



The Industrial Development Authority of the City of Phoenix, Arizona
The Industrial Development Authority of the County of Maricopa
HOME IN FIVE Advantage Down Payment Assistance Program
Second Promissory Note (Amortizing)

Second Loan Date:		Second Loan Number:	
Second Loan Amount (\$):			
Second Loan Maturity Date:			
Borrowers:	<hr/> <hr/> <hr/> <hr/>		
Property Address:	<hr/> City: _____ County: Maricopa State: Arizona, Zip Code: _____		
Second Loan Lender	The Industrial Development Authority of the City of Phoenix, Arizona The Industrial Development Authority of the County of Maricopa		
Second Loan Servicer:	Lakeview Loan Servicing, LLC		
Monthly Payment:			
Second Loan Interest Rate:	6%		

1. AMOUNT. THE INDIVIDUAL(S) LISTED ABOVE AND UNDERSIGNED BORROWERS promise to pay to the order of The Industrial Development Authority of the City of Phoenix, Arizona and The Industrial Development Authority of the County of Maricopa, each a political subdivision existing under the laws of the State of Arizona or their assignee (the “Second Loan Lender”), that portion of the Second Loan Amount that is due and payable at the times set forth in this Second Promissory Note (this “Second Note”). This Second Note is originated on this date by the Second Loan Lender under the **Home In Five Advantage Down Payment Assistance Program** (the “Program”) to provide a second mortgage loan (the “Second Loan”) to finance all or a portion of the down payment and closing costs associated with the first mortgage loan (the “First Loan”) towards the purchase of the residence located at the Property Address and more fully described in the Second Deed of Trust securing the Second Loan (the “Property”).

2. BORROWERS’ PROMISE TO PAY. In return for the Second Loan Amount that the Borrowers have received from the Second Loan Lender, the Borrowers promise to pay the Second Loan Amount, plus accrued interest and any outstanding Late Charge as defined in Section 6 of this Note, if any, to the order of the Second Loan Lender. The Borrowers will make all payments under this Second

Note in U.S. currency in the form of cash, check, money order or other payment method accepted by the Second Loan Lender.

The Borrowers understand that the Second Loan Lender may transfer this Second Note. The Second Loan Lender or anyone who takes this Second Note by transfer and who is entitled to receive payments under this Second Note is called the “Note Holder”.

3. **INTEREST RATE.** Interest will be charged on the unpaid Second Loan Amount until the Second Loan Amount has been paid in full. The Borrowers will pay interest at a yearly rate equal to the Second Loan Interest Rate stated above.

4. **NOTE PAYMENTS**

(A) **Time of Payments.** Borrowers will pay the principal and interest due by making a payment every month (the “Monthly Payment”).

The Borrowers will make the Monthly Payment on the first day of each month beginning on _____. The Borrowers will make such payments every month until the Borrowers has repaid the Second Loan Amount plus interest in full and any other charges described below that the Borrowers(s) owes under this Second Note. Each Monthly Payment will be applied as of its scheduled due date and will be applied to interest and any outstanding Late Charge as defined in Section 6 of this Note first before the Second Loan Amount. If, on the Second Loan Maturity Date, the Borrowers still owe amounts under this Second Note, the Borrowers(s) will pay those amounts on that date.

(B) **Place of Monthly Payments.** All Monthly Payments, if any, shall be made by Borrowers payable to the Lender and mailed or delivered to the Second Loan Servicer on behalf of the Second Loan Lender or at such other place or places as the Second Loan Servicer may designate in writing from time to time.

(C) **Amount of Monthly Payments.** The Borrowers’ Monthly Payment will be in the amount of _____, with no adjustment for any Prepayment as permitted by Section 5 of this Second Note.

(D) **Conditions for Second Loan Becoming Due Before the Second Loan Maturity Date.** The Second Loan will become due before the Second Loan Maturity Date upon the occurrence of any one of the following dates:

- (i) The date on which the Property (or any interest therein) is sold or otherwise transferred;
- (ii) The date on which the First Loan is refinanced or paid in full;
- (iii) The date on which the First Loan becomes due and payable for any reason; or
- (iv) The date the Borrowers cease to use the Property as a primary residence.

5. **BORROWERS’ RIGHT TO PREPAY.**

The Borrowers have the right to make payments towards the Second Loan Amount before they are due at any time. A payment of Second Loan principal before it is due is known as a “Prepayment”. When the Borrowers make a Prepayment, the Borrowers will notify the Note Holder in writing of such Prepayment. The Borrowers may not designate a payment as a

Prepayment if the Borrowers have not made all the Monthly Payments then due under this Second Note.

The Borrowers may make a full Prepayment or partial Prepayments without paying any Prepayment charge or penalty. The Note Holder will use the Borrowers' Prepayments to reduce the Second Loan Amount that the Borrowers owe under this Second Note. However, the Note Holder may apply the Borrowers' Prepayment to accrued and unpaid interest and to any Late Charge as defined in Section 6 of this Note, if any, on the Prepayment amount, before applying the Prepayment to reduce the unpaid Second Loan Amount under this Second Note. If the Borrowers make a partial Prepayment, there will be no changes in the due date or in the amount of any Monthly Payments unless the Note Holder agrees in writing to those changes.

6. BORROWERS' FAILURE TO PAY AS REQUIRED

(A) Late Charges for Overdue Payments. If the Note Holder has not received the full amount of the Monthly Payment by the end of fifteen (15) calendar days after the date is due, the Borrowers will pay a late charge to the Note Holder in an amount equal to four percent (4%) of any overdue Monthly Payment (each a "Late Charge"). The Borrowers will pay this Late Charge promptly but only once on each late payment.

(B) Default. If the Borrowers do not pay the full amount of each Monthly Payment on the date it is due, such nonpayment shall constitute an Event of Default as described in Section 10 of this Second Note.

(C) Notice of Default. If the Borrowers are in default, the Note Holder may send the Borrowers a written notice stating that if the Borrowers do not pay the overdue amount by a certain date, the Note Holder may require the Borrowers to pay immediately the full amount of the unpaid Second Loan Amount, all interest due on that amount, and other charges due under this Note ("Default Balance"). That date shall be at least 30 days after the date on which the notice is mailed to the Borrowers or delivered by other means.

