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4 **IN THE UNITED STATES DISTRICT COURT**
5 **DISTRICT OF ARIZONA**

<p>7 UNITED STATES OF AMERICA,</p> <p>8 Plaintiffs,</p> <p>9 vs.</p> <p>10 JOSEPH J. LIPARI, EILEEN H. LIPARI and EXETER TRINITY PROPERTIES, L.L.C.,</p> <p>11 Defendants.</p>	<p>No. 3:10-CV-08142 JWS</p> <p>REPLY ON EXETER’S MOTION FOR LEAVE TO FILE A SUPPLEMENTAL STATEMENT OF FACTS</p> <p>Honorable John W. Sedwick</p>
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13 In its Opposition the Plaintiff did not comment on the fact that Exeter Trinity
14 Properties, L.L.C. [“Exeter”] did not present any new facts in its proposed Supplemental
15 Statement of Facts. All facts referenced were drawn from the existing record, primarily from
16 the depositions of the Liparis. It is respectfully submitted that the purposes of Local Rules
17 56.1(a) and (b) are not thwarted, nor is the Plaintiff prejudiced, by references to the existing
18 record.

19 Evidently Exeter did not follow the best procedure, and the undersigned admits
20 to only modest federal experience. However, it seemed that an organized presentation of facts
21 already in the record would be far more convenient for the Court than a string of footnotes or
22 interdeliniations, requiring the Court to search out the evidence. That was the sole reason for
23 identifying facts in this manner.

24 The Plaintiff has not argued that it is improper to reference facts in the record.
25 Exeter respectfully submits that the Rules are intended to prevent the introduction of new
26 evidence in a reply on a motion for summary judgment, but that it is proper in a reply to

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reference any portion of the record. Any other interpretation would force the Court to rely on an incomplete record.

The Plaintiff criticized Exeter for not anticipating all positions the Plaintiff would take in its Objection to summary judgment. It is respectfully submitted that parties do their best to anticipate the arguments and facts which will be relied upon by the other side, but doing so is really guesswork. A party should be permitted to reference the record to rebut arguments and/or facts presented by other parties.

Exeter’s proposed Order would permit the Plaintiff to presents facts in rebuttal, presumably facts from the record. The reason is to avoid the possibility that the Plaintiff would feel prejudiced by Exeter’s Supplemental Statement. However, Exeter does not believe there is any prejudice, because the Court was referenced only to the existing record.

For the foregoing reasons, it is requested that the Court grant leave to file the Supplemental Statement of Facts.

Dated: February 23, 2012.

RESPECTFULLY SUBMITTED,

/s/ John Friedeman

John Friedeman
5103 E. Thomas Road
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Attorney for Exeter Trinity Properties, LLC

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this February 23, 2012, I electronically filed the foregoing with the Clerk of Court and served the following attorney of record using the CM/ECF system:

Charles M. Duffy
P.O. Box 683
Ben Franklin Station
Washington, D.C. 20044-0683

I further certify that on the same day I mailed by U.S. Postal Service the foregoing to the following party who is not represented by counsel.

Eileen Lipari
156 Johnson Hill Drive
Waynesville, NC 28786
Defendant, pro per

/s/ John Friedeman

John Friedeman

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