant to the formula set forth in Section 3.1. The rights and obligations of Lender under any such governing documents shall be the same as the other equity owners in such Company having a percentage interest that is similar to the Purchased Equity Interest with respect to such Company.

4. **Acceleration.** In addition to any other rights and remedies Lender may have as provided by law or pursuant to this Note, but subject to its right to exercise the Option set forth in Section 3, if any Event of Default shall occur:

(a) if such Event of Default is triggered by an Insolvency Event, the unpaid principal amount hereof (together with accrued interest thereon) and all other amounts payable hereunder shall automatically become immediately due and payable; and

(b) if such event is any other Event of Default, Lender may, at its election, declare the unpaid principal amount hereof (together with accrued interest thereon) and all other amounts payable hereunder to be due and payable forthwith, whereupon the same shall immediately become due and payable.

5. **Attorneys' Fees.** If any attorney is engaged by Lender to enforce or defend any provision of this Note, or as a consequence of an Event of Default, with or without the filing of any legal action or proceeding, then unless Lender is determined not to be the prevailing party in any proceeding brought under Section 13 of this Note, Borrower shall pay to Lender immediately upon demand all reasonable attorneys' fees and all reasonable out of pocket costs incurred by Lender in connection therewith, together with interest thereon from the date of such demand until paid at the Applicable Rate of Interest as if such unpaid attorneys' fees and costs had been added to the principal balance of this Note.

6. **Interest Rate Limitation.** Notwithstanding anything to the contrary, (a) all agreements and communications between Borrower and Lender are hereby and shall automatically be limited so that, after taking into account all amounts deemed interest, the interest contracted for, charged or received by Lender shall never exceed the Maximum Legal Rate, (b) in calculating whether any interest exceeds the Maximum Legal Rate, all such interest shall be amortized, prorated, allocated and spread over the full amount and term of all principal indebtedness of Borrower to Lender and (c) if through any contingency or event Lender receive or are deemed to receive interest in excess of the Maximum Legal Rate, any such excess shall be deemed to have been applied toward payment of the principal of any and all then-outstanding indebtedness of Borrower to Lender.

7. **No Waiver.** No previous waiver and no failure or delay by Lender in acting with respect to the terms of this Note shall constitute a waiver of any breach, default, or failure of condition under this Note. A waiver of any term of this Note must be made in writing and shall be limited to the express written terms of such waiver. In the event of any inconsistencies

between the terms of this Note and the terms of any other document related to the Loan, the terms of this Note shall prevail.

8. **Time is of the Essence.** Time is of the essence with respect to every provision hereof.

9. **Headings.** Headings at the beginning of each numbered paragraph of this Note are intended solely for convenience and are not to be deemed or construed to be part of this Note.

10. **Amendments; Integration.** THE PROVISIONS OF THIS NOTE MAY BE AMENDED OR REVISED ONLY BY AN INSTRUMENT IN WRITING SIGNED BY BORROWER AND LENDER. THIS NOTE EMBODY THE FINAL, ENTIRE AGREEMENT OF BORROWER AND LENDER WITH REGARD TO THE LOAN AND SUPERSEDE ANY AND ALL PRIOR COMMITMENTS, AGREEMENTS, REPRESENTATIONS AND UNDERSTANDINGS, WHETHER WRITTEN OR ORAL, RELATING TO THE LOAN AND MAY NOT BE CONTRADICTED OR VARIED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL OR WRITTEN AGREEMENTS OR DISCUSSIONS OF BORROWER AND LENDER EXCEPT AS SET FORTH IN A WRITING SIGNED BY BOTH BORROWER AND LENDER.

11. **No Protest.** Borrower waives protest, diligence, presentment, demand for payment, notice of default or nonpayment, notice of dishonor and all other demands and notices in connection with the delivery, acceptance, performance and enforcement of this Note, and to the fullest extent permitted by law, all rights to assert any statute of limitations to an action hereunder.

12. **Governing Law.** This Note shall be governed by and construed in accordance with the laws of the State of California without reference to conflicts of law principles in the State of Texas.

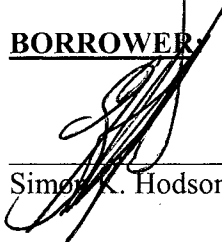
13. **Disputes.** The parties agree to submit to personal jurisdiction of the courts in the State of California for the purpose of resolving any disputes or controversies under this Note.