(D) No Waiver by Note Holder. If the Borrowers are in default and the Note Holder does not require the Borrowers to pay the Default Balance immediately as described above, the Note Holder will still have the right to do so if the Borrowers contribute to be in default or if the Borrowers are in default at a later date.

(E) Payment of Note Holder's Costs and Expenses. If the Note Holder has required the Borrowers to pay the Default Balance immediately as described above, the Note Holder will have the right to be paid back by the Borrowers for all of its costs and expenses in enforcing this Second Note to the extent not prohibited by applicable law. Those expenses include, for example, but are not limited to reasonable attorneys' fees and costs.

7. POLICY AGAINST TRANSFER.

This Second Note is intended to be solely for the benefit of the Borrowers. The Borrowers also understand that this Second Note is not intended to be of a direct benefit to any transferee as the result of any subsequent transfer. No sale of any of the real or personal property securing this Second Note will be made that will allow any transferee to take advantage of the favorable terms of this Second Note.

8. OBLIGATIONS OF PERSONS UNDER THIS SECOND NOTE

If more than one person signs this Second Note, each person is fully and personally obligated to keep all of the promises made in this Second Note, including the promise to pay the Second Loan Amount owed and all interest thereon. Any person who is a guarantor, surety or endorser of this Second Note also agrees to undertake and perform such obligations. Any person who takes over these obligations, including the obligations of a guarantor, surety or endorser of this Second Note, is also obligated to keep all promises made under this Second Note. The Note Holder may enforce its rights under this Second Note against each person individually or against all of the Borrowers together. This means that any Borrower may be required to pay all of the amounts owed under this Second Note.

9. ASSUMPTION OF SECOND LOAN; SUBORDINATION OF SECOND DEED OF TRUST.

The Second Loan is not assumable. The Lender will not subordinate the Second Deed of Trust.

10. EVENTS OF DEFAULT: REMEDIES. Events of Default. Each of the following occurrences shall be an “Event of Default” under this Second Note:

(A) Borrowers fail to timely pay any Monthly Payment when due; or

(B) Borrowers default in the performance or observance of any of its covenants or agreements contained in this Second Note, the Second Deed of Trust or any other deed of trust, mortgage or security instrument that secures this Second Note and the default continues for thirty (30) days after Borrowers are provided notice thereof; or

(C) Any representation or warranty made by Borrowers to the Second Loan Lender in this Second Note, the Second Deed of Trust or any other deed of trust, mortgage or security instrument that secures this Second Note delivered by Borrowers to the Lender that proves to be incorrect or misleading in any material respect; or

(D) Borrowers default under the First Loan and fails to cure such default within any applicable cure period set forth in the loan documents relating to such First Loan; or

(E) Borrowers (i) apply for or consents to the appointment of, or the taking of possession by, a receiver, custodian, trustee, or liquidator of itself or of all of its property, (ii) admit in writing their inability, or is generally unable, to pay its debts as they become due, (iii) make a general assignment for the benefit of its creditors, (iv) commence a voluntary case under the United States Bankruptcy Code (as now or hereafter in effect), (v) are adjudicated a bankrupt or insolvent, (vi) file a petition seeking to take advantage of any other law relating to insolvency, reorganization, winding-up, or composition or adjustment of debts, or (vii) fail to controvert in a timely and appropriate manner, or acquiesce in writing to, any petition filed against it in an involuntary case under the United States Bankruptcy Code; or

(F) A proceeding or case is commenced, without the application or consent of Borrowers seeking (i) the liquidation, dissolution or winding-up, or the composition or readjustment of debts, of Borrowers, (ii) the appointment of a trustee, receiver, custodian, liquidator, or the like for the property or of all or any substantial part of Borrowers’ assets, or (iii) similar relief in respect to Borrowers under any law relating to insolvency, reorganization, winding-up, or composition or adjustment of debts, and such proceeding or case continues

undismissed; or an order, judgment, or decree approving or ordering any of the foregoing is entered and continues unstayed and in effect for a period of sixty (60) consecutive days, or an order for relief against Borrowers is entered in an involuntary case under the United States Bankruptcy Code (as now or hereafter in effect).

Remedies upon an Event of Default. Whenever any Event of Default shall have occurred and be continuing under this Second Note, the Lender may, at its election, exercise one or more of the following remedies:

(A) Declare the outstanding portion of this Second Note and other charges payable by Borrowers pursuant to the Second Deed of Trust to be immediately due and payable in full.

(B) Exercise any and all remedies under this Second Note, the Second Deed of Trust or any other deed of trust, mortgage or security instrument that secures this Second Note.

(C) Exercise any and all other remedies available at law or in equity.

The Borrowers hereby promise to pay all costs and expenses (including but not limited to attorneys' fees) of collection incurred in connection with any default by the Borrowers hereunder.

11. **INTEREST AFTER JUDGMENT.** If this Second Note is reduced to judgment, any judgment or decree will bear interest on the unpaid balance at the rate that the law permits for interest on judgments.

12. **REQUIRED HUD PROVISIONS.** The restrictions contained in this Second Note shall automatically terminate if title to the Property is transferred by foreclosure or in deed-in-lieu-of foreclosure, or if the Second Deed of Trust is assigned to the Secretary of the United States Department of Housing and Urban Development.

13. **REMEDIES CUMULATIVE.** The rights or remedies of Lender as provided in this Second Note and the Second Deed of Trust, or otherwise available at law or in equity, shall be cumulative and concurrent, and may be pursued singularly, successively, or together against Borrowers and all sureties, guarantors, and endorsers of this Second Note, or any of them, and any other funds, property, or security held by Lender for the payment hereof at the sole, absolute, and uncontrolled discretion of the Lender. The failure to exercise any such right or remedy shall in no event be construed as a waiver or release of said rights or remedies or of the rights to exercise them at any later time.

14. **CONSENT AND WAIVER OF DEFENSE.** To the maximum extent permitted by law, Borrowers and all sureties, guarantors, endorsers, and accommodation parties (each a "Surety") of this Second Note each: (i) agree that the liability for payment under this Second Note is joint and several; (ii) waive all formalities in connection with collection on this Second Note, to the fullest extent permitted by law, including presentment, protest and demand, notice of protest, demand and dishonor, and nonpayment of this Second Note; all applicable appraisal, valuation exemption rights, notices of whatsoever kind or nature, including, but not limited to, notice of intention to accelerate, notice of acceleration, notice of dishonor, or other notice which the Lender might otherwise be obligated to provide Borrowers, specifically excepting any such notice requirements as are expressly set forth in this Second Note or in the Second Deed of Trust; and (iii) waive all homestead and exemption rights, if applicable, affecting the full collection of this Second Note.