[SIGNATURE PAGE FOLLOWS]



IN WITNESS WHEREOF, Borrower has duly executed this Promissory Note as of the date first set forth above.

BORROWER:



Simon K. Hodson

SCHEDULE A

AMOUNTS AND DATES OF LOAN PROCEEDS TO BE ADVANCED TO BORROWER

<u>Date</u>	<u>Amount</u>
March 30, 2012	\$1,000,000
June 1, 2012	\$1,000,000
September 1, 2012	\$1,000,000
December 1, 2012	\$1,000,000
February 1, 2013	\$1,000,000

All funds should be wired to the following account:

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Beneficiary:

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Schedule B

<u>Entity Name</u>	<u>Entity Valuation</u>
Quantum Nano Impact, LLC	\$158,000,000
Microstructurally Engineered Cement, LLC	\$200,000,000
StarStone Pacific, LC	\$150,000,000
Sino Quantum Petroleum Impact Group, LC	\$210,000,000



Exhibit B

SCHEDULE A

AMOUNTS AND DATES OF LOAN ADVANCED TO BORROWER

<u>Date</u>	<u>Amount</u>
April 4, 2012	\$1,000,000.00
June 29, 2012	\$ 543,574.35
January 3, 2013	\$ 144,592.52
February 22, 2013	\$ 145,345.49
December 17, 2013	\$ 36,724.91
February 10, 2014	\$ 79,835.26
September 5, 2014	\$ 84,849.44
September 11, 2014	\$ 84,849.44
October 22, 2014	\$ 250,000.00
November 20, 2014	\$ 100,000.00
December 19, 2014	\$ 212,123.61
March 31, 2015	\$ 127,273.92
June 11, 2015	\$ 127,273.92
August 19, 2015	\$ 430,923.65 (Accrued Interest)
Total loaned as of 8.19.15	\$3,367,366.51 (Including accrued Interest)

All funds should be wired to the following account:

Beneficiary:

Schedule

_____ / _____

Exhibit C

AMENDED AND RESTATED PROMISSORY NOTE

\$4,669,305

February 1, 2021

FOR VALUE RECEIVED, Simon K. Hodson (“Borrower”), hereby unconditionally promises to pay, as provided herein, to the order of Shannon P. Sorensen 2011 Irrevocable Trust (“Lender”), in lawful money of the United States of America in immediately available funds, the principal sum of FOUR MILLION SIX HUNDRED SIXTY NINE THOUSAND THREE HUNDRED AND FIVE DOLLARS (\$4,669,305), together with all accrued but unpaid interest on such principal sum (the “Principal Sum”), calculated from the date hereof as provided below, until paid in full. This Promissory Note (the “Note”) hereby amends and restates that certain Promissory Note executed by Borrower in favor of Lender in the face amount of \$5,000,000 and dated March 28, 2012 (the “Original Note”). Some of the advances intended to be made under the Original Note had not been advanced and therefor the Principal Sum set forth herein evidences the total amounts actually advanced under the Original Note and all accrued interest thereon calculated through January 31, 2021. Since this Note completely restates the Original Note, Lender shall have no obligation to advance any further installments of principal as set forth in the Original Note and Lender has no further right to exercise the option set forth in Section 4 of the Original Note.

This Note is made upon and is subject to the following terms and conditions:

1. Definitions. As used in this Note, capitalized terms not otherwise defined shall have the following meanings:

“Applicable Interest Rate” shall mean six percent (6%) per annum, compounded annually.

“Business Day” shall mean a day of the week (but not a Saturday, Sunday or holiday) on which the offices of commercial lenders in the State of California are open to the public for carrying on substantially all of such lenders’ business functions. Unless specifically referenced in this Note as a Business Day, all references to “days” shall be to calendar days.

“Event of Default” shall mean (i) an Insolvency Event, (ii) default in the payment of any principal or interest or other amounts payable to Lender on this Note within ten (10) days of the date such payment is due, (iii) any material breach of this Note (other than by reason of a nonpayment of principal or interest) by Borrower, which breach is not cured within thirty (30) days of the date Borrower is notified in writing of the breach, (iv) any material misrepresentation in connection with this Note, or (v) any judgment or order for the payment of money rendered against Borrower.