15. **FEES AND EXPENSES.** Borrowers and each Surety promise to pay all reasonable and customary costs of collection, including trustee's fees, title fees, reasonable attorneys' fees (whether suit be instituted or not), and all reasonable costs of demand, collection, or suit, in case the unpaid principal sum of this Second Note, or any payment of interest or principal and interest thereon or premium, is not paid when due, or in case it becomes necessary to protect the security for the indebtedness evidenced hereby, or for the enforcement by the Lender, in which the Lender shall be successful, or in the event Lender is made party to any litigation because of the existence of the indebtedness evidenced by this Second Note, or because of the existence of the Second Deed of Trust, whether suit be brought or not, and whether through courts of original jurisdiction, as well as courts of appellate jurisdiction, or through a bankruptcy court or other legal proceedings.

16. **AMENDMENT.** This Second Note may not be amended, modified, or changed, nor shall any waiver of any provision hereof be effective, except only by an instrument in writing and signed by the party against whom enforcement of any waiver, amendment, change, modification, or discharge is sought.

17. **INTEREST NOT TO EXCEED LEGAL MAXIMUM; ADDITIONAL SUMS.** Borrowers agree to pay, and has contracted with Lender to pay, an effective rate of interest that, together with the interest rate described in this Second Note, results from the inclusion of all charges, late fees, and other amounts payable by Borrowers that may constitute interest for the purposes of any applicable usury laws. Nothing in this Second Note will be construed as a violation of any usury laws that may be enacted from time to time in the State of Arizona. If Lender receives as interest an amount which would exceed any usury limits, all amounts that would be excessive interest will be applied as a reduction in the unpaid principal balance and, if a surplus still remains, the surplus shall be remitted to Borrowers, and Borrowers hereby agree to accept such remittance. All fees, charges, goods, things in action, or any other sums or things of value (collectively, the "**Additional Sums**") paid by Borrowers to Lender, whether pursuant to this Second Note or otherwise howsoever with respect to this Second Note or indebtedness evidenced hereby, or with respect to the Second Deed of Trust, which, under the law of the State of Arizona may be deemed to be interest with respect to such Second Note or indebtedness, shall, for the purpose of any laws of the State of Arizona which may limit the maximum rate of interest to be charged with respect to such Second Note or indebtedness, be payable by Borrowers as, and shall be deemed to be, additional interest, and for such purposes only, the agreed upon rate of interest described above shall be deemed to be increased by the Additional Sums.

18. **SUCCESSORS AND ASSIGNS.** Whenever used herein, the words "Borrowers" and "Second Loan Lender" shall be deemed to include their respective heirs, personal representatives, successors, and assigns.

19. **CHOICE OF LAW.** This Second Note shall be governed by the laws of the State of Arizona. Any action brought to enforce, construe, or interpret any provision of this Second Note must be commenced or maintained in the Superior Court of the State of Arizona, Maricopa County or, if the Superior Court lacks or declines jurisdiction, in the United States District Court for the District of Arizona. All parties irrevocably consent to this jurisdiction and venue.

20. **NOTICE.** All notices required hereunder shall be in writing and shall be deemed given (a) when received by certified or registered mail, first-class, return receipt requested, postage prepaid; or (b) when received by hand, messenger or overnight courier service, addressed to said party or parties at the addresses as Borrowers or Lender may designate; provided, the notices to Borrowers may be sent to the Property.

21. **PREFERENTIAL PAYMENT.** Borrowers agree that, to the extent Borrowers or any sureties, guarantors, endorsers, and/or accommodation parties makes any payment to Lender in connection with the Second Loan and further to the extent that all or any part of the payment is subsequently invalidated, declared to be fraudulent or preferential, set aside, or required to be repaid by the Lender or paid over to a trustee, receiver, or any other entity, whether under any bankruptcy act or otherwise (any payment of this type being referred to as a “**Preferential Payment**”), then the Second Loan will continue or will be reinstated, as the case may be, and, to the extent of the payment or repayment by the Second Lender, the Second Loan or part of this Second Note intended to be satisfied by the Preferential Payment will be revived and continued in full force and effect as if the Preferential Payment had not been made.

22. **HEADINGS.** The paragraph headings used herein are for convenience only and are not to be used to interpret or construe this Second Note.

23. **TIME IS OF THE ESSENCE.** Time is of the strictest essence in the payment and performance by Borrowers under this Second Note and each and every other provision hereof.

24. **SEVERABILITY.** In case any one or more of the provisions contained in this Second Note shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof.

25. **WAIVER OF JURY TRIAL.** TO THE EXTENT PERMITTED BY LAW, BORROWERS AND LENDER EACH HEREBY WAIVE ANY AND ALL RIGHTS IT MAY HAVE TO A JURY TRIAL IN CONNECTION WITH ANY LITIGATION COMMENCED WITH RESPECT TO RIGHTS AND OBLIGATIONS OF THE PARTIES HERETO, WHETHER SOUNDING IN TORT, CONTRACT OR OTHERWISE.

26. **REPLACEMENT SECOND NOTE.** In the event of the loss, theft, destruction or mutilation of this Second Note, Borrowers will execute and deliver to Second Loan Lender in lieu thereof, a replacement note dated as of the date of this Second Note, identical in form and substance to this Second Note and upon such execution and delivery all references to this Second Note shall be deemed to refer to such replacement note.

In construing this Second Note, it is understood that the references to the Borrowers include singular or plural, as the case may be, each of whom is jointly and severally responsible hereunder.

BORROWERS: _____ **DATE:** _____

BORROWERS: _____ **DATE:** _____

BORROWERS: _____ **DATE:** _____

BORROWERS: _____ **DATE:** _____



THE INDUSTRIAL DEVELOPMENT AUTHORITY OF THE CITY OF PHOENIX, ARIZONA
THE INDUSTRIAL DEVELOPMENT AUTHORITY OF THE COUNTY OF MARICOPA
HOME IN FIVESM ADVANTAGE DOWN PAYMENT ASSISTANCE PROGRAM
Second Deed of Trust, Security Agreement, Assignment of Rents and Leases and Fixture Filings

Second Loan Date:		Second Loan Number:	
Second Loan Amount (\$):			
Second Loan Maturity Date:			
Trustor/Borrowers, Vesting as:	_____ _____ _____ _____		
Property Address:	_____ City: _____ County: Maricopa State: Arizona, Zip Code: _____		
Trustee and Trustee Address:	First American Title Insurance Company 2425 East Camelback Road, Suite 300, Phoenix, AZ 85016		
Second Loan Lenders/Beneficiaries and Addresses:	The Industrial Development Authority of the City of Phoenix, Arizona 2201 East Camelback Road, Suite 405B, Phoenix AZ 85016 The Industrial Development Authority of the County of Maricopa 8687 East Via de Ventura, Suite 306, Scottsdale, AZ 85258		
Second Loan Servicer:	Lakeview Loan Servicing, LLC		

For good and valuable consideration, the receipt and sufficiency of which are acknowledged, Trustor agrees and covenants as follows:

1. **Grant in Trust.** Trustor irrevocably grants, conveys, and transfers to Trustee, its successors and assigns, in trust, pursuant to this Second Deed of Trust, Security Agreement, Assignment of Rents and Leases, and Fixture Filing (“**Second Deed of Trust**”) and Arizona law, WITH POWER OF SALE AND RIGHT OF ENTRY AND POSSESSION, all of Trustor’s right, title, and interest in and to that real property (“**Premises**”) situated in the County listed above, State of Arizona, more particularly described on **Exhibit “A”** attached and, by this reference, incorporated in this Second Deed of Trust. The Premises are conveyed by Trustor in trust together with all present and future tenements, hereditaments, rights, rights-of-way, easements, privileges, licenses, benefits, and appurtenances that belong to the Premises or in any way pertain to the Premises (all as part of the premises conveyed), which will include, but are not limited to:

(a) All buildings, improvements, fixtures, and equipment (whether or not annexed to the Premises) now or in the future located on, used in connection with, or intended to be used in connection with the Premises including, without limiting the generality of the foregoing, all machinery, materials, appliances, and fixtures, all wall safes, boilers, furnaces, air conditioning units, coolers, cabinets, shelving, lockers, partitions, doors, sprinkling systems, irrigating systems, awnings, window shades, shutters, blinds, light fixtures, fire sprinklers, alarm systems, drapery rods, brackets, screens, floor tile, linoleum, carpets, plumbing, water systems, power systems, incinerators, communication systems, built-in furniture, and built-in bars, and all other installations and appliances on the Premises (and all

substitutions and replacements for all of the foregoing) (All of the items described in this subparagraph are declared to be part of the real property and are called collectively the “**Improvements**”);

(b) All privileges and other rights that are now or in the future may become appurtenant to the Premises including, without limitation, all of Trustor’s right, title, and interest in and to all streets, roads, easements, rights-of-way, and public places, whether opened or proposed or public or private;

(c) Subject to the terms of *Paragraph 15* of this Second Deed of Trust, all rents, issues, lease payments, incomes, profits, revenues, bonuses, rights, and benefits (collectively, the “**Rents**”) from or under any and all existing and future leases, tenancies, or other use and occupancy agreements created on all or any part of the Premises, together with the right to collect these items for the purposes and upon the terms and conditions set forth in this Second Deed of Trust;

(d) Subject to the terms of *Paragraph 16* of this Second Deed of Trust, all current and future judgments, awards of damages, and settlements made as a result of any Condemnation or made as a result of any damage (whether caused by a taking or otherwise) to the Premises or the Improvements or any part of or interest in the Premises, including any award for change of grade or width of streets;

(e) Subject to the terms of *Paragraph 6* of this Second Deed of Trust, all right, title, and interest of Trustor in and to any insurance proceeds payable to Trustor with respect to all or any portion of the Premises, including, without limitation, the Trust Property (defined below);

(f) All monetary deposits that Trustor has given to any public or private utility with respect to utility services furnished to the Premises;

(g) All present and future rights of Trustor under or with respect to any declaration of covenants, conditions, and/or restrictions imposing rights or responsibilities on the Premises or its owner, including any development rights, declarant rights, or special declarant rights of Trustor under any declaration of covenants, conditions, and/or restrictions;

2. **Warranty of Title.** All real, personal, intangible, and other property granted, conveyed, and transferred to Trustee under this Second Deed of Trust is referred to as the “**Trust Property**”. Trustor warrants that Trustor has marketable fee simple title to the Premises, subject only to those matters disclosed in a Title Report issued within six months of the date of this Second Deed of Trust and that certain first deed of trust approved by Beneficiary recorded on or about even date herewith and which first deed of trust shall be senior to this Second Deed of Trust (“**Approved Title Exceptions**”). Trustor warrants that Trustor’s title to the Trust Property is and will remain free and unencumbered, except for the Approved Title Exceptions. Trustor agrees to warrant and defend title to the Trust Property for the benefit of Beneficiary against all claims whatsoever, except the Approved Title Exceptions and those matters consented to in writing by Beneficiary. Trustor warrants that this Second Deed of Trust is and will remain a valid and enforceable second position lien on the Premises, subject only to the Approved Title Exceptions.

3. **Secured Obligations.** Trustor has executed and delivered this Second Deed of Trust for the purpose of securing (collectively, the “**Obligations**”):

(a) Payment of the indebtedness evidenced by the Second Note of even date herewith executed by Borrowers and delivered to Beneficiary (the “**Second Note**”), and any renewals, extensions, substitutions, modifications, or amendments, together with all interest, late charges, collection costs, fees, and expenses as provided in the Second Note;

(b) Payment of all amounts specified in this Second Deed of Trust that Trustor has agreed to or is required to pay; and

(c) Prompt and complete performance and observance of each and every covenant, obligation, or agreement of Trustor contained in this Second Deed of Trust or contained in any other document or instrument given by Trustor to Beneficiary (“**Additional Documents**”).

4. **Repayment of Second Note.** The indebtedness secured by this Second Deed of Trust is a conditional payment obligation and is payable pursuant to the terms set forth in the Second Note. The amount then owing under the Second Note shall become immediately due and payable: (i) upon the sale, disposition or transfer of the Property by the Borrowers, or (ii) upon the payment in full or refinancing of the First Loan, or (iii) upon an Event of Default hereunder. No waiver of this paragraph shall occur unless evidenced in writing by the Lender, in its sole discretion.

5. **Taxes.** Trustor will pay: (i) before delinquent, all taxes, general and special assessments, and improvement district assessments of every type or nature affecting the Trust Property; (ii) all rents or charges payable under any lease affecting the Trust Property; (iii) all adverse claims, liens, charges, and encumbrances which now are or in the future may be or appear to be a lien on the Trust Property; (iv) all charges for water, water delivery, gas, electricity, sewers, waste removal; and (v) all repairs.

6. **Insurance.** Trustor, at Trustor’s expense, will comply with all insurance requirements set forth in that certain first deed of trust approved by Beneficiary recorded on or about even date herewith or any other loan document executed in connection therewith.

7. **Repairs and Waste.** Trustor will keep the Trust Property in good condition and repair and will not commit or permit waste. Trustor will not remove or demolish, nor commence or continue any grading or construction of, nor alter the design or structural character of, any Improvements comprising part of the Trust Property, without the written consent of Beneficiary (whose consent will be given or withheld at Beneficiary’s sole but commercially reasonable discretion).

8. **Improvements.** Trustor will complete promptly any improvements that may be commenced in a good and workmanlike manner. Trustor, with reasonable diligence, will repair and restore any portions of the Trust Property that may be damaged or destroyed whether any insurance proceeds against the cause of the damage or destruction are collected or not. Trustor will pay when due all claims for work performed or materials furnished, or both, on or in connection with the Trust Property, and will pay, discharge, or cause to be removed, all mechanic’s, artisan’s, laborer’s, or materialmen’s charges, liens, claims of liens, or encumbrances upon the Trust Property.

9. **Defense.** Unless otherwise requested by Beneficiary in writing, Trustor will appear in and prosecute or defend any action or proceeding that may affect the priority of this Second Deed of Trust or the security of the Beneficiary or the Trust Property, and Trustor will pay all reasonable costs, expenses (including, without limitation, the cost of searching title), and attorney fees incurred in the action or proceeding. Beneficiary, at its option, may appear in and defend any action or proceeding purporting to affect the priority of this Second Deed of Trust or the Trust Property or the rights or powers of Beneficiary. Beneficiary, at its option, may pay, purchase, contest, or compromise any adverse claim, encumbrance, charge, or lien which, in the good faith judgment of Beneficiary, appears to be prior or superior to the lien of this Second Deed of Trust or which otherwise may affect this Second Deed of Trust or the Trust Property, without affecting any duty, obligation, or liability of Trustor under this Second Deed of Trust or under any other document or instrument given by Trustor to evidence or otherwise secure the obligations secured by this Second Deed of Trust, and without subjecting Beneficiary to any liability to Trustor on account of the payment, purchase, contest, or compromise. All amounts paid, suffered, or incurred by Beneficiary in exercising the authority granted in this Paragraph (including, without limitation, attorney fees in a reasonable amount) will be payments immediately repayable by Trustor pursuant to **Paragraph 12** below.

10. **Compliance.** Trustor will comply with all laws, ordinances, regulations, covenants, conditions, and restrictions affecting the Trust Property.

11. **Performance.** If Trustor fails to do so, Beneficiary, without demand or notice and as it in its sole judgment may consider necessary or advisable, and without obligation to do so, may do any or all things

required of Trustor by any of the provisions of this Second Deed of Trust and incur and pay expenses in connection with the performance. All expenses or charges incurred by Beneficiary in the performance of any matters under this *Paragraph 11* will be considered to be payments that are immediately repayable under *Paragraph 12* below.

12. **Advances or Payments.** Trustor will pay to Trustee and Beneficiary, respectively, promptly and upon demand, but in no event later than five (5) business days following written notice from Beneficiary, all sums of money that Beneficiary or Trustee may have advanced or paid pursuant to, or resulting from, any of the provisions of this Second Deed of Trust.

13. **Default.** Any of the following events will constitute an “**Event of Default**” under this Second Deed of Trust:

- (a) Failure to pay the outstanding balance of the Second Note within five (5) days of any amounts becoming due under the Second Note or this Second Deed of Trust;
- (b) Trustor defaults in the performance or observation of any covenant or agreement contained in this Second Deed of Trust and such default continues for thirty (30) days after Trustor is provided notice thereof; or
- (c) An Event of Default under the Second Note.

14. **Remedies.** Upon an Event of Default, Beneficiary may pursue any and all rights and remedies at law or at equity, including, without limitation, the right to foreclose on the Trust Property non-judicially pursuant to the power of sale or judicially as a mortgage pursuant to this Second Deed of Trust, or as otherwise provided in this Second Deed of Trust. If Beneficiary elects to cause the sale of the Trust Property, Trustee will record and give all notices of Trustee’s sale in the manner required by law, and after the lapse of time such as then may be required by law, Trustee, without further notice to Trustor, may sell the Trust Property at the time and place fixed by it in the notice of Trustee’s sale, either as a whole or in separate parcels, and in the order as Beneficiary may determine, at public auction to the highest bidder for cash in lawful money of the United States, payable at the time of sale. Trustee will deliver to the purchaser its deed conveying the Trust Property so sold, but without any covenant or warranty, express or implied. Any person or entity, including Trustor, Trustee, or Beneficiary, may purchase the Trust Property or any part at the sale. After deducting all costs, fees, and expenses of Trustee, including costs to insure or obtain evidence of title in connection with the sale, Trustee will apply the proceeds of sale to payment of: (i) all sums expended under the terms of this Second Deed of Trust which are unpaid, together with accrued interest, if any, as set forth in the Second Note (including, without limitation, all sums expended by Beneficiary pursuant to this Second Deed of Trust); (ii) all other sums by this Second Deed of Trust; and (iii) the remainder, if any, to the person or persons “legally entitled thereto”, or as provided in A.R.S. § 33-812, or any similar or successor statute. In lieu of the power of sale, this Second Deed of Trust, at the option of Beneficiary, may be foreclosed in the same manner provided by law for the foreclosure of mortgages on real property. Beneficiary also will have all other rights and remedies available to it under this Second Deed of Trust and at law or in equity, specifically including, but not limited to, those described in A.R.S. § 33-702(B) or any similar or successor statute. All rights and remedies of Beneficiary will be cumulative.

15. **Assignment of Rents.** All Rents arising out of the use or occupancy of all or any part of the Trust Property, all rights of Trustor in any leases, tenancies, or other use and occupancy agreements affecting all of any part of the Trust Property, and all rights of Trustor against any guarantors of the foregoing are assigned absolutely to Beneficiary as further security for the payment and performance of the Obligations. To enforce Beneficiary’s rights under this Second Deed of Trust, Trustor also assigns to Beneficiary all rights to exercise any landlord liens under A.R.S. § 33-361 and § 33-362 and any other remedial rights to which a landlord may be entitled under Arizona law. Upon the occurrence of an Event of Default, Trustor authorizes and directs the Tenants of the Trust Property to make, upon written notice from Beneficiary, all payments required under any leases directly to the Beneficiary as they become due. Trustor relieves all Tenants from any liability to Trustor by reason of any payments being made to Beneficiary. Beneficiary may apply all rents collected by Beneficiary in any manner Beneficiary elects, in its sole discretion. Nevertheless, until Beneficiary notifies Tenants in

writing to make such payments to Beneficiary, Trustor is granted a revocable license to collect all such Rents and/or payments. Beneficiary will be entitled to give written notification under this **Paragraph 15** only if there is an Event of Default by Trustor.

16. Condemnation.

(a) All of Trustor's right, title and interest in any and all judgments, awards of damages, and settlements made as a result of each of the following (collectively, a "**Condemnation**") are assigned to and will be paid to Beneficiary: (i) any condemnation or other proceeding for public use; (ii) any private trespass to the Trust Property; and (iii) any eminent domain proceeding. Beneficiary will have the right, but not the obligation, to participate in any such proceedings, and Trustor will not settle or otherwise resolve any such proceedings or execute or deliver any deed without the prior written consent of Beneficiary, whose consent will not be unreasonably withheld.

(b) If the Condemnation affects less than substantially all of the Trust Property and further provided that legal access to the Trust Property has not been affected or impaired ("**Partial Condemnation**"), the proceeds of any judgment, award, or settlement will be held, applied, and disbursed by Beneficiary to the restoration of the Trust Property if requested by Trustor.

(c) If a Condemnation other than a Partial Condemnation, Beneficiary will be entitled to any award, judgment, or settlement, and Trustor agrees to immediately deliver to Beneficiary all proceeds of any such award, judgment, or settlement that may be received by Trustor. Beneficiary, at its option, may apply any proceeds to the satisfaction of any amounts secured by this Second Deed of Trust. Neither the application nor the release of any proceeds will cure or waive any breach or Event of Default or notice of sale or invalidate any act done pursuant to the notice of sale.

(d) If any Condemnation involves the taking of common elements (as described in A.R.S. § 33-1202) related to all or any part of the Trust Property, the award must compensate Beneficiary for any reduction in value in the Trust Property as a result of the Condemnation of the common elements. Any award payable with respect to the foregoing will be paid to Beneficiary to the extent of its interest in the common elements and will be applied in satisfaction of the amounts secured by this Second Deed of Trust.

17. Partial Payment. Acceptance by Beneficiary of any sum in payment, or part payment, of any indebtedness secured by this Second Deed of Trust after the amount is due or after the recording of a notice of sale will not constitute a waiver of the right to require prompt payment, when due, of all other sums so secured nor will the acceptance cure or waive any remaining breach or Event of Default or invalidate any sale held pursuant to notice of sale for any such remaining breach or Event of Default, or prejudice any of the rights of Beneficiary under this Second Deed of Trust.

18. Waiver of Certain Statutes. Trustor waives the pleading of any statute of limitations as a defense to any of the Obligations to the fullest extent permissible by law. Any person or entity that has signed this Second Deed of Trust as an accommodation party or as a surety or that has subjected its property to this Second Deed of Trust to secure the debt of another expressly waives the benefits of A.R.S. § 12-1641, 12-1642, and 44-142 and Ariz. R. Civ. P., Rule 17(f). To the fullest extent permitted under the laws of the state of Arizona, Trustor hereby:

(a) waives all equitable rights of redemption other than those in A.R.S. §33-726;

(b) waives all rights of reinstatement following acceleration of the obligations secured by this Second Deed of Trust, including any which might otherwise be available under A.R.S. §33-813, it being agreed that Trustor has bargained for the notice and cure rights given to Trustor in this Second Deed of Trust and in the Second Note; that such rights provide Trustor with sufficient opportunity to prevent acceleration following a breach or default which could become an Event of Default; and that Trustor

has agreed in return to waive any further right of reinstatement following acceleration should no cure be timely made;

(c) waives all rights of redemption Trustor might otherwise have under Arizona law with respect to the Trust Property or any other collateral, whether by statute, by subrogation or otherwise, including without limitation any rights under A.R.S. §§12-1281 through 12-1283;

(d) waives and agrees not to assert any and all rights, benefits and defenses which might otherwise be available under the provisions of A.R.S. §§12-1641 through 12-1646, 44-141, 44-142 or 47- 3605, or Arizona Rules of Civil Procedure Rule 17(f);

(e) agrees to be and remain liable for the Obligations, and agrees (including as contemplated by A.R.S. §§12-1566(E) and 33-814(C) with respect to a guaranty) that this Second Deed of Trust may be enforced (and sale had hereunder or judgment given hereon) at any time and independent of any other action or judgment, all regardless of whether, or when, a trustee's or foreclosure sale of any collateral given by Trustor or any other person is held or any other nonjudicial or judicial action to realize upon collateral, or against Trustor or any other person obligated with respect to the Obligations, is commenced, maintained, concluded, continued or discontinued;

The statutes referred to above in this paragraph shall include any further statutes amending, supplementing or supplanting same. The waivers and agreements contained in this paragraph and elsewhere in this Second Deed of Trust are given by Trustor knowingly and voluntarily and upon advice of counsel.

19. **Invalidity.** If any one or more of the provisions of this Second Deed of Trust or the applicability of any such provision to a specific situation are held to be invalid or unenforceable, the provision will be modified to the minimum extent necessary to make it or its application valid and enforceable, and the validity and enforceability of all other provisions of this Second Deed of Trust and all other applications of the provisions will not be affected.

20. **Legal.** If it becomes necessary for the Beneficiary to employ legal counsel or to take legal action to collect the indebtedness, to enforce any provision, or to protect any of Beneficiary's rights under this Second Deed of Trust (including any protection of Beneficiary's rights under any proceedings under Title 11 of the United States Code), Trustor agrees to pay to Beneficiary, in addition to taxable costs of any legal proceeding or action, attorney fees in a reasonable amount and all costs of preparation and conduct of the proceedings, including costs of title searches and title policy commitments, all of which will be a lien upon the Trust Property and secured by this Second Deed of Trust.

21. **No Offset.** No offset or claim that Trustor now has or may in the future have against Beneficiary will relieve Trustor from paying installments or performing any other obligation in or secured by this Second Deed of Trust.

22. **Corrections.** Trustor will, upon request of the Trustee, promptly correct any defect or error which may be discovered in the contents of this Second Deed of Trust or in its execution or acknowledgment, and will execute, acknowledge, and deliver such further instruments and do such further acts as may be necessary or as may be reasonably requested by the Trustee or by the Beneficiary to carry out more effectively the purposes of this Second Deed of Trust and to perfect and maintain the lien and security interest created by this Second Deed of Trust.

23. **Security Interest.** With respect to any portion of the Trust Property which constitutes personal property, fixtures or other property governed by the Uniform Commercial Code adopted by the State of Arizona ("UCC"), this Second Deed of Trust shall constitute a security agreement between Trustor as the debtor and Beneficiary as the secured party, and Trustor hereby grants to Beneficiary a security interest in such portion of the Trust Property (such portion being the "**Personality**"). Cumulative of all other rights of Beneficiary hereunder, Beneficiary shall have all of the rights conferred upon secured parties by the UCC including the rights and remedies available under A.R.S. § 47-9601. Trustor hereby authorizes Beneficiary to file all financing statements that may from time to time be required by Beneficiary to establish and maintain the validity and

priority of the security interest of Beneficiary, or any modification thereof, and agrees to reimburse Beneficiary for all costs and expenses of any searches required by Beneficiary. Beneficiary may exercise any or all of the remedies of a secured party available to it under the UCC with respect to such Personality, and it is expressly agreed that if upon an Event of Default Beneficiary should proceed to dispose of such property in accordance with the provisions of the UCC, ten (10) days' written notice by Beneficiary to Trustor shall be deemed to be reasonable notice under any provision of the UCC requiring such notice; provided, however, that Beneficiary may at its option dispose of such property in accordance with Beneficiary's rights and remedies with respect to the real property pursuant to the provisions of this Second Deed of Trust, in lieu of proceeding under the UCC.

Trustor shall give advance notice in writing to Beneficiary of any proposed change in Trustor's name, identity, or business form or structure and will execute and deliver to Beneficiary, prior to or concurrently with the occurrence of any such change, all additional financing statements that Beneficiary may reasonably require to establish and maintain the validity and priority of Beneficiary's security interest with respect to any of the Trust Property described or referred to herein.

Some of the items of the Trust Property described herein are goods that are or are to become fixtures related to the Premises, and it is intended that as to those goods, this Second Deed of Trust shall be effective as a financing statement filed as a fixture filing from the date of its filing for record in the real estate records of the county in which the Trust Property is situated. Information concerning the security interest created by this instrument may be obtained from Beneficiary, as secured party, at the address of Beneficiary stated on the first page of this Second Deed of Trust. The mailing address of Trustor, as debtor, is as stated on the first page of this Second Deed of Trust.

24. Hazardous Materials.

(a) “**Hazardous Materials**” will mean: (i) any chemical, material, or substance defined or included in the definition of “hazardous substances,” “hazardous materials,” “toxic substances,” or words of similar import under any Hazardous Materials Laws; (ii) any oil, petroleum, flammable substances, explosives, asbestos; or (iii) any other chemical, material or substance which may or could pose a hazard to health or safety.

(b) To Trustor's knowledge, Trustor represents and warrants that no Hazardous Materials have been, are, or will be used, generated, stored, or disposed of on, under, or about the Trust Property; and (b) the Trust Property and all past, present, and future uses of the Trust Property were, are, and will be in compliance with all relevant local, state, and federal laws, rules, regulations, policies, ordinances, court decisions, settlement orders, and consent decrees relating to the protection of the environment on, under, or about the Trust Property (collectively, the “**Hazardous Materials Laws**”). At Trustor's expense, Trustor will comply with and will cause any tenants or occupants of the Trust Property to comply with the Hazardous Materials Laws. If any Hazardous Materials are found to exist on, under, or about the Trust Property, Trustor will at Trustor's expense take all necessary and appropriate remedial action that Beneficiary or any relevant authority will require. Trustor will immediately advise Beneficiary in writing of any governmental or regulatory communications or proposed or instituted actions with regard to Hazardous Materials and the Trust Property, and will immediately provide Beneficiary with copies of any written communications to and from the authorities. Upon any breach or Event of Default under this Second Deed of Trust, Beneficiary will have the right, at Trustor's expense, to obtain or require Trustor to obtain an environmental survey or study of the Trust Property from a qualified independent environmental engineer, all to the satisfaction of Beneficiary.

(c) Trustor agrees to indemnify, defend, and hold Beneficiary and Trustee harmless on demand for, from, and against any liability, loss, costs, damages, and expenses (including attorney fees) which Beneficiary or Trustee may sustain in any way related to any Hazardous Materials on, under, or about the Trust Property. This indemnity will survive any foreclosure, trustee's sale, or deed in lieu of the Trust Property, will benefit any foreclosure purchaser, and will not be subject to any otherwise applicable statutory or contractual anti-deficiency limitation or nonrecourse provision.

25. [Reserved].

26. **Change of Tax or Other Laws.** If, after the date of recordation of this Second Deed of Trust, the United States of America or the State of Arizona or any other governmental entity enacts a law or regulation which: (i) changes, in any material and adverse way, the taxation of this Second Deed of Trust as to Beneficiary; (ii) impose a tax, directly or indirectly, on Beneficiary or this Second Deed of Trust or any sums due and payable under either or both (except for income taxes payable by Beneficiary), Trustor shall pay to Beneficiary the tax levied or assessed.

27. **Other Encumbrances.** Trustor will pay or perform before delinquency all obligations under any prior or subordinate mortgage, deed of trust, agreement of sale, or any other lien or encumbrance other than the Approved Title Exceptions (collectively called an “**Encumbrance**”), and will not permit any consensual or non- consensual liens, mortgages, deeds of trust, agreements for sale, or security interests, other than the lien of this Second Deed of Trust and the Approved Title Exceptions, to be placed on any part of the Trust Property without the prior written consent of Beneficiary. If any Encumbrance is in default for any reason, Beneficiary may cure such default without notice, and the cost of curing such default, with interest as set forth in the Second Note, will be secured by this Second Deed of Trust. All amounts paid by Beneficiary under this *Paragraph 27* will be added to the Obligations and may be collected from Trustor upon demand at any time after the advances are made, and the holder of the Second Deed of Trust will be subrogated to the rights of any lienholder so paid. Immediately upon receiving any knowledge or notice of any default or claimed default under any Encumbrance, Trustor will give written notice to Beneficiary.

28. **Security Intended.** Notwithstanding any provision of this Second Deed of Trust to the contrary, the parties intend that this document is security for the payment and performance of the Obligations and will be a “deed of trust” as defined in A.R.S. § 33-801. If, despite that intention, a court of competent jurisdiction determines that this document does not qualify as a “trust deed” or “deed of trust” within the meaning of Chapter 6.1, Title 33, Arizona Revised Statutes, then, *ab initio*, this instrument will be deemed a realty mortgage under A.R.S. § 33-702 and will be enforceable as a realty mortgage, Trustor will be deemed a “mortgagor”, Beneficiary will be deemed a “mortgagee”, and Trustee will be disregarded and all references to the “Trustee” will be deemed to refer to the “mortgagee” to the extent not inconsistent with interpreting this instrument as though it were a realty mortgage. As a realty mortgage, Trustor, as mortgagor, will be deemed to have conveyed the Trust Property *ab initio* to the Beneficiary as mortgagee, the conveyance as a security to be void upon condition that Trustor pay and perform all Trustor’s Obligations.

29. General.

(a) Upon the written request of Beneficiary stating that all of the Obligations have been paid or performed and upon surrender of this Second Deed of Trust to Trustee for cancellation and upon payment by Trustor of its fees, Trustee will reconvey, without warranty, the estate in the Trust Property then held by Trustee. The grantee in the reconveyance may be designated and described as the “person or persons legally entitled thereto”, or by other appropriate terms. In lieu of execution of a reconveyance by Trustee, Beneficiary may execute or release or, on behalf of Trustee, execute the reconveyance, in which case legal title will be vested in the “person or persons legally entitled thereto”. Beneficiary will not be obligated to consent to or permit any partial releases of the Trust Property.

(b) This Second Deed of Trust will inure to and bind the heirs, legatees, devisees, administrators, executors, successors, and assigns of the parties. This Second Deed of Trust will be so construed that, wherever applicable, the use of the singular number will include the plural number, the use of the plural number will include the singular number and the use of the masculine gender will include the feminine gender. The term “**Beneficiary**” will mean the owner and holder of the Second Note, and will include all successors and assigns of a beneficiary to this Second Deed of Trust. Any appointment of Beneficiary as attorney-in-fact for Trustor will be with full power of substitution.

(c) Unless otherwise specifically set forth in this Second Deed of Trust, any consent, approval, or election by Beneficiary (or the establishment of any item to the satisfaction of Beneficiary)

will be deemed and construed as being given, withheld, or established at and in Beneficiary's sole and absolute discretion.

(d) Time is of the essence in the payment and performance of each and every provision of this Second Deed of Trust. No failure on the part of Beneficiary to exercise any of its rights upon any Event of Default will be construed to prejudice its rights if any other or subsequent Event of Default. No delay on the part of Beneficiary in exercising any of the rights will be construed to preclude it from their exercise at any time during the continuance of the Event of Default. Beneficiary may enforce any one or more remedies or rights under this Second Deed of Trust successively or concurrently at its option, and any such enforcement of any one or more remedies will be not deemed to be any election against or preclusion of any other rights or remedies.

(e) Unless otherwise required by applicable law, all notices required to be given under this Second Deed of Trust will be given in accordance with the terms of the Second Note.

(f) This Second Deed of Trust, the Second Note, and any documents secured by this Second Deed of Trust will be governed and construed in accordance with the laws of the State of Arizona. Trustor irrevocably submits to jurisdiction and venue in the State of Arizona for any legal action relating to this Second Deed of Trust, the Second Note, or any other agreement given in connection with the Second Note or Second Deed of Trust. Trustor waives any defense or objection to jurisdiction or venue based on the doctrine of "*forum non conveniens*", and Trustor stipulates that any state court in the State of Arizona, or if the state court lacks or declines jurisdiction, in the United States District Court for the District of Arizona, will have personal jurisdiction over Trustor for the purpose of litigating any dispute or controversy arising out of this Second Deed of Trust, the Second Note, or any other Additional Documents. Trustor agrees that if Trustor commences or maintains any action or proceeding arising out of this Second Deed of Trust, the Second Note, or the other Additional Documents in any forum other than a state or federal court in Arizona, Beneficiary will be entitled to the removal, dismissal, or stay of such action.

Executed as of the day and year first written above.

Trustor/Borrowers

Date

Trustor/Borrowers

Date

Trustor/Borrowers

Date

Trustor/Borrowers

Date

STATE OF ARIZONA)
)
COUNTY OF _____)

ss.

The foregoing instrument was acknowledged before me this _____ day of _____, 20____, by _____ who acknowledged and executed the foregoing for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public

My commission
expires:

EXHIBIT "A"
TO
SECOND DEED OF TRUST AND ASSIGNMENT OF RENTS
AND SECURITY AGREEMENT AND FIXTURE FILING

(legal description)

Insert Property Address: _____
_____, Arizona _____

[Insert Legal Description]

Parcel Identification Number: _____