“Insolvency Event” means (i) any insolvency or bankruptcy case or proceeding (including any case under the United States Bankruptcy Code), or any receivership, liquidation, reorganization or other similar case or proceeding, relative to Borrower or his respective assets, or (ii) any assignment for the benefit of creditors or any other marshaling of assets and liabilities of Borrower; provided that in the case of an involuntary proceeding against Borrower, an Insolvency Event shall not be deemed to have occurred until thirty (30) days after any such filing, provided that Borrower is at all times diligently attempting to have such proceedings discharged, stayed or dismissed.

“Loan” shall mean the indebtedness of Borrower evidenced by this Note.

“Maturity Date” shall mean November 24, 2021.

“Maximum Legal Rate” shall mean the maximum nonusurious interest rate, if any, that at any time or from time to time may be contracted for, taken, reserved, charged or received on the indebtedness evidenced by the Note, under the laws of the State of California.

2. Borrower’s Representations and Warranties. Borrower represents and warrants to Lender that it has the power and authority to enter into this Note, that no consent of any other person or legal entity is required to execute this Note and that this Note is enforceable by Lender in accordance with its terms.

3. Payments.

3.1 General. All payments to be made under this Note of any nature shall be made to the Lender at the office designated by Lender in writing to Borrower. All payments (including permitted prepayments) on account of principal, interest and fees, if any, shall be made to the Lender without set-off or counterclaim. If any payment hereunder becomes due and payable on a day other than a Business Day, the due date thereof shall be extended to the next succeeding Business Day. All amounts hereunder shall be paid in lawful money of the United States and in cash or by cashier's check or by wire transfer in immediately available funds. All payments shall be deemed made when received by Lender except that any payments made by wire transfer shall be deemed made when Borrower irrevocably executes orders authorizing his bank to transfer immediately available funds to Lender's account pursuant to wire instructions separately communicated in writing by Lender to Borrower.

3.2 Payment of Principal and Interest. All payments of principal and accrued interest shall be due and payable on the Maturity Date or, if earlier, upon the occurrence of an Event of Default.

3.3 Prepayment. Borrower may prepay this Note in part or in full without the written consent of Lender.

3.4 Interest Payments. From and after the date of this Note, interest shall accrue on the outstanding Principal Sum of this Note at the Applicable Interest Rate. Interest on the Principal Sum of this Note shall be calculated on the basis of a three hundred sixty (360) day year composed of twelve (12) months of thirty (30) days each, except that interest accrued for a period less than a full month shall be calculated based on the actual number of days elapsed.

3.5 Application of Payments. Payments under this Note shall be applied first to costs and charges due in connection with this Note pursuant to Section 5, and then to the payment of interest and finally to the payment of principal.

4. Acceleration. In addition to any other rights and remedies Lender may have as provided by law or pursuant to this Note, if any Event of Default shall occur:

(a) if such Event of Default is triggered by an Insolvency Event, the unpaid Principal Sum hereof (together with accrued interest thereon) and all other amounts payable hereunder shall automatically become immediately due and payable; and

(b) if such event is any other Event of Default, Lender may, at its election, declare the unpaid Principal Sum hereof (together with accrued interest thereon) and all other amounts payable hereunder to be due and payable forthwith, whereupon the same shall immediately become due and payable.

(c) Lender will have all remedies available to it both in law and equity in enforcing this Note including, without limitation, commencing suit for collection, specifically enforcing the terms of the Note, foreclosing on any personal property, and pursuing any and all other remedies to enforce the terms of this Note.

(d) all outstanding principal and interest under this Note will bear interest at the default rate per annum equal to the Maximum Legal Rate, notwithstanding anything to the contrary in this Note.

5. Attorneys' Fees. If any attorney is engaged by Lender to enforce or defend any provision of this Note, or as a consequence of an Event of Default, with or without the filing of any legal action or proceeding, Borrower shall pay to Lender immediately upon demand all reasonable attorneys' fees and all reasonable out of pocket costs incurred by Lender in connection therewith, together with interest thereon from the date of such demand until paid at the Applicable Rate of Interest as if such unpaid attorneys' fees and costs had been added to the principal balance of this Note.

6. Interest Rate Limitation. Notwithstanding anything to the contrary, (a) all agreements and communications between Borrower and Lender are hereby and shall automatically be limited so that, after taking into account all amounts deemed interest, the interest contracted for, charged or received by Lender shall never exceed the Maximum Legal Rate, (b) in calculating whether any interest exceeds the Maximum Legal Rate, all such interest shall be amortized, prorated, allocated and spread over the full amount and term of all principal indebtedness of Borrower to Lender and (c) if through any contingency or event Lender receive or are deemed to receive interest in excess of the Maximum Legal Rate, any such excess shall be deemed to have been applied toward payment of the principal of any and all then-outstanding indebtedness of Borrower to Lender.

7. No Waiver. No previous waiver and no failure or delay by Lender in acting with respect to the terms of this Note shall constitute a waiver of any breach, default, or failure of condition under this Note. A waiver of any term of this Note must be made in writing and shall be limited to the express written terms of such waiver. In the event of any inconsistencies between the terms of this Note and the terms of any other document related to the Loan, the terms of this Note shall prevail. No notice to or demand on Borrower in any case will entitle Borrower to any other or further notice or demand in similar or other circumstances.

8. Time is of the Essence. Time is of the essence with respect to every provision hereof.

9. Indemnification. Borrower will indemnify and save Lender harmless against any and all liability with respect to, or resulting from, any delay in discharging any obligation of Borrower under, or in connection with, this Note, or from the use of the proceeds of the Original Note.

10. Headings. Headings at the beginning of each numbered paragraph of this Note are intended solely for convenience and are not to be deemed or construed to be part of this Note.

11. Amendments; Integration. THE PROVISIONS OF THIS NOTE MAY BE AMENDED OR REVISED ONLY BY AN INSTRUMENT IN WRITING SIGNED BY BORROWER AND LENDER. THIS NOTE EMBODIES THE FINAL, ENTIRE AGREEMENT OF BORROWER AND LENDER WITH REGARD TO THE LOAN AND SUPERSEDES ANY AND ALL PRIOR COMMITMENTS, AGREEMENTS, REPRESENTATIONS AND UNDERSTANDINGS, WHETHER WRITTEN OR ORAL, RELATING TO THE LOAN, INCLUDING THE ORIGINAL NOTE, AND MAY NOT BE CONTRADICTED OR VARIED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL OR WRITTEN AGREEMENTS OR DISCUSSIONS OF BORROWER AND LENDER EXCEPT AS SET FORTH IN A WRITING SIGNED BY BOTH BORROWER AND LENDER.

12. No Protest. Borrower waives protest, diligence, presentment, demand for payment, notice of default or nonpayment, notice of dishonor and all other demands and notices in connection with the delivery, acceptance, performance and enforcement of this Note, and to the fullest extent permitted by law, all rights to assert any statute of limitations to an action hereunder.

13. Governing Law. This Note shall be governed by and construed in accordance with the laws of the State of California without reference to conflicts of law principles in any other state.

14. Disputes. The parties agree to submit to personal jurisdiction of the courts in the State of California for the purpose of resolving any disputes or controversies under this Note.

15. Notices. All notices, consents, requests, demands, and other communications under this Note will be in writing and will be deemed to have been duly given to a party hereto if mailed by first class mail, overnight mail, sent by facsimile or email, or hand delivered to the other party at the address provided by that party, or at such other address as any party may have designated in writing to the other party.

16. Survival of Representations and Warranties. All agreements, representations and warranties made by Borrower here or in any other document in connection with this Note will survive the delivery of this Note and continue in full force and effect so long as any amount is due under this Note.

17. Void Covenants. Borrower agrees that in the event any provision of this Note is declared void, invalid, or held for any reason to be unenforceable by a non-appealable judgment or order of a court of competent jurisdiction, the remainder of this Note will remain in full force and effect.

IN WITNESS WHEREOF, Borrower and Lender have duly executed this Amended and Restated Promissory Note as of the date first set forth above.

BORROWER:



Simon K. Hodson

LENDER:

DUNHAM TRUST COMPANY, TRUSTEE FOR
SHANNON P. SORENSEN 2011 IRREVOCABLE
TRUST

By:

