

<p>DISTRICT COURT, DENVER COUNTY, STATE OF COLORADO Denver District Court 1437 Bannock St. Denver, CO 80202 720.865.8612</p>	<p>DATE FILED: July 25, 2019 12:21 PM FILING ID: 77481DCDF1332 CASE NUMBER: 2018CV33011</p> <p style="text-align: center;">▲ COURT USE ONLY ▲</p>
<p><b>Plaintiff:</b> Chris Myklebust, Securities Commissioner for the State of Colorado</p> <p>v.</p> <p><b>Defendants:</b> Gary Dragul; GDA Real Estate Services, LLC; and GDA Real Estate Management, LLC.</p>	<p>Case Number: 2018CV33011</p> <p>Division/Courtroom: 424</p>
<p style="text-align: center;"><b>RECEIVER’S REPLY IN SUPPORT OF JOINT MOTION FOR TURNOVER AND ACCOUNTING</b></p>	

Harvey Sender, the duly-appointed receiver (“Receiver”) for Gary Dragul (“Dragul”), GDA Real Estate Services, LLC (“GDARES”), GDA Real Estate Management, LLC, and related entities (collectively, “Dragul and the GDA Entities”), submits this reply in support of the Joint Motion of the Securities Commissioner and

the Receiver for an Order Requiring Dragul to Turnover and Account for Property of the Estate (“Turnover Motion,” filed June 4, 2019).

## I. Introduction

The Turnover Motion addressed several issues concerning the Receivership Estate: (1) SSC 02, LLC; (2) VRBO income Dragul concealed and failed to turnover to the Receiver; (3) Dragul’s personal vehicles; (4) Dragul’s personal property; and (5) equity in Dragul’s Personal Residence. Dragul primarily disputes the SSC 02 issues.<sup>1</sup> Dragul admits he failed to turnover VRBO income to the Receiver (but disputes the amount owed), and that various personal vehicles are property of the Estate (but are, he contends, without value).

Dragul makes only a cursory unsubstantiated argument that his personal property is not property of the Estate. He has already provided the Receiver with an inventory of that property and has agreed to allow the Receiver access to where it is presently located to confirm it. Finally, any issues concerning potential equity in his former home have been mooted by the home’s recent foreclosure.

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<sup>1</sup> See Defendant Gary Dragul’s Response to Joint Motion of the Securities Commissioner and the Receiver for an Order Requiring Dragul to Turnover and Account for Property of the Estate (“Dragul Resp.,” filed June 20, 2019).

## II. Argument

### A. SSC 02 is property of the Estate.

#### 1. SSC 02 does not own either the Newport or the Oneida property.

Contrary to information Dragul provided to the Receiver and reiterated in his Response, the only real property SSC 02 owns is a storage unit located at 7152 East Blackhawk Unit D2, Englewood, CO 80112 (the “Blackhawk Storage Unit”). The other two residential properties it claims to own – 2624 Oneida and 2432 Newport Streets in Denver – are owned by Dragul personally. *See Exhibit 9* (Oneida O&E and title documents); *Exhibit 10* (Newport O&E and title documents). Dragul attached Exhibit D to his Response contending it demonstrates SSC 02 owns the Oneida and Newport properties. Resp. at 5. It does no such thing. Exhibit D is a document Dragul created, but it doesn’t address ownership. Dragul has not provided any evidence that SSC 02 owns these two properties, and it doesn’t. Dragul owns both, as evidenced by Exhibits 9 and 10. Regardless of what other relief is granted, the Court should enter an order confirming the Oneida and Newport properties are property of the Estate the Receiver may sell.

#### 2. SSC 02 is simply another vehicle Dragul used to channel investor money.

In maintaining that SSC 02 is not property of the Receivership Estate, Dragul asks the Court to ignore economic reality and blindly follow the ownership

percentages set forth in the SSC 02 operating agreement.<sup>2</sup> The operating agreement provides that each of Dragul's three children own 33% of SSC 02, and Dragul owns 1%. As set forth in the Turnover Motion, these percentages do not appear consistent with the SSC 02 2016 tax return, which reflects Dragul's share of profit, loss, and capital as 71.58%.

In his Response, Dragul chides the Receiver for conflating "Tax Basis" with "Ownership Basis," and suggests that while his "Tax Basis" in 2016 may have been 71.58%, his "Ownership Basis" (*i.e.*, his ownership interest) in SSC 02 remained the 1% specified in the operating agreement. Dragul Resp. at 2-3. Dragul argues his Tax Basis was increased to 71.58% because he "signed on two loans to SSC 02 that were recourse to him." *Id.* at 2. This is nonsense. The loan agreements attached to the Response as Exhibits G and H demonstrate these loans were *paid in full* on April 30, 2008, and May 1, 2013, respectively. Dragul doesn't attempt to explain how contingent liabilities extinguished 8 and 3 years before would increase his Tax Basis on SSC 02's 2016 tax return.

Dragul then invokes IRC Reg. § 704-1(b)(3) in a failed effort to explain why the SSC 02 tax return appears inconsistent with the ownership percentages in the

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<sup>2</sup> The operating agreement is attached to Dragul's Response as Exhibit A. The SSC 02 operating agreement in the files turned over to the Receiver did not have this Exhibit A attached. Dragul may have presented a complete copy to the Receiver in November 2018 to convince the Receiver to consent to SSC 02 encumbering the Blackhawk Storage Unit to secure a \$65,000 loan, the proceeds of which were paid to Dragul personally, and not to his children.

operating agreement. Under § 704-1, ownership interests in partnerships are determined using a “substantial economic effect” analysis. This requires examining the partners’ relative contributions to the partnership, the interests of the partners in economic profits and losses, the interest of the partners in cash flows, and the rights of partners to distributions of capital upon liquidation. Dragul Resp. at 3, n.1. Dragul has not presented any evidence, and the Receiver isn’t aware of any, that SSC 02 maintained capital accounts in accordance with the operating agreement, or IRC Reg. 704(b). Instead, SSC 02’s tax returns and accounting records show it used a modified cash basis of accounting.

As shown in the table below, from 2002 through 2018, Dragul individually contributed 78% of the cash provided to SSC 02:

SSC 02 Cash Transactions - Recorded as Equity April 2002 through August 2018  
 Extracted from SSC 02 QuickBooks

Name	Deposits	Withdrawals	Net Amount	Percentage of Net Amount
Gary Dragul	\$2,198,215.66	(\$1,289,356.22)	\$908,859.44	78%
Spencer Dragul	\$197,453.00	(\$102,840.24)	\$94,612.76	8%
Samuel Dragul	\$212,238.00	(\$125,839.25)	\$86,398.75	7%
Charli Dragul	\$175,059.00	(\$102,840.23)	\$72,218.77	6%
	\$2,782,965.66	(\$1,620,875.94)	\$1,162,089.72	100%

**Table 1**

The underlying accounting records are not, however, complete. But given Dragul’s overwhelming funding, SSC 02 should be deemed property of the Estate.

Dragul also takes issue with the Receiver submitting only SSC 02’s April and June 2018 bank statements, instead of an additional 204 bank statements (not all of

which the Receiver possesses). Dragul concedes, however, that the two statements show he funneled at least \$106,000 from his personal bank account to SSC 02 during those two months. He characterizes these as “Net Capital Contributions.” Dragul Resp., Exhibit C at 1. Curiously, Dragul has not produced any records reflecting corresponding capital contributions from his children. And he fails to address the fact that such transfers to and from Dragul’s personal account are consistent with SSC 02’s operational history.

Remarkably, Dragul contends these “contributions” were made to “responsibly pay off a loan from Sol Leftin.” Dragul Resp. at 5. Dragul fails, however, to attach any loan agreement, promissory note, or deed of trust relating to this purported loan. Attached as **Exhibit 11** is a “12 Month History of Payments to Leftin Investment Co. (Sol Leftin)” from Dragul’s files. This shows payments of \$249,000 to Leftin Investment Co. (“Leftin”) during 2015 and 2016 on loans and for equity investments. Significantly, many of these payments were made by GDA or other Dragul-related entities. Some payments appear to have been made by SSC for a loan relating to a property located at 3416 S. Cherry Street in Denver. But SSC 02 didn’t own the Cherry Street property; it was owned by 3416 South Cherry 05, LLC, an entity controlled and ultimately owned by Dragul *individually*. **Exhibit 12** (4/16/2018 3416 S. Cherry St. Settlement Statement). Dragul personally granted a deed of trust on the Cherry Street property to Leftin, apparently to secure a \$200,000 note made by

GDARES, and/or other loans Leftin made to Dragul personally. **Exhibit 13**, at 3 (1/24/2017 Second Deed of Trust on 3416 S. Cherry).

On April 16, 2018 – four days after Dragul was indicted on nine counts of securities fraud (and several months before the Receiver was appointed) – in a scramble to raise cash, Dragul sold the Cherry Street property and directed a \$215,000 “Professional Fee” be paid to GDARES. **Exhibit 12.**<sup>3</sup>

Dragul argues he personally made \$106,000 in “Net Capital Contributions” to SSC 02 in April and June 2018, to “responsibly” pay off the Leftin loan. But SSC 02 was not obligated on any such loan, either Dragul or GDARES was. And SSC 02’s property was not pledged to secure the loan, property owned by 3416 South Cherry 05, LLC, an entity controlled and ultimately owned by Dragul *personally*, secured the loan. Dragul makes no attempt to explain why he personally would be making capital contributions to SSC 02 to repay a loan it was not obligated to repay. It’s all a shell game. Dragul used SSC 02 as yet another piggy bank to transfer money into and out of and to pay his various personal obligations. He routinely comingled funds from his

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<sup>3</sup> The Receiver doesn’t have all the documents relating to Cherry Street sale or the Leftin loan, and therefore can’t explain why the Leftin deed of trust was not paid at the Cherry Street closing on April 16, 2018, or if and why Leftin released its deed of trust without being paid at closing.

personal account with SSC 02, and he used SSC 02 and other entities to channel cash (\$333/month) to his children.<sup>4</sup>

**3. Dragul misrepresented SSC 02's ownership in order to obtain an \$87,000 loan secured by the Blackhawk Storage Unit.**

As discussed in the Turnover Motion, SSC 02 entered into a loan agreement with Greeley Asset Funding, LLC ("Greeley") pursuant to which SSC 02 borrowed \$65,000 in December 2018 secured by a December 5, 2018, deed of trust on the Blackhawk Storage Unit. Unbeknownst to the Receiver, on or about April 5, 2019, SSC 02 borrowed an additional \$22,000 from Greeley and agreed to modify the Greeley deed of trust to secure this additional loan. Dragul does not dispute that he pocketed the entire \$87,000.

To convince the Receiver to consent to the initial Greeley loan, Dragul represented that SSC 02 had been funded entirely by institutional lenders and operating revenues generated by its properties. As it turns out, Dragul channeled rental income from both the Newport and Oneida properties through SSC 02, even though SSC 02 never owned them. This was yet another subterfuge to conceal Estate assets from the Receiver. And, as shown in the table above, Dragul personally funneled nearly \$2.2 million to SSC 02. Accordingly, Dragul should be ordered to pay

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<sup>4</sup> This is Dragul's modus operandi. He also used Cornerstar Wine & Liquor, LLC, an entity purportedly owned by his wife Shelly, to funnel money to his children. **Exhibit 14.**



the Estate the \$87,000 he obtained by encumbering Estate property under false pretenses.

**B. Dragul does not dispute he misappropriated VRBO rental income or that money is owed for the use of Estate properties.**

In the Turnover Motion, the Receiver provided evidence Dragul had failed to disclose or turnover \$74,240.46 in VRBO rental income to the Estate. In his Response, Dragul argues he did not conceal this because he disclosed it to the Receiver on February 7, 2019. Dragul Resp. at 7. Dragul admits he collected VRBO income after the Receiver was appointed on August 30, 2018, until the disclosure in February. Despite the fact the Receiver demanded Dragul provide a complete accounting and turnover, Dragul continued to collect the VRBO income until his staff was terminated in March 2019. Dragul doesn't explain why he concealed this income for more than five months, or why he has failed to turn any of it over to the Receiver.

It is undisputed that Dragul received \$74,240.30 in VRBO rental income that was property of the Estate. Dragul contends he paid various expenses that should be deducted from any amount he is ordered to pay, but concedes that even after all deductions he owes the Estate at least \$32,079.95. Dragul fails to submit any evidence to support the expenses he claims to have paid. He has not produced any invoices, canceled checks, or credit card statements to demonstrate these expenses were incurred for the VRBO properties, or that they were paid. Absent such support, the Court should order Dragul to repay the entire \$74,240.

In the Turnover Motion, the Receiver asked the Court to order Dragul to pay the Estate \$35,105.33 for unauthorized use of Estate property by he and his staff and friends. In his Response, Dragul admits that he owes \$3,100 in cleaning fees, but he hasn't tendered payment. Dragul Response at 7 & Exhibit I. He also admits using Estate properties for at least 21 nights, but argues nothing is owed to the Estate because (1) Dragul worked tirelessly for the Receiver without pay 7 days a week for 8 months, (2) the Receiver told Dragul that while he worked for the Receiver "all operations should stay the same," and (3) some of the use was by prospective purchasers. Dragul Response at 7. The Receiver's determination that Dragul and his friends and employees used the properties for 51 days was based on records provided by the third-party leasing agent Premier Vacation Rentals. Turnover Motion Exhibit 4. The fact is that Dragul continued to use Estate assets as his own without the Receiver's permission. The Receiver did not authorize Dragul to use these properties without any payment to the Estate. Dragul never informed the Receiver about the use by Dragul, his family, friends, and GDA employees. Dragul should be ordered to pay the Estate \$35,105.33 for his unauthorized use of Estate property.

**C. Dragul’s personal vehicles**

Dragul makes two arguments concerning the following vehicles:

<b>Year</b>	<b>Vehicle</b>	<b>Title Name</b>	<b>Amount Paid from GDA Real Estate Services</b>
2018	Toyota Tundra	Gary Dragul	
2017	Chevy Tahoe	Gary Dragul	
2002	RV	Gary Dragul	
1997	Land Rover	Gary Dragul	
	Honda ATV	Gary Dragul	
2016	Land Rover	Shelly Dragul	\$15,482.25
2012	Land Rover	Shelly Dragul	\$54,345.33

**Table 2**

He claims the 2018 Toyota Tundra, the 2017 Chevy Tundra, and the 1997 Land Rover are over-encumbered and of no value to the Estate. But he has not provided any documents to support this. *See* Turnover Motion, Exhibit K. If there is no equity in the vehicles, why doesn’t Dragul just turn them over? The Receiver is not willing to accept Dragul’s word alone, either as to fair market values or encumbrances. At minimum, he should be ordered to provide documents reflecting the current loan balances, and the source of payments made on the loans for each vehicle. If these documents demonstrate that GDA funds were used to pay the loans, the vehicle is an asset of the Estate.

Dragul also argues the 2016 Land Rover is owned by his wife Shelly, and that the 2012 Land Rover is “no longer owned.” *Id.* Dragul does not dispute that the 2016 Land Rover was purchased with GDARES funds and that there is (or was) equity in the car. Titling the car in his wife’s name is yet another of Dragul’s effort to defraud

creditors. While the RV has been turned over to the Receiver (albeit over-encumbered and with no equity), the Honda ATV has not be turned over nor has Dragul informed the Receiver where it is. The Court should order Dragul to turnover both the 2016 Land Rover and the ATV. As to the 2012 Land Rover Dragul claims is “no longer owned,” Dragul should be ordered to produce all documents concerning its disposition and turnover any sales proceeds to the Estate.

As to the following vehicles, Dragul admits the 2018 Dodge Ram is owned by Cornerstar Liquors.

<b>Year</b>	<b>Vehicle</b>	<b>Title Name</b>
2018	Dodge Ram	Shelly Dragul
2013	Land Rover	Shelly Dragul
2010	Mercedes	Gary Dragul
2007	Chevy	Gary Dragul
2007	Chevy	Shelly Dragul
2006	Mini Cooper	MC Liquor
2000	Range Rover	Shelly Dragul
1997	Land Rover	Gary Dragul

**Table 3**

As to the remaining vehicles, Dragul claims they are “not owned,” but he has not produced the documents the Receiver requested showing when they were disposed of, or the requested accounting for the proceeds of any sale.

**D. Dragul’s personal property is property of the Estate.**

In the Turnover Motion, the Receiver demonstrated that under the Receivership Order, his personal property is property of the Estate. Without referring to the Receivership Order, and without support, Dragul simply denies this is the case. Dragul Response at 8. This is not a meaningful or supported argument. Dragul

attempts to shield the personal property from the Estate claiming it is owned jointly with his wife Shelly. Dragul entirely ignores that the money used to acquire those assets came from the Estate, making all the property part of the Estate.

Dragul has provided the Receiver with a purportedly accurate inventory of the personal property, and agreed to provide access to the Receiver to confirm and inspect the inventory. The Court should enter an order providing that Dragul's personal property is property of the Estate and requiring Dragul to turn it over to the Receiver.

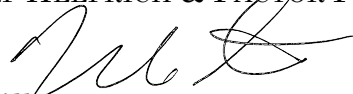
### **III. Conclusion**

The Receiver (joined by the Commissioner) asks the Court to enter an Order: (1)(a) declaring that SSC 02, LLC is property of the Estate, (b) requiring Dragul to repay the Estate the \$87,000 he obtained mortgaging the Blackhawk Storage Unit, (c) requiring Dragul to provide the Receiver with a complete and accurate accounting of all SSC 02 income, assets, and liabilities, and (d) granting the Receiver authority to change the locks on the Blackhawk Storage Unit and precluding Dragul and his agents from accessing the Storage Unit; (2) requiring Dragul to reimburse the Estate \$74,240.46 for VRBO income he concealed from and failed to pay the Estate, and an additional \$34,345.33 for the unauthorized use of Estate property; (3) requiring Dragul to produce documents confirming the amounts owed on his 2018 Toyota Tundra, 2017 Chevy Tundra, and 1997 Land Rover; turnover both the 2016 Land Rover and the ATV, and as to the 2012 Land Rover Dragul claims is "no longer owned," requiring Dragul to produce all documents concerning its disposition and

turnover any sales proceeds to the Estate; and (4) declaring that all of Dragul's personal property is property of the Estate.

Dated: July 25, 2019.

ALLEN VELLONE WOLF HELFRICH & FACTOR P.C.



By: /s/ Michael T. Gilbert

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ATTORNEYS FOR THE RECEIVER

**CERTIFICATE OF SERVICE**

I hereby certify that on July 25, 2019, a true and correct copy of the **RECEIVER'S REPLY IN SUPPORT OF JOINT MOTION FOR TURNOVER AND ACCOUNTING** was filed and served via the Colorado Courts E-Filing system to the following:

Robert W. Finke  
Sueanna P. Johnson  
Ralph L. Carr Judicial Building  
1300 Broadway, 8th Floor  
Denver, Colorado 80203  
E-mail: robert.finke@coag.gov  
E-mail: sueanna.johnson@coag.gov

Jeffery A. Springer  
Springer and Steinberg P.C.  
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E-mail: jspringer@springersteinberg.com

***Counsel for Gary Dragul***

***Counsel for Plaintiff, Gerald Rome,  
Securities Commissioner***

Brad W. Schacht  
Otten, Johnson, Robinson, Neff &  
Ragonnetti, P.C.  
950 17th Street, Suite 1600  
Denver, CO 80202

***Counsel for Alan Fox***

A copy of the foregoing was also served by electronic mail on all currently known creditors of the Receivership Estate for whom the Receiver has email addresses and who have asked to receive email notice as set forth on the service list maintained in the Receiver's records.

*By: /s/Salowa Khan*  
Allen Vellone Wolf Helfrich & Factor P.C.

**EXHIBITS TO RECEIVER'S REPLY IN SUPPORT OF JOINT MOTION FOR  
TURNOVER AND ACCOUNTING**

**Case No. 2018 CV 33011**

DATE FILED: July 25, 2019 12:21 PM  
FILING ID: 77481DCDF1332  
CASE NUMBER: 2018CV33011

- EX. 9. Oneida St. Ownership & Encumbrances with title documents
- EX. 10. Newport St. Ownership & Encumbrances with title documents
- EX. 11. 12 Month History of Payments to Leftin Investment Co.
- EX. 12. 3416 S. Cherry St. Settlement Statement dated April 16, 2018
- EX. 13. Deed of Trust dated January 24, 2017
- EX. 14. Cornerstar Wine & Liquor, LLC General Ledger





# ONE REPORT

To: ALLEN & VELLONE PC

Attn: MARILYN DAVIES

Fax:

Date Ordered: 09-20-2018  
DATE FILED: July 25, 2019 12:21 PM  
FILING ID: 77481DCDF1362  
Order Number: 770546  
CASE NUMBER: 2018CV33011

Phone: 303-534-4499

Address: 2624 S ONEIDA ST DENVER, CO

County: DENVER

## LEGAL DESCRIPTION

LOT 43, BLOCK 5, HUTCHINSON HILLS FILING NO. 18, CITY AND COUNTY OF DENVER, STATE OF COLORADO.

## OWNERSHIP & ENCUMBRANCES

Certification Date: 09-17-2018

OWNERSHIP: GARY J. DRAGUL

<u>Doc Type</u>	<u>Doc Fee</u>	<u>Date</u>	<u>Reference#</u>
WARRANTY DEED	\$26.05	06-28-2007	100740

## ENCUMBRANCES AND OTHER DOCUMENTS

<u>Item</u>	<u>Payable To</u>	<u>Amount</u>	<u>Date</u>	<u>Reference#</u>
DEED OF TRUST	COLORADO CAPITAL BANK	\$24,347.95	06-25-09	80533
DEED OF TRUST	COLORADO CAPITAL BANK	\$208,400.00	06-28-07	100741

Cust Ref# 19461.103

By: NIKKI VOSHELL  
Land Title  
Property Resource Specialist  
Email: nvoshell@ltgc.com  
Phone: 303-850-4194  
Fax:

This ONE REPORT is based on a limited search of the county real property records and is intended for informational purposes only. The ONE REPORT does not constitute any form of warranty or guarantee of title or title insurance, and should not be used by the recipient of the ONE REPORT as the basis for making any legal, investment or business decisions. The recipient of the ONE REPORT should consult legal, tax and other advisors before making any such decisions. The liability of Land Title Guarantee Company is strictly limited to (1) the recipient of the ONE REPORT, and no other person, and (2) the amount paid for the ONE REPORT.



Prepared For:  
**ALLEN & VELLONE PC**  
**MARILYN DAVIES**

**Reference:** 2624 S ONEIDA ST DENVER, CO

**Attached are the additional documents you requested:**

<u>Doc Type</u>	<u>Recorded</u>	<u>Reception#/BookPage</u>
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NIKKI VOSHELL  
**Land Title**  
**Property Resource Specialist**  
**Email:** nvoshell@ltgc.com  
**Phone:** 303-850-4194  
**Fax:**

ADD .DOCS 770545

# INVOICE



Land Title Guarantee Company  
5975 Greenwood Plaza Blvd Suite 125  
Greenwood Village, CO 80111  
303-270-0445

Tax ID: 84-0572036

**INVOICE NO. CC-183667**

ALLEN & VELLONE PC  
Attn: MARILYN DAVIES  
1600 STOUT ST #1100

DENVER, CO 80202

### Reference

Your reference Number : O & E Report  
Our Order Number : 770545  
Our Customer Number : 48813.8  
Invoice Requested By : Marilyn Davies  
Invoice (Process) Date : September 21, 2018  
Transaction Invoiced By : Web Services  
Email Address : system@ltgc.com

Property Address: 2624 S ONEIDA ST

Owner: Gary J. Dragul

### - CHARGES -

Service:	O & E Report	\$5.00
Ref:	O & E Report-770545	
Addr:	2624 S ONEIDA ST	
Party:	GARY J. DRAGUL	
Total Amount Invoiced:		\$5.00
Less Payment(s):		\$0.00
Balance Due:		\$5.00

**Payment due upon receipt**  
*Please Reference Invoice No. on Payment*  
Please make check payable and send to:  
Land Title Guarantee Company  
5975 Greenwood Plaza Blvd Suite 125  
Greenwood Village, CO 80111



ONE REPORT - This ONE REPORT is based on a limited search of the county real property records and is intended for informational purposes only. The ONE REPORT does not constitute any form of warranty or guarantee of title or title insurance, and should not be used by the recipient of the ONE REPORT as the basis for making any legal, investment or business decisions. The recipient of the ONE REPORT should consult legal, tax and other advisors before making any such decisions. The liability of Land Title Guarantee Company is strictly limited to (1) the recipient of the ONE REPORT, and no other person, and (2) the amount paid for the ONE REPORT.

TBD REPORT - This report is neither a commitment to insure, nor an abstract of title. This product may not conform to the written standard and practices of our underwriters and the Company reserves the right to set further requirements and/or exceptions should a full title commitment be ordered in the future. The liability of the Company shall not exceed the charge paid by the applicant for this report, nor shall the Company be held liable to any party other than the applicant for this report.

PROPERTY REPORT - This Report is based on a limited search of the county real property records and provides the name(s) of the vested owner(s), the legal description, tax information (taken from information provided by the county treasurer on its website) and encumbrances, which, for the purposes of this report, means deed of trust and mortgages, and liens recorded against the property and the owner(s) in the records of the clerk and recorder for the county in which the subject property is located. This Report does not constitute any form of warranty or guarantee of title or title insurance. The liability of Land Title Guarantee Company is strictly limited to (1) the recipient of the Report, and no other person, and (2) the amount paid for the Report.

OPEN DEED REPORT - The Open Deed Report does not include a search of the names of the property owner(s). This report is for informational purposes only and does not constitute any form of title guarantee nor insurance. The liability of this company shall not exceed the charge paid by the applicant for this report, nor shall the company be held liable to any party other than the applicant for this report.

**WARRANTY DEED**

THIS DEED, made this 29th day of May, 2007, between ROBERT JAMES HUTMACHER of the County of Denver and State of , grantor, and GARY J. DRAGUL whose legal address is 8301 E. Prentice Avenue, Suite 210, Greenwood Village, Colorado 80111, of the County of Arapahoe, State of Colorado, grantee:

WITNESSETH, that the grantor, for and in consideration of the sum of TWO HUNDRED SIXTY THOUSAND FIVE HUNDRED AND 00/100 DOLLARS (\$260,500.00), the receipt and sufficiency of which is hereby acknowledged, has granted, bargained, sold and conveyed, and by these presents does grant, bargain, sell, convey and confirm, unto the grantee, his heirs and assigns forever, all the real property together with improvements, if any, situate, lying and being in the County of Denver and State of Colorado described as follows:

LOT 43,  
BLOCK 5,  
HUTCHINSON HILLS FILING NO 18,  
CITY AND COUNTY OF DENVER,  
STATE OF COLORADO.

also known by street and number as: 2624 South Oneida Street, Denver, CO 80224

TOGETHER with all and singular the hereditaments and appurtenances thereto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and all the estate, right, title, interest, claim and demand whatsoever of the grantor, either in law or equity, of, in and to the above bargained premises, with the hereditaments and appurtenances.

TO HAVE AND TO HOLD the said premises above bargained and described, with the appurtenances, unto the grantee, his heirs and assigns forever. And the grantor, for himself, his heirs and personal representatives, does covenant, grant, bargain and agree to and with the grantee, his heirs and assigns, that at the time of the ensembling and delivery of these presents, he is well seized of the premises above conveyed, has good, sure, perfect, absolute and indefeasible estate of inheritance, in law, in fee simple, and has good right, full power and lawful authority to grant, bargain, sell and convey the same in manner and form aforesaid, and that the same are free and clear from all former and other grants, bargains, sales, liens, taxes, assessments, encumbrances and restrictions of whatever kind or nature whatsoever, except:

general taxes for the current year and subsequent years subject to restrictions, reservations, and covenants of record and except easements and rights of way of record, if any.

The grantor shall and will WARRANT AND FOREVER DEFEND the above-bargained premises in the quiet and peaceable possession of the grantee, his heirs and assigns, against all and every person or persons lawfully claiming the whole or any part thereof.

The singular number shall include the plural, the plural the singular, and the use of any gender shall be applicable to all genders.

IN WITNESS WHEREOF, the grantor has executed this deed on the date set forth above.

*Robert James Hutmacher*  
Robert James Hutmacher

STATE OF Colorado

COUNTY OF *Arapahoe*

The foregoing instrument was acknowledged before me this *25<sup>th</sup>* day of *May*, 20*07*, by *Robert James Hutmacher*

Witness my hand and official seal

*Jessica R. Hallgren*  
Notary Public

My Commission Expires:

After recording return to:



Exhibit 9 - Page 5 of 26

36-  
9381  
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RECORDATION REQUESTED BY:  
COLORADO CAPITAL BANK  
COLORADO SPRINGS  
TWO SOUTH CASCADE AVE, SUITE 150  
COLORADO SPRINGS, CO 80903

WHEN RECORDED MAIL TO:  
COLORADO CAPITAL BANK  
COLORADO SPRINGS  
TWO SOUTH CASCADE AVE, SUITE 150  
COLORADO SPRINGS, CO 80903

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Page: 1 of 7  
06/25/2009 04:46P  
R35.00 D0.00  
City & County of Denver DOT

SEND TAX NOTICES TO:  
GARY J. DRAGUL  
8301 E. PRENTICE AVENUE SUITE 210  
GREENWOOD VILLAGE, CO 80111

FOR RECORDER'S USE ONLY

DEED OF TRUST

MAXIMUM PRINCIPAL AMOUNT SECURED. The Lien of this Deed of Trust shall not exceed at any one time \$24,347.95 except as allowed under applicable Colorado law.

THIS DEED OF TRUST is dated June 2, 2009, among GARY J. DRAGUL, whose address is 8301 E. PRENTICE AVENUE SUITE 210, GREENWOOD VILLAGE, CO 80111 ("Grantor"); COLORADO CAPITAL BANK, whose address is COLORADO SPRINGS, TWO SOUTH CASCADE AVE, SUITE 150, COLORADO SPRINGS, CO 80903 (referred to below sometimes as "Lender" and sometimes as "Beneficiary"); and the Public Trustee of the City and County of Denver, Colorado (referred to below as "Trustee").

CONVEYANCE AND GRANT. For valuable consideration, Grantor hereby irrevocably grants, transfers and assigns to Trustee for the benefit of Lender as Beneficiary all of Grantor's right, title, and interest in and to the following described real property, together with all existing or subsequently erected or affixed buildings, improvements and fixtures; all easements, rights of way, and appurtenances; all water, water rights and ditch rights (including stock in utilities with ditch or irrigation rights); and all other rights, royalties, and profits relating to the real property, including without limitation all minerals, oil, gas, geothermal and similar matters, (the "Real Property") located in DENVER County, State of Colorado:

LOT 43, BLOCK 5, HUTCHINSON HILLS FILING NO. 18, CITY AND COUNTY OF DENVER, STATE OF COLORADO

The Real Property or its address is commonly known as 2624 SOUTH ONEIDA STREET, DENVER, CO 80224.

CROSS-COLLATERALIZATION. In addition to the Note, this Deed of Trust secures all obligations, debts and liabilities, plus interest thereon, of Grantor to Lender, or any one or more of them, as well as all claims by Lender against Grantor or any one or more of them, whether now existing or hereafter arising, whether related or unrelated to the purpose of the Note, whether voluntary or otherwise, whether due or not due, direct or indirect, determined or undetermined, absolute or contingent, liquidated or unliquidated, whether Grantor may be liable individually or jointly with others, whether obligated as guarantor, surety, accommodation party or otherwise, and whether recovery upon such amounts may be or hereafter may become barred by any statute of limitations, and whether the obligation to repay such amounts may be or hereafter may become otherwise unenforceable.

Grantor presently assigns to Lender (also known as Beneficiary in this Deed of Trust) all of Grantor's right, title, and interest in and to all present and future leases of the Property and all Rents from the Property. In addition, Grantor grants to Lender a Uniform Commercial Code security interest in the Personal Property and Rents.

THIS DEED OF TRUST, INCLUDING THE ASSIGNMENT OF RENTS AND THE SECURITY INTEREST IN THE RENTS AND PERSONAL PROPERTY, IS GIVEN TO SECURE (A) PAYMENT OF THE INDEBTEDNESS AND (B) PERFORMANCE OF ANY AND ALL OBLIGATIONS UNDER THE NOTE, THE RELATED DOCUMENTS, AND THIS DEED OF TRUST. THIS DEED OF TRUST IS GIVEN AND ACCEPTED ON THE FOLLOWING TERMS:

PAYMENT AND PERFORMANCE. Except as otherwise provided in this Deed of Trust, Grantor shall pay to Lender all amounts secured by this Deed of Trust as they become due, and shall strictly and in a timely manner perform all of Grantor's obligations under the Note, this Deed of Trust, and the Related Documents.

POSSESSION AND MAINTENANCE OF THE PROPERTY. Grantor agrees that Grantor's possession and use of the Property shall be governed by the following provisions:

Possession and Use. Until the occurrence of an Event of Default, Grantor may (1) remain in possession and control of the Property; (2) use, operate or manage the Property; and (3) collect the Rents from the Property.

Duty to Maintain. Grantor shall maintain the Property in good condition and promptly perform all repairs, replacements, and maintenance necessary to preserve its value.

Compliance With Environmental Laws. Grantor represents and warrants to Lender that: (1) During the period of Grantor's ownership of the Property, there has been no use, generation, manufacture, storage, treatment, disposal, release or threatened release of any Hazardous Substance by any person on, under, about or from the Property; (2) Grantor has no knowledge of, or reason to believe that there has been, except as previously disclosed to and acknowledged by Lender in writing, (a) any breach or violation of any Environmental Laws, (b) any use, generation, manufacture, storage, treatment, disposal, release or threatened release of any Hazardous Substance on, under, about or from the Property by any prior owners or occupants of the Property, or (c) any actual or threatened litigation or claims of any kind by any person relating to such matters; and (3) Except as previously disclosed to and acknowledged by Lender in writing, (a) neither Grantor nor any tenant, contractor, agent or other authorized user of the Property shall use, generate, manufacture, store, treat, dispose of or release any Hazardous Substance on, under, about or from the Property; and (b) any such activity shall be conducted in compliance with all applicable federal, state, and local laws, regulations and ordinances, including without limitation all Environmental Laws. Grantor authorizes Lender and its agents to enter upon the Property to make such inspections and tests, at Grantor's expense, as Lender may deem appropriate to determine compliance of the Property with this section of the Deed of Trust. Any inspections or tests made by Lender shall be for Lender's purposes only and shall not be construed to create any responsibility or liability on the part of Lender to Grantor or to any other person. The representations and warranties contained herein are based on Grantor's due diligence in investigating the Property for Hazardous Substances. Grantor hereby (1) releases and waives any future claims against Lender for indemnity or contribution in the event Grantor becomes liable for cleanup or other costs under any such laws; and (2) agrees to indemnify, defend, and hold harmless Lender against any and all claims, losses, liabilities, damages, penalties, and expenses which Lender may directly or indirectly sustain or suffer resulting from a breach of this section of the Deed of Trust or as a consequence of any use, generation, manufacture, storage, disposal, release or threatened release occurring prior to Grantor's ownership or interest in the Property, whether or not the same was or should have been known to Grantor. The provisions of this section of the Deed

of Trust, including the obligation to indemnify and defend, shall survive the payment of the Indebtedness and the satisfaction and reconveyance of the lien of this Deed of Trust and shall not be affected by Lender's acquisition of any interest in the Property, whether by foreclosure or otherwise.

**Nuisance, Waste.** Grantor shall not cause, conduct or permit any nuisance nor commit, permit, or suffer any stripping of or waste on or to the Property or any portion of the Property. Without limiting the generality of the foregoing, Grantor will not remove, or grant to any other party the right to remove, any timber, minerals (including oil and gas), coal, clay, scoria, soil, gravel or rock products without Lender's prior written consent.

**Removal of Improvements.** Grantor shall not demolish or remove any Improvements from the Real Property without Lender's prior written consent. As a condition to the removal of any Improvements, Lender may require Grantor to make arrangements satisfactory to Lender to replace such Improvements with improvements of at least equal value.

**Lender's Right to Enter.** Lender and Lender's agents and representatives may enter upon the Real Property at all reasonable times to attend to Lender's interests and to inspect the Real Property for purposes of Grantor's compliance with the terms and conditions of this Deed of Trust.

**Compliance with Governmental Requirements.** Grantor shall promptly comply with all laws, ordinances, and regulations, now or hereafter in effect, of all governmental authorities applicable to the use or occupancy of the Property. Grantor may contest in good faith any such law, ordinance, or regulation and withhold compliance during any proceeding, including appropriate appeals, so long as Grantor has notified Lender in writing prior to doing so and so long as, in Lender's sole opinion, Lender's interests in the Property are not jeopardized. Lender may require Grantor to post adequate security or a surety bond, reasonably satisfactory to Lender, to protect Lender's interest.

**Duty to Protect.** Grantor agrees neither to abandon or leave unattended the Property. Grantor shall do all other acts, in addition to those acts set forth above in this section, which from the character and use of the Property are reasonably necessary to protect and preserve the Property.

**DUE ON SALE - CONSENT BY LENDER.** Lender may, at Lender's option, declare immediately due and payable all sums secured by this Deed of Trust upon the sale or transfer, without Lender's prior written consent, of all or any part of the Real Property, or any interest in the Real Property. A "sale or transfer" means the conveyance of Real Property or any right, title or interest in the Real Property; whether legal, beneficial or equitable; whether voluntary or involuntary; whether by outright sale, deed, installment sale contract, land contract, contract for deed, leasehold interest with a term greater than three (3) years, lease-option contract, or by sale, assignment, or transfer of any beneficial interest in or to any land trust holding title to the Real Property, or by any other method of conveyance of an interest in the Real Property. However, this option shall not be exercised by Lender if such exercise is prohibited by federal law or by Colorado law.

**TAXES AND LIENS.** The following provisions relating to the taxes and liens on the Property are part of this Deed of Trust:

**Payment.** Grantor shall pay when due (and in all events prior to delinquency) all taxes, special taxes, assessments, charges (including water and sewer), fines and impositions levied against or on account of the Property, and shall pay when due all claims for work done on or for services rendered or material furnished to the Property. Grantor shall maintain the Property free of all liens having priority over or equal to the interest of Lender under this Deed of Trust, except for the lien of taxes and assessments not due, except for the Existing Indebtedness referred to below, and except as otherwise provided in this Deed of Trust.

**Right to Contest.** Grantor may withhold payment of any tax, assessment, or claim in connection with a good faith dispute over the obligation to pay, so long as Lender's interest in the Property is not jeopardized. If a lien arises or is filed as a result of nonpayment, Grantor shall within fifteen (15) days after the lien arises or, if a lien is filed, within fifteen (15) days after Grantor has notice of the filing, secure the discharge of the lien, or if requested by Lender, deposit with Lender cash or a sufficient corporate surety bond or other security satisfactory to Lender in an amount sufficient to discharge the lien plus any costs and reasonable attorneys' fees, or other charges that could accrue as a result of a foreclosure or sale under the lien. In any contest, Grantor shall defend itself and Lender and shall satisfy any adverse judgment before enforcement against the Property. Grantor shall name Lender as an additional obligee under any surety bond furnished in the contest proceedings.

**Evidence of Payment.** Grantor shall upon demand furnish to Lender satisfactory evidence of payment of the taxes or assessments and shall authorize the appropriate governmental official to deliver to Lender at any time a written statement of the taxes and assessments against the Property.

**Notice of Construction.** Grantor shall notify Lender at least fifteen (15) days before any work is commenced, any services are furnished, or any materials are supplied to the Property, if any mechanic's lien, materialman's lien, or other lien could be asserted on account of the work, services, or materials. Grantor will upon request of Lender furnish to Lender advance assurances satisfactory to Lender that Grantor can and will pay the cost of such improvements.

**PROPERTY DAMAGE INSURANCE.** The following provisions relating to insuring the Property are a part of this Deed of Trust.

**Maintenance of Insurance.** Grantor shall procure and maintain policies of fire insurance with standard extended coverage endorsements on a replacement basis for the full insurable value covering all Improvements on the Real Property in an amount sufficient to avoid application of any coinsurance clause, and with a standard mortgagee clause in favor of Lender, together with such other hazard and liability insurance as Lender may reasonably require. Policies shall be written in form, amounts, coverages and basis reasonably acceptable to Lender and issued by a company or companies reasonably acceptable to Lender. Grantor, upon request of Lender, will deliver to Lender from time to time the policies or certificates of insurance in form satisfactory to Lender, including stipulations that coverages will not be cancelled or diminished without at least thirty (30) days prior written notice to Lender. Each insurance policy also shall include an endorsement providing that coverage in favor of Lender will not be impaired in any way by any act, omission or default of Grantor or any other person. Should the Real Property be located in an area designated by the Director of the Federal Emergency Management Agency as a special flood hazard area, Grantor agrees to obtain and maintain Federal Flood Insurance, if available, for the full unpaid principal balance of the loan and any prior liens on the property securing the loan, up to the maximum policy limits set under the National Flood Insurance Program, or as otherwise required by Lender, and to maintain such insurance for the term of the loan.

**Application of Proceeds.** Grantor shall promptly notify Lender of any loss or damage to the Property. Lender may make proof of loss if Grantor fails to do so within fifteen (15) days of the casualty. Whether or not Lender's security is impaired, Lender may, at Lender's election, receive and retain the proceeds of any insurance and apply the proceeds to the reduction of the Indebtedness, payment of any lien affecting the Property, or the restoration and repair of the Property. If Lender elects to apply the proceeds to restoration and repair, Grantor shall repair or replace the damaged or destroyed Improvements in a manner satisfactory to Lender. Lender shall, upon satisfactory proof of such expenditure, pay or reimburse Grantor from the proceeds for the reasonable cost of repair or restoration if Grantor is not in default under this Deed of Trust. Any proceeds which have not been disbursed within 180 days after their receipt and which Lender has not committed to the repair or restoration of the Property shall be used first to pay any amount owing to Lender under this Deed of Trust, then to pay accrued interest, and the remainder, if any, shall be applied to the principal balance of the Indebtedness. If Lender holds any proceeds after payment in full of the Indebtedness, such proceeds shall be paid to Grantor as Grantor's interests may appear.

**Compliance with Existing Indebtedness.** During the period in which any Existing Indebtedness described below is in effect, compliance with the insurance provisions contained in the instrument evidencing such Existing Indebtedness shall constitute compliance with the insurance provisions under this Deed of Trust, to the extent compliance with the terms of this Deed of Trust would constitute a duplication of insurance requirement. If any proceeds from the insurance become payable on loss, the provisions in this Deed of Trust for division of proceeds shall apply only to that portion of the proceeds not payable to the holder

of the Existing Indebtedness.

**LENDER'S EXPENDITURES.** If Grantor fails (A) to keep the Property free of all taxes, liens, security interests, encumbrances, and other claims, (B) to provide any required insurance on the Property, (C) to make repairs to the Property or to comply with any obligation to maintain Existing Indebtedness in good standing as required below, then Lender may do so. If any action or proceeding is commenced that would materially affect Lender's interests in the Property, then Lender on Grantor's behalf may, but is not required to, take any action that Lender believes to be appropriate to protect Lender's interests. All expenses incurred or paid by Lender for such purposes will then bear interest at the rate charged under the Note from the date incurred or paid by Lender to the date of repayment by Grantor. All such expenses will become a part of the Indebtedness and, at Lender's option, will (A) be payable on demand; (B) be added to the balance of the Note and be apportioned among and be payable with any installment payments to become due during either (1) the term of any applicable insurance policy; or (2) the remaining term of the Note; or (C) be treated as a balloon payment which will be due and payable at the Note's maturity. The Deed of Trust also will secure payment of these amounts. The rights provided for in this paragraph shall be in addition to any other rights or any remedies to which Lender may be entitled on account of any default. Any such action by Lender shall not be construed as curing the default so as to bar Lender from any remedy that it otherwise would have had.

**WARRANTY; DEFENSE OF TITLE.** The following provisions relating to ownership of the Property are a part of this Deed of Trust:

**Title.** Grantor warrants that: (a) Grantor holds good and marketable title of record to the Property in fee simple, free and clear of all liens and encumbrances other than those set forth in the Real Property description or in the Existing Indebtedness section below or in any title insurance policy, title report, or final title opinion issued in favor of, and accepted by, Lender in connection with this Deed of Trust, and (b) Grantor has the full right, power, and authority to execute and deliver this Deed of Trust to Lender.

**Defense of Title.** Subject to the exception in the paragraph above, Grantor warrants and will forever defend the title to the Property against the lawful claims of all persons. In the event any action or proceeding is commenced that questions Grantor's title or the interest of Trustee or Lender under this Deed of Trust, Grantor shall defend the action at Grantor's expense. Grantor may be the nominal party in such proceeding, but Lender shall be entitled to participate in the proceeding and to be represented in the proceeding by counsel of Lender's own choice, and Grantor will deliver, or cause to be delivered, to Lender such instruments as Lender may request from time to time to permit such participation.

**Compliance With Laws.** Grantor warrants that the Property and Grantor's use of the Property complies with all existing applicable laws, ordinances, and regulations of governmental authorities.

**Survival of Promises.** All promises, agreements, and statements Grantor has made in this Deed of Trust shall survive the execution and delivery of this Deed of Trust, shall be continuing in nature and shall remain in full force and effect until such time as Grantor's Indebtedness is paid in full.

**EXISTING INDEBTEDNESS.** The following provisions concerning Existing Indebtedness are a part of this Deed of Trust:

**Existing Lien.** The lien of this Deed of Trust securing the Indebtedness may be secondary and inferior to an existing lien. Grantor expressly covenants and agrees to pay, or see to the payment of, the Existing Indebtedness and to prevent any default on such indebtedness, any default under the instruments evidencing such indebtedness, or any default under any security documents for such indebtedness.

**No Modification.** Grantor shall not enter into any agreement with the holder of any mortgage, deed of trust, or other security agreement which has priority over this Deed of Trust by which that agreement is modified, amended, extended, or renewed without the prior written consent of Lender. Grantor shall neither request nor accept any future advances under any such security agreement without the prior written consent of Lender.

**CONDEMNATION.** The following provisions relating to condemnation proceedings are a part of this Deed of Trust:

**Proceedings.** If any proceeding in condemnation is filed, Grantor shall promptly notify Lender in writing, and Grantor shall promptly take such steps as may be necessary to defend the action and obtain the award. Grantor may be the nominal party in such proceeding, but Lender shall be entitled to participate in the proceeding and to be represented in the proceeding by counsel of its own choice, and Grantor will deliver or cause to be delivered to Lender such instruments and documentation as may be requested by Lender from time to time to permit such participation.

**Application of Net Proceeds.** If all or any part of the Property is condemned by eminent domain proceedings or by any proceeding or purchase in lieu of condemnation, Lender may at its election require that all or any portion of the net proceeds of the award be applied to the Indebtedness or the repair or restoration of the Property. The net proceeds of the award shall mean the award after payment of all reasonable costs, expenses, and attorneys' fees incurred by Trustee or Lender in connection with the condemnation.

**IMPOSITION OF TAXES, FEES AND CHARGES BY GOVERNMENTAL AUTHORITIES.** The following provisions relating to governmental taxes, fees and charges are a part of this Deed of Trust:

**Current Taxes, Fees and Charges.** Upon request by Lender, Grantor shall execute such documents in addition to this Deed of Trust and take whatever other action is requested by Lender to perfect and continue Lender's lien on the Real Property. Grantor shall reimburse Lender for all taxes, as described below, together with all expenses incurred in recording, perfecting or continuing this Deed of Trust, including without limitation all taxes, fees, documentary stamps, and other charges for recording or registering this Deed of Trust.

**Taxes.** The following shall constitute taxes to which this section applies: (1) a specific tax upon this type of Deed of Trust or upon all or any part of the Indebtedness secured by this Deed of Trust; (2) a specific tax on Grantor which Grantor is authorized or required to deduct from payments on the Indebtedness secured by this type of Deed of Trust; (3) a tax on this type of Deed of Trust chargeable against the Lender or the holder of the Note; and (4) a specific tax on all or any portion of the Indebtedness or on payments of principal and interest made by Grantor.

**Subsequent Taxes.** If any tax to which this section applies is enacted subsequent to the date of this Deed of Trust, this event shall have the same effect as an Event of Default, and Lender may exercise any or all of its available remedies for an Event of Default as provided below unless Grantor either (1) pays the tax before it becomes delinquent, or (2) contests the tax as provided above in the Taxes and Liens section and deposits with Lender cash or a sufficient corporate surety bond or other security satisfactory to Lender.

**SECURITY AGREEMENT; FINANCING STATEMENTS.** The following provisions relating to this Deed of Trust as a security agreement are a part of this Deed of Trust:

**Security Agreement.** This instrument shall constitute a Security Agreement to the extent any of the Property constitutes fixtures, and Lender shall have all of the rights of a secured party under the Uniform Commercial Code as amended from time to time.

**Security Interest.** Upon request by Lender, Grantor shall take whatever action is requested by Lender to perfect and continue Lender's security interest in the Personal Property. In addition to recording this Deed of Trust in the real property records, Lender may, at any time and without further authorization from Grantor, file executed counterparts, copies or reproductions of this Deed of Trust as a financing statement. Grantor shall reimburse Lender for all expenses incurred in perfecting or continuing this security interest. Upon default, Grantor shall not remove, sever or detach the Personal Property from the Property. Upon default, Grantor shall assemble any Personal Property not affixed to the Property in a manner and at a place reasonably convenient to Grantor and Lender and make it available to Lender within three (3) days after receipt of written demand from Lender to the



extent permitted by applicable law.

**Addresses.** The mailing addresses of Grantor (debtor) and Lender (secured party) from which information concerning the security interest granted by this Deed of Trust may be obtained (each as required by the Uniform Commercial Code) are as stated on the first page of this Deed of Trust.

**FURTHER ASSURANCES; ATTORNEY-IN-FACT.** The following provisions relating to further assurances and attorney-in-fact are a part of this Deed of Trust:

**Further Assurances.** At any time, and from time to time, upon request of Lender, Grantor will make, execute and deliver, or will cause to be made, executed or delivered, to Lender or to Lender's designee, and when requested by Lender, cause to be filed, recorded, refiled, or re-recorded, as the case may be, at such times and in such offices and places as Lender may deem appropriate, any and all such mortgages, deeds of trust, security deeds, security agreements, financing statements, continuation statements, instruments of further assurance, certificates, and other documents as may, in the sole opinion of Lender, be necessary or desirable in order to effectuate, complete, perfect, continue, or preserve (1) Grantor's obligations under the Note, this Deed of Trust, and the Related Documents, and (2) the liens and security interests created by this Deed of Trust on the Property, whether now owned or hereafter acquired by Grantor. Unless prohibited by law or Lender agrees to the contrary in writing, Grantor shall reimburse Lender for all costs and expenses incurred in connection with the matters referred to in this paragraph.

**Attorney-in-Fact.** If Grantor fails to do any of the things referred to in the preceding paragraph, Lender may do so for and in the name of Grantor and at Grantor's expense. For such purposes, Grantor hereby irrevocably appoints Lender as Grantor's attorney-in-fact for the purpose of making, executing, delivering, filing, recording, and doing all other things as may be necessary or desirable, in Lender's sole opinion, to accomplish the matters referred to in the preceding paragraph.

**FULL PERFORMANCE.** Upon the full performance of all the obligations under the Note and this Deed of Trust, Trustee may, upon production of documents and fees as required under applicable law, release this Deed of Trust, and such release shall constitute a release of the lien for all such additional sums and expenditures made pursuant to this Deed of Trust. Lender agrees to cooperate with Grantor in obtaining such release and releasing the other collateral securing the Indebtedness. Any release fees required by law shall be paid by Grantor, if permitted by applicable law.

**EVENTS OF DEFAULT.** At Lender's option, Grantor will be in default under this Deed of Trust if any of the following happen:

**Payment Default.** Grantor fails to make any payment when due under the Indebtedness.

**Breach Other Promises.** Grantor breaks any promise made to Lender or fails to perform promptly at the time and strictly in the manner provided in this Deed of Trust or in any agreement related to this Deed of Trust.

**Compliance Default.** Failure to comply with any other term, obligation, covenant or condition contained in this Deed of Trust, the Note or in any of the Related Documents.

**Default on Other Payments.** Failure of Grantor within the time required by this Deed of Trust to make any payment for taxes or insurance, or any other payment necessary to prevent filing of or to affect discharge of any lien.

**False Statements.** Any representation or statement made or furnished to Lender by Grantor or on Grantor's behalf under this Deed of Trust or the Related Documents is false or misleading in any material respect, either now or at the time made or furnished.

**Defective Collateralization.** This Deed of Trust or any of the Related Documents ceases to be in full force and effect (including failure of any collateral document to create a valid and perfected security interest or lien) at any time and for any reason.

**Death or Insolvency.** The death of Grantor, the insolvency of Grantor, the appointment of a receiver for any part of Grantor's property, any assignment for the benefit of creditors, any type of creditor workout, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Grantor.

**Taking of the Property.** Any creditor or governmental agency tries to take any of the Property or any other of Grantor's property in which Lender has a lien. This includes taking of, garnishing of or levying on Grantor's accounts with Lender. However, if Grantor disputes in good faith whether the claim on which the taking of the Property is based is valid or reasonable, and if Grantor gives Lender written notice of the claim and furnishes Lender with monies or a surety bond satisfactory to Lender to satisfy the claim, then this default provision will not apply.

**Breach of Other Agreement.** Any breach by Grantor under the terms of any other agreement between Grantor and Lender that is not remedied within any grace period provided therein, including without limitation any agreement concerning any indebtedness or other obligation of Grantor to Lender, whether existing now or later.

**Events Affecting Guarantor.** Any of the preceding events occurs with respect to any guarantor, endorser, surety, or accommodation party of any of the Indebtedness or any guarantor, endorser, surety, or accommodation party dies or becomes incompetent, or revokes or disputes the validity of, or liability under, any Guaranty of the Indebtedness.

**Insecurity.** Lender has reasonable cause to believe Lender is insecure or that Lender's collateral is impaired.

**Existing Indebtedness.** The payment of any installment of principal or any interest on the Existing Indebtedness is not made within the time required by the promissory note evidencing such indebtedness, or a default occurs under the instrument securing such indebtedness and is not cured during any applicable grace period in such instrument, or any suit or other action is commenced to foreclose any existing lien on the Property.

**Right to Cure.** If any default, other than a default in payment is curable and if Grantor has not been given a notice of a breach of the same provision of this Deed of Trust within the preceding twelve (12) months, it may be cured if Grantor, after receiving written notice from Lender demanding cure of such default: (1) cures the default within twenty (20) days; or (2) if the cure requires more than twenty (20) days, immediately initiates steps which Lender deems in Lender's sole discretion to be sufficient to cure the default and thereafter continues and completes all reasonable and necessary steps sufficient to produce compliance as soon as reasonably practical.

**RIGHTS AND REMEDIES ON DEFAULT.** Subject to any applicable notice and cure provisions under Colorado law, if an Event of Default occurs under this Deed of Trust, at any time thereafter, Trustee or Lender may exercise any one or more of the following rights and remedies:

**Election of Remedies.** All of Lender's rights and remedies will be cumulative and may be exercised alone or together. An election by Lender to choose any one remedy will not bar Lender from using any other remedy. If Lender decides to spend money or to perform any of Grantor's obligations under this Deed of Trust, after Grantor's failure to do so, that decision by Lender will not affect Lender's right to declare Grantor in default and to exercise Lender's remedies.

**Accelerate Indebtedness.** Lender shall have the right at its option to declare the entire Indebtedness immediately due and payable, including any prepayment penalty which Grantor would be required to pay.

**Foreclosure.** Lender shall have the right to cause all or any part of the Real Property, and Personal Property, if Lender decides to proceed against it as if it were real property, to be sold by the Trustee according to the laws of the State of Colorado as respects foreclosures against real property. The Trustee shall give notice in accordance with the laws of Colorado. The Trustee shall apply the proceeds of the sale in the following order: (a) to all costs and expenses of the sale, including but not limited to Trustee's fees, attorneys' fees, and the cost of title evidence; (b) to all sums secured by this Deed of Trust; and (c) the excess,

if any, to the person or persons legally entitled to the excess.

**UCC Remedies.** With respect to all or any part of the Personal Property, Lender shall have all the rights and remedies of a secured party under the Uniform Commercial Code.

**Collect Rents.** Lender shall have the right to take possession of and manage the Property and collect the Rents, including amounts past due and unpaid, and apply the net proceeds, over and above Lender's costs, against the Indebtedness. In furtherance of this right, Lender may require any tenant or other user of the Property to make payments of rent or use fees directly to Lender. If the Rents are collected by Lender, then Grantor irrevocably designates Lender as Grantor's attorney-in-fact to endorse instruments received in payment thereof in the name of Grantor and to negotiate the same and collect the proceeds. Payments by tenants or other users to Lender in response to Lender's demand shall satisfy the obligations for which the payments are made, whether or not any proper grounds for the demand existed. Lender may exercise its rights under this subparagraph either in person, by agent, or through a receiver.

**Appoint Receiver.** Lender shall have the right to have a receiver appointed to take possession of all or any part of the Property, with the power to protect and preserve the Property, to operate the Property preceding foreclosure or sale, and to collect the Rents from the Property and apply the proceeds, over and above the cost of the receivership, against the Indebtedness. The receiver may serve without bond if permitted by law. Lender's right to the appointment of a receiver shall exist whether or not the apparent value of the Property exceeds the Indebtedness by a substantial amount. Employment by Lender shall not disqualify a person from serving as a receiver. Receiver may be appointed by a court of competent jurisdiction upon ex parte application and without notice, notice being expressly waived.

**Tenancy at Sufferance.** If Grantor remains in possession of the Property after the Property is sold as provided above or Lender otherwise becomes entitled to possession of the Property upon default of Grantor, Grantor shall become a tenant at sufferance of Lender or the purchaser of the Property and shall, at Lender's option, either (1) pay a reasonable rental for the use of the Property, or (2) vacate the Property immediately upon the demand of Lender.

**Other Remedies.** Trustee or Lender shall have any other right or remedy provided in this Deed of Trust or the Note or available at law or in equity.

**Sale of the Property.** In exercising its rights and remedies, Lender shall be free to designate on or before it files a notice of election and demand with the Trustee, that the Trustee sell all or any part of the Property together or separately, in one sale or by separate sales. Lender shall be entitled to bid at any public sale on all or any portion of the Property. Upon any sale of the Property, whether made under a power of sale granted in this Deed of Trust or pursuant to judicial proceedings, if the holder of the Note is a purchaser at such sale, it shall be entitled to use and apply all, or any portion of, the Indebtedness for or in settlement or payment of all, or any portion of, the purchase price of the Property purchased, and, in such case, this Deed of Trust, the Note, and any documents evidencing expenditures secured by this Deed of Trust shall be presented to the person conducting the sale in order that the amount of Indebtedness so used or applied may be credited thereon as having been paid.

**Attorneys' Fees; Expenses.** If Lender forecloses or institutes any suit or action to enforce any of the terms of this Deed of Trust, Lender shall be entitled to recover such sum as the court may adjudge reasonable as attorneys' fees at trial and upon any appeal. Whether or not any court action is involved, and to the extent not prohibited by law, all reasonable expenses Lender incurs that in Lender's opinion are necessary at any time for the protection of its interest or the enforcement of its rights shall become a part of the Indebtedness payable on demand and shall bear interest at the Note rate from the date of the expenditure until repaid. Expenses covered by this paragraph include, without limitation, however subject to any limits under applicable law, Lender's reasonable attorneys' fees not in excess of fifteen percent (15%) of the unpaid debt after default and referral to an attorney not Lender's salaried employee whether or not there is a lawsuit, including reasonable attorneys' fees and expenses for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), appeals, and any anticipated post-judgment collection services, the cost of searching records, obtaining title reports (including foreclosure reports), surveyors' reports, and appraisal fees, title insurance, and fees for the Trustee, to the extent permitted by applicable law. Grantor also will pay any court costs, in addition to all other sums provided by law.

**Rights of Trustee.** To the extent permitted by applicable law, Trustee shall have all of the rights and duties of Lender as set forth in this section.

**NOTICES.** Any notice required to be given under this Deed of Trust, including without limitation any notice of default and any notice of sale shall be given in writing, and shall be effective when actually delivered, when actually received by telefacsimile (unless otherwise required by law), when deposited with a nationally recognized overnight courier, or, if mailed, when deposited in the United States mail, as first class, certified or registered mail postage prepaid, directed to the addresses shown near the beginning of this Deed of Trust. All copies of notices of foreclosure from the holder of any lien which has priority over this Deed of Trust shall be sent to Lender's address, as shown near the beginning of this Deed of Trust. Any person may change his or her address for notices under this Deed of Trust by giving formal written notice to the other person or persons, specifying that the purpose of the notice is to change the person's address. For notice purposes, Grantor agrees to keep Lender informed at all times of Grantor's current address. Unless otherwise provided or required by law, if there is more than one Grantor, any notice given by Lender to any Grantor is deemed to be notice given to all Grantors. It will be Grantor's responsibility to tell the others of the notice from Lender.

**MISCELLANEOUS PROVISIONS.** The following miscellaneous provisions are a part of this Deed of Trust:

**Amendments.** What is written in this Deed of Trust and in the Related Documents is Grantor's entire agreement with Lender concerning the matters covered by this Deed of Trust. To be effective, any change or amendment to this Deed of Trust must be in writing and must be signed by whoever will be bound or obligated by the change or amendment.

**Caption Headings.** Caption headings in this Deed of Trust are for convenience purposes only and are not to be used to interpret or define the provisions of this Deed of Trust.

**Merger.** There shall be no merger of the interest or estate created by this Deed of Trust with any other interest or estate in the Property at any time held by or for the benefit of Lender in any capacity, without the written consent of Lender.

**Governing Law.** This Deed of Trust will be governed by federal law applicable to Lender and, to the extent not preempted by federal law, the laws of the State of Colorado without regard to its conflicts of law provisions. This Deed of Trust has been accepted by Lender in the State of Colorado.

**Choice of Venue.** If there is a lawsuit, Grantor agrees upon Lender's request to submit to the jurisdiction of the courts of EL PASO County, State of Colorado.

**No Waiver by Lender.** Grantor understands Lender will not give up any of Lender's rights under this Deed of Trust unless Lender does so in writing. The fact that Lender delays or omits to exercise any right will not mean that Lender has given up that right. If Lender does agree in writing to give up one of Lender's rights, that does not mean Grantor will not have to comply with the other provisions of this Deed of Trust. Grantor also understands that if Lender does consent to a request, that does not mean that Grantor will not have to get Lender's consent again if the situation happens again. Grantor further understands that just because Lender consents to one or more of Grantor's requests, that does not mean Lender will be required to consent to any of Grantor's future requests. Grantor waives presentment, demand for payment, protest, and notice of dishonor. In the event Lender institutes legal process to obtain possession of the Property and to the extent permitted by law, Grantor hereby knowingly and voluntarily waives any right to a hearing prior to a court order granting Lender the right to take possession of the Property. Grantor waives all rights of exemption from execution or similar law in the Property, and Grantor agrees that the rights of Lender in the Property under this Deed of Trust are prior to Grantor's rights while this Deed of Trust remains in effect.

**Severability.** If a court finds that any provision of this Deed of Trust is not valid or should not be enforced, that fact by itself will not mean that the rest of this Deed of Trust will not be valid or enforced. Therefore, a court will enforce the rest of the provisions of this Deed of Trust even if a provision of this Deed of Trust may be found to be invalid or unenforceable.

**Successors and Assigns.** Subject to any limitations stated in this Deed of Trust on transfer of Grantor's interest, this Deed of Trust shall be binding upon and inure to the benefit of the parties, their successors and assigns. If ownership of the Property becomes vested in a person other than Grantor, Lender, without notice to Grantor, may deal with Grantor's successors with reference to this Deed of Trust and the indebtedness by way of forbearance or extension without releasing Grantor from the obligations of this Deed of Trust or liability under the indebtedness.

**Time is of the Essence.** Time is of the essence in the performance of this Deed of Trust.

**Waive Jury.** All parties to this Deed of Trust hereby waive the right to any jury trial in any action, proceeding, or counterclaim brought by any party against any other party.

**Waiver of Homestead Exemption.** Grantor hereby releases and waives all rights and benefits of the homestead exemption laws of the State of Colorado as to all indebtedness secured by this Deed of Trust.

**DEFINITIONS.** The following words shall have the following meanings when used in this Deed of Trust:

**Beneficiary.** The word "Beneficiary" means COLORADO CAPITAL BANK, and its successors and assigns.

**Borrower.** The word "Borrower" means GARY J. DRAGUL and includes all co-signers and co-makers signing the Note and all their successors and assigns.

**Deed of Trust.** The words "Deed of Trust" mean this Deed of Trust among Grantor, Lender, and Trustee, and includes without limitation all assignment and security interest provisions relating to the Personal Property and Rents.

**Environmental Laws.** The words "Environmental Laws" mean any and all state, federal and local statutes, regulations and ordinances relating to the protection of human health or the environment, including without limitation the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. Section 9601, et seq. ("CERCLA"), the Superfund Amendments and Reauthorization Act of 1980, Pub. L. No. 99-499 ("SARA"), the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq., the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et seq., or other applicable state or federal laws, rules, or regulations adopted pursuant thereto.

**Event of Default.** The words "Event of Default" mean any of the events of default set forth in this Deed of Trust in the events of default section of this Deed of Trust.

**Existing Indebtedness.** The words "Existing Indebtedness" mean the indebtedness described in the Existing Liens provision of this Deed of Trust.

**Grantor.** The word "Grantor" means GARY J. DRAGUL.

**Guaranty.** The word "Guaranty" means the guaranty from guarantor, endorser, surety, or accommodation party to Lender, including without limitation a guaranty of all or part of the Note.

**Hazardous Substances.** The words "Hazardous Substances" mean materials that, because of their quantity, concentration or physical, chemical or infectious characteristics, may cause or pose a present or potential hazard to human health or the environment when improperly used, treated, stored, disposed of, generated, manufactured, transported or otherwise handled. The words "Hazardous Substances" are used in their very broadest sense and include without limitation any and all hazardous or toxic substances, materials or waste as defined by or listed under the Environmental Laws. The term "Hazardous Substances" also includes, without limitation, petroleum and petroleum by-products or any fraction thereof and asbestos.

**Improvements.** The word "Improvements" means all existing and future improvements, buildings, structures, mobile homes affixed on the Real Property, facilities, additions, replacements and other construction on the Real Property.

**Indebtedness.** The word "indebtedness" means all principal, interest, and other amounts, costs and expenses payable under the Note or Related Documents, together with all renewals of, extensions of, modifications of, consolidations of and substitutions for the Note or Related Documents and any amounts expended or advanced by Lender to discharge Grantor's obligations or expenses incurred by Trustee or Lender to enforce Grantor's obligations under this Deed of Trust, together with interest on such amounts as provided in this Deed of Trust. Specifically, without limitation, indebtedness includes all amounts that may be indirectly secured by the Cross-Collateralization provision of this Deed of Trust.

**Lender.** The word "Lender" means COLORADO CAPITAL BANK, its successors and assigns. The words "successors or assigns" mean any person or company that acquires any interest in the Note.

**Note.** The word "Note" means the promissory note dated June 2, 2009, in the original principal amount of \$1,391,076.69 from Grantor to Lender, together with all renewals of, extensions of, modifications of, refinancings of, consolidations of, and substitutions for the promissory note or agreement.

**Personal Property.** The words "Personal Property" mean all equipment, fixtures, and other articles of personal property now or hereafter owned by Grantor, and now or hereafter attached or affixed to the Real Property; together with all accessions, parts, and additions to, all replacements of, and all substitutions for, any of such property; and together with all proceeds (including without limitation all insurance proceeds and refunds of premiums) from any sale or other disposition of the Property.

**Property.** The word "Property" means collectively the Real Property and the Personal Property.

**Real Property.** The words "Real Property" mean the real property, interests and rights, as further described in this Deed of Trust.


**Related Documents.** The words "Related Documents" mean all promissory notes, credit agreements, loan agreements, environmental agreements, guarantees, security agreements, mortgages, deeds of trust, security deeds, collateral mortgages, and all other instruments, agreements and documents, whether now or hereafter existing, executed in connection with the Indebtedness.

**Rents.** The word "Rents" means all present and future rents, revenues, income, issues, royalties, profits, and other benefits derived from the Property.

**Trustee.** The word "Trustee" means the Public Trustee of the City and County of Denver, Colorado.

GRANTOR ACKNOWLEDGES HAVING READ ALL THE PROVISIONS OF THIS DEED OF TRUST, AND GRANTOR AGREES TO ITS TERMS.

GRANTOR:

X   
GARY J. DRAGUL

INDIVIDUAL ACKNOWLEDGMENT

STATE OF Colorado )  
 )  
COUNTY OF Arapahoe ) SS  
 )

On this day before me, the undersigned Notary Public, personally appeared GARY J. DRAGUL, to me known to be the individual described in and who executed the Deed of Trust, and acknowledged that he or she signed the Deed of Trust as his or her free and voluntary act and deed, for the uses and purposes therein mentioned.

Given under my hand and official seal this 12th day of June, 2009.  
By Sarah Frances M. Neel Residing at Aurora Colorado  
Notary Public in and for the State of Colorado My commission expires 7-10-2011

**SARAH FRANCES M. NEEL**  
NOTARY PUBLIC  
STATE OF COLORADO  
My Commission Expires 07/10/2011

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After Recording Return To:  
COLORADO CAPITAL BANK  
TWO S. CASCADE AVENUE., #135  
COLORADO SPRINGS, COLORADO 80903  
Loan Number: 2019901054



[Space Above This Line For Recording Data]

### DEED OF TRUST

MIN: 10048600000003716

#### DEFINITIONS

Words used in multiple sections of this document are defined below and other words are defined in Sections 3, 11, 13, 18, 20 and 21. Certain rules regarding the usage of words used in this document are also provided in Section 16.

(A) "Security Instrument" means this document, which is dated MAY 24, 2007, together with all Riders to this document.

(B) "Borrower" is GARY J. DRAGUL

Borrower is the trustor under this Security Instrument.

(C) "Lender" is COLORADO CAPITAL BANK

Lender is a COLORADO CORPORATION organized and existing under the laws of COLORADO  
Lender's address is TWO S. CASCADE AVENUE., #150, COLORADO SPRINGS, COLORADO 80903

(D) "Trustee" is the Public Trustee of DENVER

County, Colorado.

(E) "MERS" is Mortgage Electronic Registration Systems, Inc. MERS is a separate corporation that is acting solely as a nominee for Lender and Lender's successors and assigns. MERS is the beneficiary under this Security Instrument. MERS is organized and existing under the laws of Delaware, and has an address and telephone number of P.O. Box 2026, Flint, MI 48501-2026, tel. (888) 679-MERS.

(F) "Note" means the promissory note signed by Borrower and dated MAY 24, 2007. The Note states that Borrower owes Lender TWO HUNDRED EIGHT THOUSAND FOUR HUNDRED AND 00/100 Dollars (U.S. \$ 208,400.00) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than JUNE 1, 2037

(G) "Property" means the property that is described below under the heading "Transfer of Rights in the Property."

(H) "Loan" means the debt evidenced by the Note, plus interest, any prepayment charges and late charges due under the Note, and all sums due under this Security Instrument, plus interest.

(I) "Riders" means all Riders to this Security Instrument that are executed by Borrower. The following Riders are to be executed by Borrower [check box as applicable]:

- Adjustable Rate Rider
- Balloon Rider
- 1-4 Family Rider
- Condominium Rider
- Planned Unit Development Rider
- Biweekly Payment Rider
- Second Home Rider
- Other(s) [specify]

(J) "Applicable Law" means all controlling applicable federal, state and local statutes, regulations, ordinances and administrative rules and orders (that have the effect of law) as well as all applicable final, non-appealable judicial opinions.

(K) "Community Association Dues, Fees, and Assessments" means all dues, fees, assessments and other charges that are imposed on Borrower or the Property by a condominium association, homeowners association or similar organization.

(L) "Electronic Funds Transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, computer, or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account. Such term includes, but is not limited to, point-of-sale transfers, automated teller machine transactions, transfers initiated by telephone, wire transfers, and automated clearinghouse transfers.

(M) "Escrow Items" means those items that are described in Section 3.

(N) "Miscellaneous Proceeds" means any compensation, settlement, award of damages, or proceeds paid by any third party (other than insurance proceeds paid under the coverages described in Section 5) for: (i) damage to, or destruction of, the Property; (ii) condemnation or other taking of all or any part of the Property; (iii) conveyance in lieu of condemnation; or (iv) misrepresentations of, or omissions as to, the value and/or condition of the Property.

(O) "Mortgage Insurance" means insurance protecting Lender against the nonpayment of, or default on, the Loan.

(P) "Periodic Payment" means the regularly scheduled amount due for (i) principal and interest under the Note, plus (ii) any amounts under Section 3 of this Security Instrument.

(Q) "RESPA" means the Real Estate Settlement Procedures Act (12 U.S.C. §2601 et seq.) and its implementing regulation, Regulation X (24 C.F.R. Part 3500), as they might be amended from time to time, or any additional or successor legislation or regulation that governs the same subject matter. As used in this Security Instrument, "RESPA" refers to all requirements and restrictions that are imposed in regard to a "federally related mortgage loan" even if the Loan does not qualify as a "federally related mortgage loan" under RESPA.

(R) "Successor in Interest of Borrower" means any party that has taken title to the Property, whether or not that party has assumed Borrower's obligations under the Note and/or this Security Instrument.

#### TRANSFER OF RIGHTS IN THE PROPERTY

The beneficiary of this Security Instrument is MERS (solely as nominee for Lender and Lender's successors and assigns) and the successors and assigns of MERS. This Security Instrument secures to Lender: (i) the repayment of the Loan, and all renewals, extensions and modifications of the Note; and (ii) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower, in consideration of the debt and the trust herein created, irrevocably grants and conveys to Trustee, in trust, with power of sale, the following described property located in the

COUNTY of DENVER  
[Type of Recording Jurisdiction] [Name of Recording Jurisdiction]  
LOT 43, BLOCK 5, HUTCHINSON HILLS FILING NO. 18, CITY AND COUNTY OF DENVER,  
STATE OF COLORADO.  
A.P.N.: 06294-16-043-000

which currently has the address of 2624 SOUTH ONEIDA STREET  
[Street]

DENVER, Colorado 80224 ("Property Address")  
[City] [Zip Code]

TOGETHER WITH all the improvements now or hereafter erected on the property, and all easements, appurtenances, and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property." Borrower understands and agrees that MERS holds only legal title to the interests granted by Borrower in this Security Instrument, but, if necessary to comply with law or custom, MERS (as nominee for Lender and Lender's successors and assigns) has the right: to exercise any or all of those interests, including, but not limited to, the right to foreclose and sell the Property; and to take any action required of Lender including, but not limited to, releasing and canceling this Security Instrument.

BORROWER COVENANTS that Borrower is lawfully seised of the estate hereby conveyed and has the right to grant and convey the Property and that the Property is unencumbered, except for encumbrances of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record and liens for taxes for the current year not yet due and payable.

THIS SECURITY INSTRUMENT combines uniform covenants for national use and non-uniform covenants with limited variations by jurisdiction to constitute a uniform security instrument covering real property.

#### UNIFORM COVENANTS. Borrower and Lender covenant and agree as follows:

1. **Payment of Principal, Interest, Escrow Items, Prepayment Charges, and Late Charges.** Borrower shall pay when due the principal of, and interest on, the debt evidenced by the Note and any prepayment charges and late charges due under the Note. Borrower shall also pay funds for Escrow Items pursuant to Section 3. Payments due under the Note and this Security Instrument shall be made in U.S. currency. However, if any check or other

instrument received by Lender as payment under the Note or this Security Instrument is returned to Lender unpaid, Lender may require that any or all subsequent payments due under the Note and this Security Instrument be made in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality, or entity; or (d) Electronic Funds Transfer.

Payments are deemed received by Lender when received at the location designated in the Note or at such other location as may be designated by Lender in accordance with the notice provisions in Section 15. Lender may return any payment or partial payment if the payment or partial payments are insufficient to bring the Loan current. Lender may accept any payment or partial payment insufficient to bring the Loan current, without waiver of any rights hereunder or prejudice to its rights to refuse such payment or partial payments in the future, but Lender is not obligated to apply such payments at the time such payments are accepted. If each Periodic Payment is applied as of its scheduled due date, then Lender need not pay interest on unapplied funds. Lender may hold such unapplied funds until Borrower makes payment to bring the Loan current. If Borrower does not do so within a reasonable period of time, Lender shall either apply such funds or return them to Borrower. If not applied earlier, such funds will be applied to the outstanding principal balance under the Note immediately prior to foreclosure. No offset or claim which Borrower might have now or in the future against Lender shall relieve Borrower from making payments due under the Note and this Security Instrument or performing the covenants and agreements secured by this Security Instrument.

**2. Application of Payments or Proceeds.** Except as otherwise described in this Section 2, all payments accepted and applied by Lender shall be applied in the following order of priority: (a) interest due under the Note; (b) principal due under the Note; (c) amounts due under Section 3. Such payments shall be applied to each Periodic Payment in the order in which it became due. Any remaining amounts shall be applied first to late charges, second to any other amounts due under this Security Instrument, and then to reduce the principal balance of the Note.

If Lender receives a payment from Borrower for a delinquent Periodic Payment which includes a sufficient amount to pay any late charge due, the payment may be applied to the delinquent payment and the late charge. If more than one Periodic Payment is outstanding, Lender may apply any payment received from Borrower to the repayment of the Periodic Payments if, and to the extent that, each payment can be paid in full. To the extent that any excess exists after the payment is applied to the full payment of one or more Periodic Payments, such excess may be applied to any late charges due. Voluntary prepayments shall be applied first to any prepayment charges and then as described in the Note.

Any application of payments, insurance proceeds, or Miscellaneous Proceeds to principal due under the Note shall not extend or postpone the due date, or change the amount, of the Periodic Payments.

**3. Funds for Escrow Items.** Borrower shall pay to Lender on the day Periodic Payments are due under the Note, until the Note is paid in full, a sum (the "Funds") to provide for payment of amounts due for: (a) taxes and assessments and other items which can attain priority over this Security Instrument as a lien or encumbrance on the Property; (b) leasehold payments or ground rents on the Property, if any; (c) premiums for any and all insurance required by Lender under Section 5; and (d) Mortgage Insurance premiums, if any, or any sums payable by Borrower to Lender in lieu of the payment of Mortgage Insurance premiums in accordance with the provisions of Section 10. These items are called "Escrow Items." At origination or at any time during the term of the Loan, Lender may require that Community Association Dues, Fees, and Assessments, if any, be escrowed by Borrower, and such dues, fees and assessments shall be an Escrow Item. Borrower shall promptly furnish to Lender all notices of amounts to be paid under this Section. Borrower shall pay Lender the Funds for Escrow Items unless Lender waives Borrower's obligation to pay the Funds for any or all Escrow Items. Lender may waive Borrower's obligation to pay to Lender Funds for any or all Escrow Items at any time. Any such waiver may only be in writing. In the event of such waiver, Borrower shall pay directly, when and where payable, the amounts due for any Escrow Items for which payment of Funds has been waived by Lender and, if Lender requires, shall furnish to Lender receipts evidencing such payment within such time period as Lender may require. Borrower's obligation to make such payments and to provide receipts shall for all purposes be deemed to be a covenant and agreement contained in this Security Instrument, as the phrase "covenant and agreement" is used in Section 9. If Borrower is obligated to pay Escrow Items directly, pursuant to a waiver, and Borrower fails to pay the amount due for an Escrow Item, Lender may exercise its rights under Section 9 and pay such amount and Borrower shall then be obligated under Section 9 to repay to Lender any such amount. Lender may revoke the waiver as to any or all Escrow Items at any time by a notice given in accordance with Section 15 and, upon such revocation, Borrower shall pay to Lender all Funds, and in such amounts, that are then required under this Section 3.

Lender may, at any time, collect and hold Funds in an amount (a) sufficient to permit Lender to apply the Funds at the time specified under RESPA, and (b) not to exceed the maximum amount a lender can require under RESPA. Lender shall estimate the amount of Funds due on the basis of current data and reasonable estimates of expenditures of future Escrow Items or otherwise in accordance with Applicable Law.

The Funds shall be held in an institution whose deposits are insured by a federal agency, instrumentality, or entity (including Lender, if Lender is an institution whose deposits are so insured) or in any Federal Home Loan Bank. Lender shall apply the Funds to pay the Escrow Items no later than the time specified under RESPA. Lender shall not charge Borrower for holding and applying the Funds, annually analyzing the escrow account, or verifying the Escrow Items, unless Lender pays Borrower interest on the Funds and Applicable Law permits Lender to make such a charge. Unless an agreement is made in writing or Applicable Law requires interest to be paid on the Funds, Lender shall not be required to pay Borrower any interest or earnings on the Funds. Borrower and Lender can agree in writing, however, that interest shall be paid on the Funds. Lender shall give to Borrower, without charge, an annual accounting of the Funds as required by RESPA.

If there is a surplus of Funds held in escrow, as defined under RESPA, Lender shall account to Borrower for the excess funds in accordance with RESPA. If there is a shortage of Funds held in escrow, as defined under RESPA,

Lender shall notify Borrower as required by RESPA, and Borrower shall pay to Lender the amount necessary to make up the shortage in accordance with RESPA, but in no more than 12 monthly payments. If there is a deficiency of Funds held in escrow, as defined under RESPA, Lender shall notify Borrower as required by RESPA, and Borrower shall pay to Lender the amount necessary to make up the deficiency in accordance with RESPA, but in no more than 12 monthly payments.

Upon payment in full of all sums secured by this Security Instrument, Lender shall promptly refund to Borrower any Funds held by Lender.

**4. Charges; Liens.** Borrower shall pay all taxes, assessments, charges, fines, and impositions attributable to the Property which can attain priority over this Security Instrument, leasehold payments or ground rents on the Property, if any, and Community Association Dues, Fees, and Assessments, if any. To the extent that these items are Escrow Items, Borrower shall pay them in the manner provided in Section 3.

Borrower shall promptly discharge any lien which has priority over this Security Instrument unless Borrower: (a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Lender, but only so long as Borrower is performing such agreement; (b) contests the lien in good faith by, or defends against enforcement of the lien in, legal proceedings which in Lender's opinion operate to prevent the enforcement of the lien while those proceedings are pending, but only until such proceedings are concluded; or (c) secures from the holder of the lien an agreement satisfactory to Lender subordinating the lien to this Security Instrument. If Lender determines that any part of the Property is subject to a lien which can attain priority over this Security Instrument, Lender may give Borrower a notice identifying the lien. Within 10 days of the date on which that notice is given, Borrower shall satisfy the lien or take one or more of the actions set forth above in this Section 4.

Lender may require Borrower to pay a one-time charge for a real estate tax verification and/or reporting service used by Lender in connection with this Loan.

**5. Property Insurance.** Borrower shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, hazards included within the term "extended coverage," and any other hazards including, but not limited to, earthquakes and floods, for which Lender requires insurance. This insurance shall be maintained in the amounts (including deductible levels) and for the periods that Lender requires. What Lender requires pursuant to the preceding sentences can change during the term of the Loan. The insurance carrier providing the insurance shall be chosen by Borrower subject to Lender's right to disapprove Borrower's choice, which right shall not be exercised unreasonably. Lender may require Borrower to pay, in connection with this Loan, either: (a) a one-time charge for flood zone determination, certification and tracking services; or (b) a one-time charge for flood zone determination and certification services and subsequent charges each time remappings or similar changes occur which reasonably might affect such determination or certification. Borrower shall also be responsible for the payment of any fees imposed by the Federal Emergency Management Agency in connection with the review of any flood zone determination resulting from an objection by Borrower.

If Borrower fails to maintain any of the coverages described above, Lender may obtain insurance coverage, at Lender's option and Borrower's expense. Lender is under no obligation to purchase any particular type or amount of coverage. Therefore, such coverage shall cover Lender, but might or might not protect Borrower, Borrower's equity in the Property, or the contents of the Property, against any risk, hazard or liability and might provide greater or lesser coverage than was previously in effect. Borrower acknowledges that the cost of the insurance coverage so obtained might significantly exceed the cost of insurance that Borrower could have obtained. Any amounts disbursed by Lender under this Section 5 shall become additional debt of Borrower secured by this Security Instrument. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

All insurance policies required by Lender and renewals of such policies shall be subject to Lender's right to disapprove such policies, shall include a standard mortgage clause, and shall name Lender as mortgagee and/or as an additional loss payee. Lender shall have the right to hold the policies and renewal certificates. If Lender requires, Borrower shall promptly give to Lender all receipts of paid premiums and renewal notices. If Borrower obtains any form of insurance coverage, not otherwise required by Lender, for damage to, or destruction of, the Property, such policy shall include a standard mortgage clause and shall name Lender as mortgagee and/or as an additional loss payee.

In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower. Unless Lender and Borrower otherwise agree in writing, any insurance proceeds, whether or not the underlying insurance was required by Lender, shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such insurance proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such insurance proceeds, Lender shall not be required to pay Borrower any interest or earnings on such proceeds. Fees for public adjusters, or other third parties, retained by Borrower shall not be paid out of the insurance proceeds and shall be the sole obligation of Borrower. If the restoration or repair is not economically feasible or Lender's security would be lessened, the insurance proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower. Such insurance proceeds shall be applied in the order provided for in Section 2.

If Borrower abandons the Property, Lender may file, negotiate and settle any available insurance claim and related matters. If Borrower does not respond within 30 days to a notice from Lender that the insurance carrier has offered to settle a claim, then Lender may negotiate and settle the claim. The 30-day period will begin when the notice is given. In either event, or if Lender acquires the Property under Section 22 or otherwise, Borrower hereby assigns to Lender (a) Borrower's rights to any insurance proceeds in an amount not to exceed the amounts unpaid



under the Note or this Security Instrument, and (b) any other of Borrower's rights (other than the right to any refund of unearned premiums paid by Borrower) under all insurance policies covering the Property, insofar as such rights are applicable to the coverage of the Property. Lender may use the insurance proceeds either to repair or restore the Property or to pay amounts unpaid under the Note or this Security Instrument, whether or not then due.

**6. Occupancy.** Borrower shall occupy, establish, and use the Property as Borrower's principal residence within 60 days after the execution of this Security Instrument and shall continue to occupy the Property as Borrower's principal residence for at least one year after the date of occupancy, unless Lender otherwise agrees in writing, which consent shall not be unreasonably withheld, or unless extenuating circumstances exist which are beyond Borrower's control.

**7. Preservation, Maintenance and Protection of the Property; Inspections.** Borrower shall not destroy, damage or impair the Property, allow the Property to deteriorate or commit waste on the Property. Whether or not Borrower is residing in the Property, Borrower shall maintain the Property in order to prevent the Property from deteriorating or decreasing in value due to its condition. Unless it is determined pursuant to Section 5 that repair or restoration is not economically feasible, Borrower shall promptly repair the Property if damaged to avoid further deterioration or damage. If insurance or condemnation proceeds are paid in connection with damage to, or the taking of, the Property, Borrower shall be responsible for repairing or restoring the Property only if Lender has released proceeds for such purposes. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. If the insurance or condemnation proceeds are not sufficient to repair or restore the Property, Borrower is not relieved of Borrower's obligation for the completion of such repair or restoration.

Lender or its agent may make reasonable entries upon and inspections of the Property. If it has reasonable cause, Lender may inspect the interior of the improvements on the Property. Lender shall give Borrower notice at the time of or prior to such an interior inspection specifying such reasonable cause.

**8. Borrower's Loan Application.** Borrower shall be in default if, during the Loan application process, Borrower or any persons or entities acting at the direction of Borrower or with Borrower's knowledge or consent gave materially false, misleading, or inaccurate information or statements to Lender (or failed to provide Lender with material information) in connection with the Loan. Material representations include, but are not limited to, representations concerning Borrower's occupancy of the Property as Borrower's principal residence.

**9. Protection of Lender's Interest in the Property and Rights Under this Security Instrument.** If (a) Borrower fails to perform the covenants and agreements contained in this Security Instrument, (b) there is a legal proceeding that might significantly affect Lender's interest in the Property and/or rights under this Security Instrument (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture, for enforcement of a lien which may attain priority over this Security Instrument or to enforce laws or regulations), or (c) Borrower has abandoned the Property, then Lender may do and pay for whatever is reasonable or appropriate to protect Lender's interest in the Property and rights under this Security Instrument, including protecting and/or assessing the value of the Property, and securing and/or repairing the Property. Lender's actions can include, but are not limited to: (a) paying any sums secured by a lien which has priority over this Security Instrument; (b) appearing in court; and (c) paying reasonable attorneys' fees to protect its interest in the Property and/or rights under this Security Instrument, including its secured position in a bankruptcy proceeding. Securing the Property includes, but is not limited to, entering the Property to make repairs, change locks, replace or board up doors and windows, drain water from pipes, eliminate building or other code violations or dangerous conditions, and have utilities turned on or off. Although Lender may take action under this Section 9, Lender does not have to do so and is not under any duty or obligation to do so. It is agreed that Lender incurs no liability for not taking any or all actions authorized under this Section 9.

Any amounts disbursed by Lender under this Section 9 shall become additional debt of Borrower secured by this Security Instrument. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

If this Security Instrument is on a leasehold, Borrower shall comply with all the provisions of the lease. Borrower shall not surrender the leasehold estate and interests herein conveyed or terminate or cancel the ground lease. Borrower shall not, without the express written consent of Lender, alter or amend the ground lease. If Borrower acquires fee title to the Property, the leasehold and the fee title shall not merge unless Lender agrees to the merger in writing.

**10. Mortgage Insurance.** If Lender required Mortgage Insurance as a condition of making the Loan, Borrower shall pay the premiums required to maintain the Mortgage Insurance in effect. If, for any reason, the Mortgage Insurance coverage required by Lender ceases to be available from the mortgage insurer that previously provided such insurance and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower shall pay the premiums required to obtain coverage substantially equivalent to the Mortgage Insurance previously in effect, at a cost substantially equivalent to the cost to Borrower of the Mortgage Insurance previously in effect, from an alternate mortgage insurer selected by Lender. If substantially equivalent Mortgage Insurance coverage is not available, Borrower shall continue to pay to Lender the amount of the separately designated payments that were due when the insurance coverage ceased to be in effect. Lender will accept, use and retain these payments as a non-refundable loss reserve in lieu of Mortgage Insurance. Such loss reserve shall be non-refundable, notwithstanding the fact that the Loan is ultimately paid in full, and Lender shall not be required to pay Borrower any interest or earnings on such loss reserve. Lender can no longer require loss reserve payments if Mortgage Insurance coverage (in the amount and for the period that Lender requires) provided by an insurer selected by Lender again becomes available, is obtained, and Lender requires separately designated payments toward the premiums for Mortgage Insurance. If Lender required Mortgage Insurance as a condition of making the Loan and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower shall pay the premiums required to maintain Mortgage Insurance in effect, or to provide a non-refundable loss reserve, until Lender's requirement for Mortgage Insurance ends in accordance with any written agreement between Borrower and

Lender providing for such termination or until termination is required by Applicable Law. Nothing in this Section 10 affects Borrower's obligation to pay interest at the rate provided in the Note.

Mortgage Insurance reimburses Lender (or any entity that purchases the Note) for certain losses it may incur if Borrower does not repay the Loan as agreed. Borrower is not a party to the Mortgage Insurance.

Mortgage insurers evaluate their total risk on all such insurance in force from time to time, and may enter into agreements with other parties that share or modify their risk, or reduce losses. These agreements are on terms and conditions that are satisfactory to the mortgage insurer and the other party (or parties) to these agreements. These agreements may require the mortgage insurer to make payments using any source of funds that the mortgage insurer may have available (which may include funds obtained from Mortgage Insurance premiums).

As a result of these agreements, Lender, any purchaser of the Note, another insurer, any reinsurer, any other entity, or any affiliate of any of the foregoing, may receive (directly or indirectly) amounts that derive from (or might be characterized as) a portion of Borrower's payments for Mortgage Insurance, in exchange for sharing or modifying the mortgage insurer's risk, or reducing losses. If such agreement provides that an affiliate of Lender takes a share of the insurer's risk in exchange for a share of the premiums paid to the insurer, the arrangement is often termed "captive reinsurance." Further:

(a) Any such agreements will not affect the amounts that Borrower has agreed to pay for Mortgage Insurance, or any other terms of the Loan. Such agreements will not increase the amount Borrower will owe for Mortgage Insurance, and they will not entitle Borrower to any refund.

(b) Any such agreements will not affect the rights Borrower has - if any - with respect to the Mortgage Insurance under the Homeowners Protection Act of 1998 or any other law. These rights may include the right to receive certain disclosures, to request and obtain cancellation of the Mortgage Insurance, to have the Mortgage Insurance terminated automatically, and/or to receive a refund of any Mortgage Insurance premiums that were unearned at the time of such cancellation or termination.

**11. Assignment of Miscellaneous Proceeds; Forfeiture.** All Miscellaneous Proceeds are hereby assigned to and shall be paid to Lender.

If the Property is damaged, such Miscellaneous Proceeds shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such Miscellaneous Proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may pay for the repairs and restoration in a single disbursement or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such Miscellaneous Proceeds, Lender shall not be required to pay Borrower any interest or earnings on such Miscellaneous Proceeds. If the restoration or repair is not economically feasible or Lender's security would be lessened, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower. Such Miscellaneous Proceeds shall be applied in the order provided for in Section 2.

In the event of a total taking, destruction, or loss in value of the Property, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is equal to or greater than the amount of the sums secured by this Security Instrument immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the sums secured by this Security Instrument shall be reduced by the amount of the Miscellaneous Proceeds multiplied by the following fraction: (a) the total amount of the sums secured immediately before the partial taking, destruction, or loss in value divided by (b) the fair market value of the Property immediately before the partial taking, destruction, or loss in value. Any balance shall be paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is less than the amount of the sums secured immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument whether or not the sums are then due.

If the Property is abandoned by Borrower, or if, after notice by Lender to Borrower that the Opposing Party (as defined in the next sentence) offers to make an award to settle a claim for damages, Borrower fails to respond to Lender within 30 days after the date the notice is given, Lender is authorized to collect and apply the Miscellaneous Proceeds either to restoration or repair of the Property or to the sums secured by this Security Instrument, whether or not then due. "Opposing Party" means the third party that owes Borrower Miscellaneous Proceeds or the party against whom Borrower has a right of action in regard to Miscellaneous Proceeds.

Borrower shall be in default if any action or proceeding, whether civil or criminal, is begun that, in Lender's judgment, could result in forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Security Instrument. Borrower can cure such a default and, if acceleration has occurred, reinstate as provided in Section 19, by causing the action or proceeding to be dismissed with a ruling that, in Lender's judgment, precludes forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Security Instrument. The proceeds of any award or claim for damages that are attributable to the impairment of Lender's interest in the Property are hereby assigned and shall be paid to Lender.

All Miscellaneous Proceeds that are not applied to restoration or repair of the Property shall be applied in the order provided for in Section 2.

**12. Borrower Not Released; Forbearance By Lender Not a Waiver.** Extension of the time for payment or modification of amortization of the sums secured by this Security Instrument granted by Lender to Borrower or any Successor in Interest of Borrower shall not operate to release the liability of Borrower or any Successors in Interest

of Borrower. Lender shall not be required to commence proceedings against any Successor in Interest of Borrower or to refuse to extend time for payment or otherwise modify amortization of the sums secured by this Security Instrument by reason of any demand made by the original Borrower or any Successors in Interest of Borrower. Any forbearance by Lender in exercising any right or remedy including, without limitation, Lender's acceptance of payments from third persons, entities or Successors in Interest of Borrower or in amounts less than the amount then due, shall not be a waiver of or preclude the exercise of any right or remedy.

**13. Joint and Several Liability; Co-signers; Successors and Assigns Bound.** Borrower covenants and agrees that Borrower's obligations and liability shall be joint and several. However, any Borrower who co-signs this Security Instrument but does not execute the Note (a "co-signer"): (a) is co-signing this Security Instrument only to mortgage, grant and convey the co-signer's interest in the Property under the terms of this Security Instrument; (b) is not personally obligated to pay the sums secured by this Security Instrument; and (c) agrees that Lender and any other Borrower can agree to extend, modify, forbear or make any accommodations with regard to the terms of this Security Instrument or the Note without the co-signer's consent.

Subject to the provisions of Section 18, any Successor in Interest of Borrower who assumes Borrower's obligations under this Security Instrument in writing, and is approved by Lender, shall obtain all of Borrower's rights and benefits under this Security Instrument. Borrower shall not be released from Borrower's obligations and liability under this Security Instrument unless Lender agrees to such release in writing. The covenants and agreements of this Security Instrument shall bind (except as provided in Section 20) and benefit the successors and assigns of Lender.

**14. Loan Charges.** Lender may charge Borrower fees for services performed in connection with Borrower's default, for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument, including, but not limited to, attorneys' fees, property inspection and valuation fees. In regard to any other fees, the absence of express authority in this Security Instrument to charge a specific fee to Borrower shall not be construed as a prohibition on the charging of such fee. Lender may not charge fees that are expressly prohibited by this Security Instrument or by Applicable Law.

If the Loan is subject to a law which sets maximum loan charges, and that law is finally interpreted so that the interest or other loan charges collected or to be collected in connection with the Loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from Borrower which exceeded permitted limits will be refunded to Borrower. Lender may choose to make this refund by reducing the principal owed under the Note or by making a direct payment to Borrower. If a refund reduces principal, the reduction will be treated as a partial prepayment without any prepayment charge (whether or not a prepayment charge is provided for under the Note). Borrower's acceptance of any such refund made by direct payment to Borrower will constitute a waiver of any right of action Borrower might have arising out of such overcharge.

**15. Notices.** All notices given by Borrower or Lender in connection with this Security Instrument must be in writing. Any notice to Borrower in connection with this Security Instrument shall be deemed to have been given to Borrower when mailed by first class mail or when actually delivered to Borrower's notice address if sent by other means. Notice to any one Borrower shall constitute notice to all Borrowers unless Applicable Law expressly requires otherwise. The notice address shall be the Property Address unless Borrower has designated a substitute notice address by notice to Lender. Borrower shall promptly notify Lender of Borrower's change of address. If Lender specifies a procedure for reporting Borrower's change of address, then Borrower shall only report a change of address through that specified procedure. There may be only one designated notice address under this Security Instrument at any one time. Any notice to Lender shall be given by delivering it or by mailing it by first class mail to Lender's address stated herein unless Lender has designated another address by notice to Borrower. Any notice in connection with this Security Instrument shall not be deemed to have been given to Lender until actually received by Lender. If any notice required by this Security Instrument is also required under Applicable Law, the Applicable Law requirement will satisfy the corresponding requirement under this Security Instrument.

**16. Governing Law; Severability; Rules of Construction.** This Security Instrument shall be governed by federal law and the law of the jurisdiction in which the Property is located. All rights and obligations contained in this Security Instrument are subject to any requirements and limitations of Applicable Law. Applicable Law might explicitly or implicitly allow the parties to agree by contract or it might be silent, but such silence shall not be construed as a prohibition against agreement by contract. In the event that any provision or clause of this Security Instrument or the Note conflicts with Applicable Law, such conflict shall not affect other provisions of this Security Instrument or the Note which can be given effect without the conflicting provision.

As used in this Security Instrument: (a) words of the masculine gender shall mean and include corresponding neuter words or words of the feminine gender; (b) words in the singular shall mean and include the plural and vice versa; and (c) the word "may" gives sole discretion without any obligation to take any action.

**17. Borrower's Copy.** Borrower shall be given one copy of the Note and of this Security Instrument.

**18. Transfer of the Property or a Beneficial Interest in Borrower.** As used in this Section 18, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser.

If all or any part of the Property or any Interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of

this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

**19. Borrower's Right to Reinstate After Acceleration.** If Borrower meets certain conditions, Borrower shall have the right to have enforcement of this Security Instrument discontinued at any time prior to the earliest of: (a) five days before sale of the Property pursuant to any power of sale contained in this Security Instrument; (b) such other period as Applicable Law might specify for the termination of Borrower's right to reinstate; or (c) entry of a judgment enforcing this Security Instrument. Those conditions are that Borrower: (a) pays Lender all sums which then would be due under this Security Instrument and the Note as if no acceleration had occurred; (b) cures any default of any other covenants or agreements; (c) pays all expenses incurred in enforcing this Security Instrument, including, but not limited to, reasonable attorneys' fees, property inspection and valuation fees, and other fees incurred for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument; and (d) takes such action as Lender may reasonably require to assure that Lender's interest in the Property and rights under this Security Instrument, and Borrower's obligation to pay the sums secured by this Security Instrument, shall continue unchanged. Lender may require that Borrower pay such reinstatement sums and expenses in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality or entity; or (d) Electronic Funds Transfer. Upon reinstatement by Borrower, this Security Instrument and obligations secured hereby shall remain fully effective as if no acceleration had occurred. However, this right to reinstate shall not apply in the case of acceleration under Section 18.

**20. Sale of Note; Change of Loan Servicer; Notice of Grievance.** The Note or a partial interest in the Note (together with this Security Instrument) can be sold one or more times without prior notice to Borrower. A sale might result in a change in the entity (known as the "Loan Servicer") that collects Periodic Payments due under the Note and this Security Instrument and performs other mortgage loan servicing obligations under the Note, this Security Instrument, and Applicable Law. There also might be one or more changes of the Loan Servicer unrelated to a sale of the Note. If there is a change of the Loan Servicer, Borrower will be given written notice of the change which will state the name and address of the new Loan Servicer, the address to which payments should be made and any other information RESPA requires in connection with a notice of transfer of servicing. If the Note is sold and thereafter the Loan is serviced by a Loan Servicer other than the purchaser of the Note, the mortgage loan servicing obligations to Borrower will remain with the Loan Servicer or be transferred to a successor Loan Servicer and are not assumed by the Note purchaser unless otherwise provided by the Note purchaser.

Neither Borrower nor Lender may commence, join, or be joined to any judicial action (as either an individual litigant or the member of a class) that arises from the other party's actions pursuant to this Security Instrument or that alleges that the other party has breached any provision of, or any duty owed by reason of, this Security Instrument, until such Borrower or Lender has notified the other party (with such notice given in compliance with the requirements of Section 15) of such alleged breach and afforded the other party hereto a reasonable period after the giving of such notice to take corrective action. If Applicable Law provides a time period which must elapse before certain action can be taken, that time period will be deemed to be reasonable for purposes of this paragraph. The notice of acceleration and opportunity to cure given to Borrower pursuant to Section 22 and the notice of acceleration given to Borrower pursuant to Section 18 shall be deemed to satisfy the notice and opportunity to take corrective action provisions of this Section 20.

**21. Hazardous Substances.** As used in this Section 21: (a) "Hazardous Substances" are those substances defined as toxic or hazardous substances, pollutants, or wastes by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials; (b) "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection; (c) "Environmental Cleanup" includes any response action, remedial action, or removal action, as defined in Environmental Law; and (d) an "Environmental Condition" means a condition that can cause, contribute to, or otherwise trigger an Environmental Cleanup.

Borrower shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances, or threaten to release any Hazardous Substances, on or in the Property. Borrower shall not do, nor allow anyone else to do, anything affecting the Property (a) that is in violation of any Environmental Law, (b) which creates an Environmental Condition, or (c) which, due to the presence, use, or release of a Hazardous Substance, creates a condition that adversely affects the value of the Property. The preceding two sentences shall not apply to the presence, use, or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and to maintenance of the Property (including, but not limited to, hazardous substances in consumer products).

Borrower shall promptly give Lender written notice of (a) any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which Borrower has actual knowledge, (b) any Environmental Condition, including but not limited to, any spilling, leaking, discharge, release or threat of release of any Hazardous Substance, and (c) any condition caused by the presence, use or release of a Hazardous Substance which adversely affects the value of the Property. If Borrower learns, or is notified by any governmental or regulatory authority, or any private party, that any removal or other remediation of any Hazardous Substance affecting the Property is necessary, Borrower shall promptly take all necessary remedial actions in accordance with Environmental Law. Nothing herein shall create any obligation on Lender for an Environmental Cleanup.

**NON-UNIFORM COVENANTS.** Borrower and Lender further covenant and agree as follows:

**22. Acceleration; Remedies.** Lender shall give notice to Borrower prior to acceleration following Borrower's breach of any covenant or agreement in this Security Instrument (but not prior to acceleration under

Section 18 unless Applicable Law provides otherwise). The notice shall specify: (a) the default; (b) the action required to cure the default; (c) a date, not less than 30 days from the date the notice is given to Borrower, by which the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Security Instrument and sale of the Property. The notice shall further inform Borrower of the right to reinstate after acceleration and the right to assert in the foreclosure proceeding the non-existence of a default or any other defense of Borrower to acceleration and sale. If the default is not cured on or before the date specified in the notice, Lender at its option may require immediate payment in full of all sums secured by this Security Instrument without further demand and may invoke the power of sale and any other remedies permitted by Applicable Law. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this Section 22, including, but not limited to, reasonable attorneys' fees and costs of title evidence.

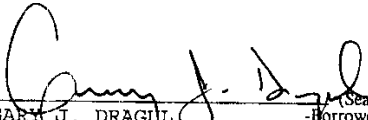
If Lender invokes the power of sale, Lender shall give written notice to Trustee of the occurrence of an event of default and of Lender's election to cause the Property to be sold. Lender shall mail a copy of the notice to Borrower as provided in Section 15. Trustee shall record a copy of the notice in the county in which the Property is located. Trustee shall publish a notice of sale for the time and in the manner provided by Applicable Law and shall mail copies of the notice of sale in the manner prescribed by Applicable Law to Borrower and to the other persons prescribed by Applicable Law. After the time required by Applicable Law, Trustee, without demand on Borrower, shall sell the Property at public auction to the highest bidder for cash at the time and place and under the terms designated in the notice of sale in one or more parcels and in any order Trustee determines. Trustee may postpone sale of any parcel of the Property by public announcement at the time and place of any previously scheduled sale. Lender or its designee may purchase the Property at any sale.

Trustee shall deliver to the purchaser Trustee's certificate describing the Property and the time the purchaser will be entitled to Trustee's deed. The recitals in the Trustee's deed shall be prima facie evidence of the truth of the statements made therein. Trustee shall apply the proceeds of the sale in the following order: (a) to all expenses of the sale, including, but not limited to, reasonable Trustee's and attorneys' fees; (b) to all sums secured by this Security Instrument; and (c) any excess to the person or persons legally entitled to it.

23. Release. Upon payment of all sums secured by this Security Instrument, Lender shall request that Trustee release this Security Instrument and shall produce for Trustee, duly cancelled, all notes evidencing debts secured by this Security Instrument. Trustee shall release this Security Instrument without further inquiry or liability. Borrower shall pay any recordation costs and the statutory Trustee's fees.

24. Waiver of Homestead. Borrower waives all right of homestead exemption in the Property.

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Security Instrument and in any Rider executed by Borrower and recorded with it.

  
 \_\_\_\_\_ (Seal)  
 GARY J. DRAGUL -Borrower

\_\_\_\_\_  
 \_\_\_\_\_ (Seal)  
 -Borrower

\_\_\_\_\_  
 \_\_\_\_\_ (Seal)  
 -Borrower

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 -Borrower

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 \_\_\_\_\_ (Seal)  
 -Borrower

Witness:

Witness:

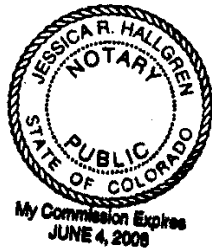
(Space Below This Line For Acknowledgment)

State of Colorado

County of DENVER

The foregoing instrument was acknowledged before me this 5-24-07

by GARY J. DRAGUL



(Seal)

*Jessica R. Hallgren*  
Signature of Person Taking Acknowledgment  
JESSICA R. HALLGREN, Vice President  
Commercial Escrow Officer

Title

Serial Number, if any

My commission expires:

Loan Number: 2019901054

## FIXED/ADJUSTABLE RATE RIDER

(LIBOR One-Year Index (As Published In *The Wall Street Journal*) - Rate Caps)

THIS FIXED/ADJUSTABLE RATE RIDER is made this 24<sup>th</sup> day of MAY, 2007, and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust, or Security Deed (the "Security Instrument") of the same date given by the undersigned ("Borrower") to secure Borrower's Fixed/Adjustable Rate Note (the "Note") to COLORADO CAPITAL BANK, A COLORADO CORPORATION ("Lender") of the same date and covering the property described in the Security Instrument and located at:

2624 SOUTH ONEIDA STREET, DENVER, COLORADO 80224  
(Property Address)

**THE NOTE PROVIDES FOR A CHANGE IN BORROWER'S FIXED INTEREST RATE TO AN ADJUSTABLE INTEREST RATE. THE NOTE LIMITS THE AMOUNT BORROWER'S ADJUSTABLE INTEREST RATE CAN CHANGE AT ANY ONE TIME AND THE MAXIMUM RATE BORROWER MUST PAY.**

**ADDITIONAL COVENANTS.** In addition to the covenants and agreements made in the Security Instrument, Borrower and Lender further covenant and agree as follows:

**A. ADJUSTABLE RATE AND MONTHLY PAYMENT CHANGES**

The Note provides for an initial fixed interest rate of 7.500%. The Note also provides for a change in the initial fixed rate to an adjustable interest rate, as follows:

**4. ADJUSTABLE INTEREST RATE AND MONTHLY PAYMENT CHANGES**

**(A) Change Dates**

The initial fixed interest rate I will pay will change to an adjustable interest rate on the 1<sup>st</sup> day of JUNE, 2014, and the adjustable interest rate I will pay may change on that day every 12th month thereafter. The date on which my initial fixed interest rate changes to an adjustable interest rate, and each date on which my adjustable interest rate could change, is called a "Change Date."

**(B) The Index**

Beginning with the first Change Date, my adjustable interest rate will be based on an Index. The "Index" is the average of interbank offered rates for one-year U.S. dollar-denominated deposits in the London market ("LIBOR"), as published in *The Wall Street Journal*. The most recent Index figure available as of the date 45 days before each Change Date is called the "Current Index."

If the Index is no longer available, the Note Holder will choose a new index that is based upon comparable information. The Note Holder will give me notice of this choice.

**(C) Calculation of Changes**

Before each Change Date, the Note Holder will calculate my new interest rate by adding TWO AND 250/1000 percentage points ( 2.250 %) to the Current Index. The Note Holder will then round the result of this addition to the nearest one-eighth of one percentage point (0.125%). Subject to the limits stated in Section 4(D) below, this rounded amount will be my new interest rate until the next Change Date.

The Note Holder will then determine the amount of the monthly payment that would be sufficient to repay the unpaid principal that I am expected to owe at the Change Date in full on the Maturity Date at my new interest rate in substantially equal payments. The result of this calculation will be the new amount of my monthly payment.

**(D) Limits on Interest Rate Changes**

The interest rate I am required to pay at the first Change Date will not be greater than 12.500 % or less than 2.500 %. Thereafter, my adjustable interest rate will never be increased or decreased on any single Change Date by more than TWO AND 000/1000 percentage points from the rate of interest I have been paying for the preceding 12 months. My interest rate will never be greater than 12.500 %.

**(E) Effective Date of Changes**

My new interest rate will become effective on each Change Date. I will pay the amount of my new monthly payment beginning on the first monthly payment date after the Change Date until the amount of my monthly payment changes again.

**(F) Notice of Changes**

The Note Holder will deliver or mail to me a notice of any changes in my initial fixed interest rate to an adjustable interest rate and of any changes in my adjustable interest rate before the effective date of any change. The notice will include the amount of my monthly payment, any information required by law to be given to me and also the title and telephone number of a person who will answer any question I may have regarding the notice.

**B. TRANSFER OF THE PROPERTY OR A BENEFICIAL INTEREST IN BORROWER**

1. Until Borrower's initial fixed interest rate changes to an adjustable interest rate under the terms stated in Section A above, Uniform Covenant 18 of the Security Instrument shall read as follows:

**Transfer of the Property or a Beneficial Interest in Borrower.** As used in this Section 18, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser.

If all or any part of the Property or any Interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law.



If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

2. When Borrower's initial fixed interest rate changes to an adjustable interest rate under the terms stated in Section A above, Uniform Covenant 18 of the Security Instrument described in Section B1 above shall then cease to be in effect, and the provisions of Uniform Covenant 18 of the Security Instrument shall be amended to read as follows:


**Transfer of the Property or a Beneficial Interest in Borrower.** As used in this Section 18, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser.

If all or any part of the Property or any Interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law. Lender also shall not exercise this option if: (a) Borrower causes to be submitted to Lender information required by Lender to evaluate the intended transferee as if a new loan were being made to the transferee; and (b) Lender reasonably determines that Lender's security will not be impaired by the loan assumption and that the risk of a breach of any covenant or agreement in this Security Instrument is acceptable to Lender.

To the extent permitted by Applicable Law, Lender may charge a reasonable fee as a condition to Lender's consent to the loan assumption. Lender also may require the transferee to sign an assumption agreement that is acceptable to Lender and that obligates the transferee to keep all the promises and agreements made in the Note and in this Security Instrument. Borrower will continue to be obligated under the Note and this Security Instrument unless Lender releases Borrower in writing.

If Lender exercises the option to require immediate payment in full, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Fixed/Adjustable Rate Rider.

  
\_\_\_\_\_  
GARY J. DRAGUL (Seal)  
-Borrower

\_\_\_\_\_  
(Seal)  
-Borrower

\_\_\_\_\_  
(Seal)  
-Borrower

\_\_\_\_\_  
(Seal)  
-Borrower

\_\_\_\_\_  
(Seal)  
-Borrower

\_\_\_\_\_  
(Seal)  
-Borrower



# ONE REPORT

To: ALLEN & VELLONE PC

Attn: MARILYN DAVIES

Fax:

Date Ordered: 09-20-2018  
DATE FILED: July 25, 2019 12:21 PM  
FILING ID: 77481DCDFE132  
Order Number: 770543  
CASE NUMBER: 2018CV33011

Phone: 303-534-4499

Address: 2432 S NEWPORT ST DENVER, CO

County: DENVER

## LEGAL DESCRIPTION

LOT 1, BLOCK 4, HUTCHINSON HILLS SUBDIVISION FILING NO. 10, CITY AND COUNTY OF DENVER, STATE OF COLORADO.

## OWNERSHIP & ENCUMBRANCES

Certification Date: 09-17-2018

OWNERSHIP: GARY J. DRAGUL

<u>Doc Type</u>	<u>Doc Fee</u>	<u>Date</u>	<u>Reference#</u>
WARRANTY DEED	\$28.95	12-20-2006	199839

## ENCUMBRANCES AND OTHER DOCUMENTS

<u>Item</u>	<u>Payable To</u>	<u>Amount</u>	<u>Date</u>	<u>Reference#</u>
DEED OF TRUST	COLORADO CAPITAL BANK	\$37,993.64	06-25-09	80534
DEED OF TRUST	COLORADO CAPITAL BANK	\$217,125.00	12-20-06	199840

Cust Ref# 19461.103

By:  
Land Title  
Property Resource Specialist  
Email:  
Phone:  
Fax:

This ONE REPORT is based on a limited search of the county real property records and is intended for informational purposes only. The ONE REPORT does not constitute any form of warranty or guarantee of title or title insurance, and should not be used by the recipient of the ONE REPORT as the basis for making any legal, investment or business decisions. The recipient of the ONE REPORT should consult legal, tax and other advisors before making any such decisions. The liability of Land Title Guarantee Company is strictly limited to (1) the recipient of the ONE REPORT, and no other person, and (2) the amount paid for the ONE REPORT.



Prepared For:  
**ALLEN & VELLONE PC**  
**MARILYN DAVIES**

**Reference:** 2432 S NEWPORT ST DENVER, CO

**Attached are the additional documents you requested:**

<u>Doc Type</u>	<u>Recorded</u>	<u>Reception#/BookPage</u>
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**Land Title**  
**Property Resource Specialist**  
**Email:**  
**Phone:**  
**Fax:**

ADD .DOCS 770543

# INVOICE



Land Title Guarantee Company  
5975 Greenwood Plaza Blvd Suite 125  
Greenwood Village, CO 80111  
303-270-0445

Tax ID: 84-0572036

**INVOICE NO. CC-183625**

ALLEN & VELLONE PC  
Attn: MARILYN DAVIES  
1600 STOUT ST #1100

DENVER, CO 80202

### Reference

Your reference Number : O & E Report  
Our Order Number : 770543  
Our Customer Number : 48813.8  
Invoice Requested By : Marilyn Davies  
Invoice (Process) Date : September 20, 2018  
Transaction Invoiced By : Web Services  
Email Address : system@ltgc.com

Property Address: 2432 S NEWPORT ST

Owner: Gary J. Dragul

### - CHARGES -

Service:	O & E Report	\$5.00
Ref:	O & E Report-770543	
Addr:	2432 S NEWPORT ST	
Party:	GARY J. DRAGUL	
Total Amount Invoiced:		\$5.00
Less Payment(s):		\$0.00
Balance Due:		\$5.00

**Payment due upon receipt**  
*Please Reference Invoice No. on Payment*  
Please make check payable and send to:  
Land Title Guarantee Company  
5975 Greenwood Plaza Blvd Suite 125  
Greenwood Village, CO 80111



ONE REPORT - This ONE REPORT is based on a limited search of the county real property records and is intended for informational purposes only. The ONE REPORT does not constitute any form of warranty or guarantee of title or title insurance, and should not be used by the recipient of the ONE REPORT as the basis for making any legal, investment or business decisions. The recipient of the ONE REPORT should consult legal, tax and other advisors before making any such decisions. The liability of Land Title Guarantee Company is strictly limited to (1) the recipient of the ONE REPORT, and no other person, and (2) the amount paid for the ONE REPORT.

TBD REPORT - This report is neither a commitment to insure, nor an abstract of title. This product may not conform to the written standard and practices of our underwriters and the Company reserves the right to set further requirements and/or exceptions should a full title commitment be ordered in the future. The liability of the Company shall not exceed the charge paid by the applicant for this report, nor shall the Company be held liable to any party other than the applicant for this report.

PROPERTY REPORT - This Report is based on a limited search of the county real property records and provides the name(s) of the vested owner(s), the legal description, tax information (taken from information provided by the county treasurer on its website) and encumbrances, which, for the purposes of this report, means deed of trust and mortgages, and liens recorded against the property and the owner(s) in the records of the clerk and recorder for the county in which the subject property is located. This Report does not constitute any form of warranty or guarantee of title or title insurance. The liability of Land Title Guarantee Company is strictly limited to (1) the recipient of the Report, and no other person, and (2) the amount paid for the Report.

OPEN DEED REPORT - The Open Deed Report does not include a search of the names of the property owner(s). This report is for informational purposes only and does not constitute any form of title guarantee nor insurance. The liability of this company shall not exceed the charge paid by the applicant for this report, nor shall the company be held liable to any party other than the applicant for this report.



2006199839

Page: 1 of 1  
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Filed for record the \_\_\_\_\_ day of \_\_\_\_\_, A.D. \_\_\_\_\_, at \_\_\_\_\_ o'clock \_\_\_\_\_ M. \_\_\_\_\_  
Reception No. \_\_\_\_\_ By \_\_\_\_\_ RECORDER DEPUTY.

**WARRANTY DEED**

THIS DEED, Made on this day of December 01, 2006, between  
**TIMOTHY M. GLIDDEN**

State Documentary Fee  
Date 12-1-06  
\$ 28.95

of the CITY AND County of DENVER and State of COLORADO, the Grantor(s), and  
**GARY J. DRAGUL**

whose legal address is : 2432 SOUTH NEWPORT STREET DENVER, CO 80224  
of the CITY AND County of DENVER and State of COLORADO, the Grantee(s):

WITNESS, That the Grantor(s), for and in consideration of the sum of ( \$289,500.00 )  
\*\*\* Two Hundred Eighty Nine Thousand Five Hundred and 00/100 \*\*\* DOLLARS

the receipt and sufficiency of which is hereby acknowledged, has granted, bargained, sold and conveyed, and by these presents does grant, bargain, sell, convey and confirm unto the Grantee(s), his heirs and assigns forever, all the real property, together with improvements, if any, situate, lying and being in the CITY AND County of DENVER and State of Colorado, described as follows:

**LOT 1, BLOCK 4, HUTCHINSON HILLS FILING NO. 10, CITY AND COUNTY OF DENVER, STATE OF COLORADO.**

also known as street number 2432 SOUTH NEWPORT STREET DENVER CO 80224

TOGETHER with all and singular and hereditaments and appurtenances thereto belonging, or in anywise appertaining and the reversion and reversions, remainder and remainders, rents, issues and profits thereof; and all the estate, right title interest, claim and demand whatsoever of the Grantor(s), either in law or equity, of, in and to the above bargained premises, with the hereditaments and appurtenances;

TO HAVE AND TO HOLD the said premises above bargained and described with appurtenances, unto the Grantee(s), his heirs and assigns forever. The Grantor(s), for himself, his heirs and personal representatives, does covenant, grant, bargain, and agree to and with the Grantee(s), his heirs and assigns, that at the time of the ensealing and delivery of these presents, he is well seized of the premises above conveyed, has good, sure, perfect, absolute and indefeasible estate of inheritance, in law, in fee simple, and has good right, full power and lawful authority to grant, bargain, sell and convey the same in manner and form as aforesaid, and that the same are free and clear from all former and other grants, bargains, sales, liens, taxes, assessments, encumbrances and restrictions of whatever kind or nature soever, Subject to general taxes for the year 2006 and those specific Exceptions described by reference to recorded documents as reflected in the Title Documents accepted by Grantee(s) in accordance with Section 8a (Title Review) of the Contract to Buy and Sell Real Estate relating to the above described property; distribution utility easements (including cable TV); those specifically described rights of third parties not shown by the public records of which Grantee(s) has actual knowledge and which were accepted by Grantee(s) in accordance with Section 8b (Matters not Shown by the Public Records) and Section 8c (Survey Review) of the Contract to Buy and Sell Real Estate relating to the above described real property; inclusion of the Property within any special tax district; and, the benefit and burdens of any declaration and party wall agreements, if any and other NONE

The Grantor(s) shall and will WARRANT AND FOREVER DEFEND the above bargained premises in the quiet and peaceable possession of the Grantee(s), his heirs and assigns, against all and every person or persons lawfully claiming the whole or any part thereof. The singular number shall include the plural, and the plural the singular, and the use of any gender shall be applicable to all genders.

IN WITNESS WHEREOF the Grantor(s) has executed this deed on the date set forth above.

By: *Timothy M. Glidden*  
TIMOTHY M. GLIDDEN

STATE OF COLORADO )  
County of ARAPAHOE ) ss.

**SHERRY CAMPBELL  
NOTARY PUBLIC  
STATE OF COLORADO**

My Commission Expires July 2007 **Exhibit 10 - Page 5 of 25**

The foregoing instrument was acknowledged before me on this day of December 01, 2006,  
by TIMOTHY M. GLIDDEN

My commission expires 7/8/10  
Witness my hand and official seal.

*Sherry Campbell*  
Notary Public

Name and Address of Person Creating Newly Created Legal Description ( 38-35-106.5, C.R.S.)

Escrow# DT70165195 When Recorded Return to: GARY J. DRAGUL  
Title# K70165195  
Form 84 08/29/04 WDRARRENT DEED (Photographic) 2432 SOUTH NEWPORT STREET DENVER, CO 80224 (4129802)

9

9383  
36-

**RECORDATION REQUESTED BY:**  
COLORADO CAPITAL BANK  
COLORADO SPRINGS  
TWO SOUTH CASCADE AVE, SUITE 150  
COLORADO SPRINGS, CO 80903

**WHEN RECORDED MAIL TO:**  
COLORADO CAPITAL BANK  
COLORADO SPRINGS  
TWO SOUTH CASCADE AVE, SUITE 150  
COLORADO SPRINGS, CO 80903



2009080534

Page: 1 of 7  
06/25/2009 04:46P

City & County Of Denver DOT R36.00 D0.00

**SEND TAX NOTICES TO:**  
GARY J. DRAGUL  
8301 E. PRENTICE AVENUE SUITE 210  
GREENWOOD VILLAGE, CO 80111

**FOR RECORDER'S USE ONLY**

**DEED OF TRUST**

**MAXIMUM PRINCIPAL AMOUNT SECURED.** The Lien of this Deed of Trust shall not exceed at any one time \$37,993.64 except as allowed under applicable Colorado law.

**THIS DEED OF TRUST** is dated June 2, 2009, among GARY J. DRAGUL, whose address is 8301 E. PRENTICE AVENUE SUITE 210, GREENWOOD VILLAGE, CO 80111 ("Grantor"); COLORADO CAPITAL BANK, whose address is COLORADO SPRINGS, TWO SOUTH CASCADE AVE, SUITE 150, COLORADO SPRINGS, CO 80903 (referred to below sometimes as "Lender" and sometimes as "Beneficiary"); and the Public Trustee of the City and County of Denver, Colorado (referred to below as "Trustee").

**CONVEYANCE AND GRANT.** For valuable consideration, Grantor hereby irrevocably grants, transfers and assigns to Trustee for the benefit of Lender as Beneficiary all of Grantor's right, title, and interest in and to the following described real property, together with all existing or subsequently erected or affixed buildings, improvements and fixtures; all easements, rights of way, and appurtenances; all water, water rights and ditch rights (including stock in utilities with ditch or irrigation rights); and all other rights, royalties, and profits relating to the real property, including without limitation all minerals, oil, gas, geothermal and similar matters, (the "Real Property") located in DENVER County, State of Colorado:

**LOT 1, BLOCK 4, HUTCHINSON HILLS FILING NO. 10, CITY AND COUNTY OF DENVER, STATE OF COLORADO**

The Real Property or its address is commonly known as 2432 SOUTH NEWPORT STREET, DENVER, CO 80224.

**CROSS-COLLATERALIZATION.** In addition to the Note, this Deed of Trust secures all obligations, debts and liabilities, plus interest thereon, of Grantor to Lender, or any one or more of them, as well as all claims by Lender against Grantor or any one or more of them, whether now existing or hereafter arising, whether related or unrelated to the purpose of the Note, whether voluntary or otherwise, whether due or not due, direct or indirect, determined or undetermined, absolute or contingent, liquidated or unliquidated, whether Grantor may be liable individually or jointly with others, whether obligated as guarantor, surety, accommodation party or otherwise, and whether recovery upon such amounts may be or hereafter may become barred by any statute of limitations, and whether the obligation to repay such amounts may be or hereafter may become otherwise unenforceable.

Grantor presently assigns to Lender (also known as Beneficiary in this Deed of Trust) all of Grantor's right, title, and interest in and to all present and future leases of the Property and all Rents from the Property. In addition, Grantor grants to Lender a Uniform Commercial Code security interest in the Personal Property and Rents.

**THIS DEED OF TRUST, INCLUDING THE ASSIGNMENT OF RENTS AND THE SECURITY INTEREST IN THE RENTS AND PERSONAL PROPERTY, IS GIVEN TO SECURE (A) PAYMENT OF THE INDEBTEDNESS AND (B) PERFORMANCE OF ANY AND ALL OBLIGATIONS UNDER THE NOTE, THE RELATED DOCUMENTS, AND THIS DEED OF TRUST. THIS DEED OF TRUST IS GIVEN AND ACCEPTED ON THE FOLLOWING TERMS:**

**PAYMENT AND PERFORMANCE.** Except as otherwise provided in this Deed of Trust, Grantor shall pay to Lender all amounts secured by this Deed of Trust as they become due, and shall strictly and in a timely manner perform all of Grantor's obligations under the Note, this Deed of Trust, and the Related Documents.

**POSSESSION AND MAINTENANCE OF THE PROPERTY.** Grantor agrees that Grantor's possession and use of the Property shall be governed by the following provisions:

**Possession and Use.** Until the occurrence of an Event of Default, Grantor may (1) remain in possession and control of the Property; (2) use, operate or manage the Property; and (3) collect the Rents from the Property.

**Duty to Maintain.** Grantor shall maintain the Property in good condition and promptly perform all repairs, replacements, and maintenance necessary to preserve its value.

**Compliance With Environmental Laws.** Grantor represents and warrants to Lender that: (1) During the period of Grantor's ownership of the Property, there has been no use, generation, manufacture, storage, treatment, disposal, release or threatened release of any Hazardous Substance by any person on, under, about or from the Property; (2) Grantor has no knowledge of, or reason to believe that there has been, except as previously disclosed to and acknowledged by Lender in writing, (a) any breach or violation of any Environmental Laws, (b) any use, generation, manufacture, storage, treatment, disposal, release or threatened release of any Hazardous Substance on, under, about or from the Property by any prior owners or occupants of the Property, or (c) any actual or threatened litigation or claims of any kind by any person relating to such matters; and (3) Except as previously disclosed to and acknowledged by Lender in writing, (a) neither Grantor nor any tenant, contractor, agent or other authorized user of the Property shall use, generate, manufacture, store, treat, dispose of or release any Hazardous Substance on, under, about or from the Property; and (b) any such activity shall be conducted in compliance with all applicable federal, state, and local laws, regulations and ordinances, including without limitation all Environmental Laws. Grantor authorizes Lender and its agents to enter upon the Property to make such inspections and tests, at Grantor's expense, as Lender may deem appropriate to determine compliance of the Property with this section of the Deed of Trust. Any inspections or tests made by Lender shall be for Lender's purposes only and shall not be construed to create any responsibility or liability on the part of Lender to Grantor or to any other person. The representations and warranties contained herein are based on Grantor's due diligence in investigating the Property for Hazardous Substances. Grantor hereby (1) releases and waives any future claims against Lender for indemnity or contribution in the event Grantor becomes liable for cleanup or other costs under any such laws; and (2) agrees to indemnify, defend, and hold harmless Lender against any and all claims, losses, liabilities, damages, penalties, and expenses which Lender may directly or indirectly sustain or suffer resulting from a breach of this section of the Deed of Trust or as a consequence of any use, generation, manufacture, storage, disposal, release or threatened release occurring prior to Grantor's ownership or interest in the Property, whether or not the same was or should have been known to Grantor. The provisions of this section of the Deed



of Trust, including the obligation to indemnify and defend, shall survive the payment of the Indebtedness and the satisfaction and reconveyance of the lien of this Deed of Trust and shall not be affected by Lender's acquisition of any interest in the Property, whether by foreclosure or otherwise.

**Nuisance, Waste.** Grantor shall not cause, conduct or permit any nuisance nor commit, permit, or suffer any stripping of or waste on or to the Property or any portion of the Property. Without limiting the generality of the foregoing, Grantor will not remove, or grant to any other party the right to remove, any timber, minerals (including oil and gas), coal, clay, scoria, soil, gravel or rock products without Lender's prior written consent.

**Removal of Improvements.** Grantor shall not demolish or remove any Improvements from the Real Property without Lender's prior written consent. As a condition to the removal of any Improvements, Lender may require Grantor to make arrangements satisfactory to Lender to replace such Improvements with Improvements of at least equal value.

**Lender's Right to Enter.** Lender and Lender's agents and representatives may enter upon the Real Property at all reasonable times to attend to Lender's interests and to inspect the Real Property for purposes of Grantor's compliance with the terms and conditions of this Deed of Trust.

**Compliance with Governmental Requirements.** Grantor shall promptly comply with all laws, ordinances, and regulations, now or hereafter in effect, of all governmental authorities applicable to the use or occupancy of the Property. Grantor may contest in good faith any such law, ordinance, or regulation and withhold compliance during any proceeding, including appropriate appeals, so long as Grantor has notified Lender in writing prior to doing so and so long as, in Lender's sole opinion, Lender's interests in the Property are not jeopardized. Lender may require Grantor to post adequate security or a surety bond, reasonably satisfactory to Lender, to protect Lender's interest.

**Duty to Protect.** Grantor agrees neither to abandon or leave unattended the Property. Grantor shall do all other acts, in addition to those acts set forth above in this section, which from the character and use of the Property are reasonably necessary to protect and preserve the Property.

**DUE ON SALE - CONSENT BY LENDER.** Lender may, at Lender's option, declare immediately due and payable all sums secured by this Deed of Trust upon the sale or transfer, without Lender's prior written consent, of all or any part of the Real Property, or any interest in the Real Property. A "sale or transfer" means the conveyance of Real Property or any right, title or interest in the Real Property; whether legal, beneficial or equitable; whether voluntary or involuntary; whether by outright sale, deed, installment sale contract, land contract, contract for deed, leasehold interest with a term greater than three (3) years, lease-option contract, or by sale, assignment, or transfer of any beneficial interest in or to any land trust holding title to the Real Property, or by any other method of conveyance of an interest in the Real Property. However, this option shall not be exercised by Lender if such exercise is prohibited by federal law or by Colorado law.

**TAXES AND LIENS.** The following provisions relating to the taxes and liens on the Property are part of this Deed of Trust:

**Payment.** Grantor shall pay when due (and in all events prior to delinquency) all taxes, special taxes, assessments, charges (including water and sewer), fines and impositions levied against or on account of the Property, and shall pay when due all claims for work done on or for services rendered or material furnished to the Property. Grantor shall maintain the Property free of all liens having priority over or equal to the interest of Lender under this Deed of Trust, except for the lien of taxes and assessments not due, except for the Existing Indebtedness referred to below, and except as otherwise provided in this Deed of Trust.

**Right to Contest.** Grantor may withhold payment of any tax, assessment, or claim in connection with a good faith dispute over the obligation to pay, so long as Lender's interest in the Property is not jeopardized. If a lien arises or is filed as a result of nonpayment, Grantor shall within fifteen (15) days after the lien arises or, if a lien is filed, within fifteen (15) days after Grantor has notice of the filing, secure the discharge of the lien, or if requested by Lender, deposit with Lender cash or a sufficient corporate surety bond or other security satisfactory to Lender in an amount sufficient to discharge the lien plus any costs and reasonable attorneys' fees, or other charges that could accrue as a result of a foreclosure or sale under the lien. In any contest, Grantor shall defend itself and Lender and shall satisfy any adverse judgment before enforcement against the Property. Grantor shall name Lender as an additional obligee under any surety bond furnished in the contest proceedings.

**Evidence of Payment.** Grantor shall upon demand furnish to Lender satisfactory evidence of payment of the taxes or assessments and shall authorize the appropriate governmental official to deliver to Lender at any time a written statement of the taxes and assessments against the Property.

**Notice of Construction.** Grantor shall notify Lender at least fifteen (15) days before any work is commenced, any services are furnished, or any materials are supplied to the Property, if any mechanic's lien, materialmen's lien, or other lien could be asserted on account of the work, services, or materials. Grantor will upon request of Lender furnish to Lender advance assurances satisfactory to Lender that Grantor can and will pay the cost of such improvements.

**PROPERTY DAMAGE INSURANCE.** The following provisions relating to insuring the Property are a part of this Deed of Trust.

**Maintenance of Insurance.** Grantor shall procure and maintain policies of fire insurance with standard extended coverage endorsements on a replacement basis for the full insurable value covering all Improvements on the Real Property in an amount sufficient to avoid application of any coinsurance clause, and with a standard mortgagee clause in favor of Lender, together with such other hazard and liability insurance as Lender may reasonably require. Policies shall be written in form, amounts, coverages and basis reasonably acceptable to Lender and issued by a company or companies reasonably acceptable to Lender. Grantor, upon request of Lender, will deliver to Lender from time to time the policies or certificates of insurance in form satisfactory to Lender, including stipulations that coverages will not be cancelled or diminished without at least thirty (30) days prior written notice to Lender. Each insurance policy also shall include an endorsement providing that coverage in favor of Lender will not be impaired in any way by any act, omission or default of Grantor or any other person. Should the Real Property be located in an area designated by the Director of the Federal Emergency Management Agency as a special flood hazard area, Grantor agrees to obtain and maintain Federal Flood Insurance, if available, for the full unpaid principal balance of the loan and any prior liens on the property securing the loan, up to the maximum policy limits set under the National Flood Insurance Program, or as otherwise required by Lender, and to maintain such insurance for the term of the loan.

**Application of Proceeds.** Grantor shall promptly notify Lender of any loss or damage to the Property. Lender may make proof of loss if Grantor fails to do so within fifteen (15) days of the casualty. Whether or not Lender's security is impaired, Lender may, at Lender's election, receive and retain the proceeds of any insurance and apply the proceeds to the reduction of the Indebtedness, payment of any lien affecting the Property, or the restoration and repair of the Property. If Lender elects to apply the proceeds to restoration and repair, Grantor shall repair or replace the damaged or destroyed improvements in a manner satisfactory to Lender. Lender shall, upon satisfactory proof of such expenditure, pay or reimburse Grantor from the proceeds for the reasonable cost of repair or restoration if Grantor is not in default under this Deed of Trust. Any proceeds which have not been disbursed within 180 days after their receipt and which Lender has not committed to the repair or restoration of the Property shall be used first to pay any amount owing to Lender under this Deed of Trust, then to pay accrued interest, and the remainder, if any, shall be applied to the principal balance of the Indebtedness. If Lender holds any proceeds after payment in full of the Indebtedness, such proceeds shall be paid to Grantor as Grantor's interests may appear.

**Compliance with Existing Indebtedness.** During the period in which any Existing Indebtedness described below is in effect, compliance with the insurance provisions contained in the instrument evidencing such Existing Indebtedness shall constitute compliance with the insurance provisions under this Deed of Trust, to the extent compliance with the terms of this Deed of Trust would constitute a duplication of insurance requirement. If any proceeds from the insurance become payable on loss, the provisions in this Deed of Trust for division of proceeds shall apply only to that portion of the proceeds not payable to the holder

of the Existing Indebtedness.

**LENDER'S EXPENDITURES.** If Grantor fails (A) to keep the Property free of all taxes, liens, security interests, encumbrances, and other claims, (B) to provide any required insurance on the Property, (C) to make repairs to the Property or to comply with any obligation to maintain Existing Indebtedness in good standing as required below, then Lender may do so. If any action or proceeding is commenced that would materially affect Lender's interests in the Property, then Lender on Grantor's behalf may, but is not required to, take any action that Lender believes to be appropriate to protect Lender's interests. All expenses incurred or paid by Lender for such purposes will then bear interest at the rate charged under the Note from the date incurred or paid by Lender to the date of repayment by Grantor. All such expenses will become a part of the indebtedness and, at Lender's option, will (A) be payable on demand; (B) be added to the balance of the Note and be apportioned among and be payable with any installment payments to become due during either (1) the term of any applicable insurance policy; or (2) the remaining term of the Note; or (C) be treated as a balloon payment which will be due and payable at the Note's maturity. The Deed of Trust also will secure payment of these amounts. The rights provided for in this paragraph shall be in addition to any other rights or any remedies to which Lender may be entitled on account of any default. Any such action by Lender shall not be construed as curing the default so as to bar Lender from any remedy that it otherwise would have had.

**WARRANTY: DEFENSE OF TITLE.** The following provisions relating to ownership of the Property are a part of this Deed of Trust:

**Title.** Grantor warrants that: (a) Grantor holds good and marketable title of record to the Property in fee simple, free and clear of all liens and encumbrances other than those set forth in the Real Property description or in the Existing Indebtedness section below or in any title insurance policy, title report, or final title opinion issued in favor of, and accepted by, Lender in connection with this Deed of Trust, and (b) Grantor has the full right, power, and authority to execute and deliver this Deed of Trust to Lender.

**Defense of Title.** Subject to the exception in the paragraph above, Grantor warrants and will forever defend the title to the Property against the lawful claims of all persons. In the event any action or proceeding is commenced that questions Grantor's title or the interest of Trustee or Lender under this Deed of Trust, Grantor shall defend the action at Grantor's expense. Grantor may be the nominal party in such proceeding, but Lender shall be entitled to participate in the proceeding and to be represented in the proceeding by counsel of Lender's own choice, and Grantor will deliver, or cause to be delivered, to Lender such instruments as Lender may request from time to time to permit such participation.

**Compliance With Laws.** Grantor warrants that the Property and Grantor's use of the Property complies with all existing applicable laws, ordinances, and regulations of governmental authorities.

**Survival of Promises.** All promises, agreements, and statements Grantor has made in this Deed of Trust shall survive the execution and delivery of this Deed of Trust, shall be continuing in nature and shall remain in full force and effect until such time as Grantor's Indebtedness is paid in full.

**EXISTING INDEBTEDNESS.** The following provisions concerning Existing Indebtedness are a part of this Deed of Trust:

**Existing Lien.** The lien of this Deed of Trust securing the Indebtedness may be secondary and inferior to an existing lien. Grantor expressly covenants and agrees to pay, or see to the payment of, the Existing Indebtedness and to prevent any default on such indebtedness, any default under the instruments evidencing such indebtedness, or any default under any security documents for such indebtedness.

**No Modification.** Grantor shall not enter into any agreement with the holder of any mortgage, deed of trust, or other security agreement which has priority over this Deed of Trust by which that agreement is modified, amended, extended, or renewed without the prior written consent of Lender. Grantor shall neither request nor accept any future advances under any such security agreement without the prior written consent of Lender.

**CONDEMNATION.** The following provisions relating to condemnation proceedings are a part of this Deed of Trust:

**Proceedings.** If any proceeding in condemnation is filed, Grantor shall promptly notify Lender in writing, and Grantor shall promptly take such steps as may be necessary to defend the action and obtain the award. Grantor may be the nominal party in such proceeding, but Lender shall be entitled to participate in the proceeding and to be represented in the proceeding by counsel of its own choice, and Grantor will deliver or cause to be delivered to Lender such instruments and documentation as may be requested by Lender from time to time to permit such participation.

**Application of Net Proceeds.** If all or any part of the Property is condemned by eminent domain proceedings or by any proceeding or purchase in lieu of condemnation, Lender may at its election require that all or any portion of the net proceeds of the award be applied to the Indebtedness or the repair or restoration of the Property. The net proceeds of the award shall mean the award after payment of all reasonable costs, expenses, and attorneys' fees incurred by Trustee or Lender in connection with the condemnation.

**IMPOSITION OF TAXES, FEES AND CHARGES BY GOVERNMENTAL AUTHORITIES.** The following provisions relating to governmental taxes, fees and charges are a part of this Deed of Trust:

**Current Taxes, Fees and Charges.** Upon request by Lender, Grantor shall execute such documents in addition to this Deed of Trust and take whatever other action is requested by Lender to perfect and continue Lender's lien on the Real Property. Grantor shall reimburse Lender for all taxes, as described below, together with all expenses incurred in recording, perfecting or continuing this Deed of Trust, including without limitation all taxes, fees, documentary stamps, and other charges for recording or registering this Deed of Trust.

**Taxes.** The following shall constitute taxes to which this section applies: (1) a specific tax upon this type of Deed of Trust or upon all or any part of the Indebtedness secured by this Deed of Trust; (2) a specific tax on Grantor which Grantor is authorized or required to deduct from payments on the indebtedness secured by this type of Deed of Trust; (3) a tax on this type of Deed of Trust chargeable against the Lender or the holder of the Note; and (4) a specific tax on all or any portion of the Indebtedness or on payments of principal and interest made by Grantor.

**Subsequent Taxes.** If any tax to which this section applies is enacted subsequent to the date of this Deed of Trust, this event shall have the same effect as an Event of Default, and Lender may exercise any or all of its available remedies for an Event of Default as provided below unless Grantor either (1) pays the tax before it becomes delinquent, or (2) contests the tax as provided above in the Taxes and Liens section and deposits with Lender cash or a sufficient corporate surety bond or other security satisfactory to Lender.

**SECURITY AGREEMENT: FINANCING STATEMENTS.** The following provisions relating to this Deed of Trust as a security agreement are a part of this Deed of Trust:

**Security Agreement.** This instrument shall constitute a Security Agreement to the extent any of the Property constitutes fixtures, and Lender shall have all of the rights of a secured party under the Uniform Commercial Code as amended from time to time.

**Security Interest.** Upon request by Lender, Grantor shall take whatever action is requested by Lender to perfect and continue Lender's security interest in the Personal Property. In addition to recording this Deed of Trust in the real property records, Lender may, at any time and without further authorization from Grantor, file executed counterparts, copies or reproductions of this Deed of Trust as a financing statement. Grantor shall reimburse Lender for all expenses incurred in perfecting or continuing this security interest. Upon default, Grantor shall not remove, sever or detach the Personal Property from the Property. Upon default, Grantor shall assemble any Personal Property not affixed to the Property in a manner and at a place reasonably convenient to Grantor and Lender and make it available to Lender within three (3) days after receipt of written demand from Lender to the

extent permitted by applicable law.

**Addressee.** The mailing addresses of Grantor (debtor) and Lender (secured party) from which information concerning the security interest granted by this Deed of Trust may be obtained (each as required by the Uniform Commercial Code) are as stated on the first page of this Deed of Trust.

**FURTHER ASSURANCES; ATTORNEY-IN-FACT.** The following provisions relating to further assurances and attorney-in-fact are a part of this Deed of Trust:

**Further Assurances.** At any time, and from time to time, upon request of Lender, Grantor will make, execute and deliver, or will cause to be made, executed or delivered, to Lender or to Lender's designee, and when requested by Lender, cause to be filed, recorded, refiled, or re-recorded, as the case may be, at such times and in such offices and places as Lender may deem appropriate, any and all such mortgages, deeds of trust, security deeds, security agreements, financing statements, continuation statements, instruments of further assurance, certificates, and other documents as may, in the sole opinion of Lender, be necessary or desirable in order to effectuate, complete, perfect, continue, or preserve (1) Grantor's obligations under the Note, this Deed of Trust, and the Related Documents, and (2) the liens and security interests created by this Deed of Trust on the Property, whether now owned or hereafter acquired by Grantor. Unless prohibited by law or Lender agrees to the contrary in writing, Grantor shall reimburse Lender for all costs and expenses incurred in connection with the matters referred to in this paragraph.

**Attorney-in-Fact.** If Grantor fails to do any of the things referred to in the preceding paragraph, Lender may do so for and in the name of Grantor and at Grantor's expense. For such purposes, Grantor hereby irrevocably appoints Lender as Grantor's attorney-in-fact for the purpose of making, executing, delivering, filing, recording, and doing all other things as may be necessary or desirable, in Lender's sole opinion, to accomplish the matters referred to in the preceding paragraph.

**FULL PERFORMANCE.** Upon the full performance of all the obligations under the Note and this Deed of Trust, Trustee may, upon production of documents and fees as required under applicable law, release this Deed of Trust, and such release shall constitute a release of the lien for all such additional sums and expenditures made pursuant to this Deed of Trust. Lender agrees to cooperate with Grantor in obtaining such release and releasing the other collateral securing the indebtedness. Any release fees required by law shall be paid by Grantor, if permitted by applicable law.

**EVENTS OF DEFAULT.** At Lender's option, Grantor will be in default under this Deed of Trust if any of the following happen:

**Payment Default.** Grantor fails to make any payment when due under the Indebtedness.

**Break Other Promise.** Grantor breaks any promise made to Lender or fails to perform promptly at the time and strictly in the manner provided in this Deed of Trust or in any agreement related to this Deed of Trust.

**Compliance Default.** Failure to comply with any other term, obligation, covenant or condition contained in this Deed of Trust, the Note or in any of the Related Documents.

**Default on Other Payments.** Failure of Grantor within the time required by this Deed of Trust to make any payment for taxes or insurance, or any other payment necessary to prevent filing of or to effect discharge of any lien.

**False Statements.** Any representation or statement made or furnished to Lender by Grantor or on Grantor's behalf under this Deed of Trust or the Related Documents is false or misleading in any material respect, either now or at the time made or furnished.

**Defective Collateralization.** This Deed of Trust or any of the Related Documents ceases to be in full force and effect (including failure of any collateral document to create a valid and perfected security interest or lien) at any time and for any reason.

**Death or Insolvency.** The death of Grantor, the insolvency of Grantor, the appointment of a receiver for any part of Grantor's property, any assignment for the benefit of creditors, any type of creditor workout, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Grantor.

**Taking of the Property.** Any creditor or governmental agency tries to take any of the Property or any other of Grantor's property in which Lender has a lien. This includes taking of, garnishing of or levying on Grantor's accounts with Lender. However, if Grantor disputes in good faith whether the claim on which the taking of the Property is based is valid or reasonable, and if Grantor gives Lender written notice of the claim and furnishes Lender with monies or a surety bond satisfactory to Lender to satisfy the claim, then this default provision will not apply.

**Breach of Other Agreement.** Any breach by Grantor under the terms of any other agreement between Grantor and Lender that is not remedied within any grace period provided therein, including without limitation any agreement concerning any indebtedness or other obligation of Grantor to Lender, whether existing now or later.

**Events Affecting Guarantor.** Any of the preceding events occurs with respect to any guarantor, endorser, surety, or accommodation party of any of the indebtedness or any guarantor, endorser, surety, or accommodation party dies or becomes incompetent, or revokes or disputes the validity of, or liability under, any Guaranty of the Indebtedness.

**Insecurity.** Lender has reasonable cause to believe Lender is insecure or that Lender's collateral is impaired.

**Existing Indebtedness.** The payment of any installment of principal or any interest on the Existing Indebtedness is not made within the time required by the promissory note evidencing such indebtedness, or a default occurs under the instrument securing such indebtedness and is not cured during any applicable grace period in such instrument, or any suit or other action is commenced to foreclose any existing lien on the Property.

**Right to Cure.** If any default, other than a default in payment is curable and if Grantor has not been given a notice of a breach of the same provision of this Deed of Trust within the preceding twelve (12) months, it may be cured if Grantor, after receiving written notice from Lender demanding cure of such default: (1) cures the default within twenty (20) days; or (2) if the cure requires more than twenty (20) days, immediately initiates steps which Lender deems in Lender's sole discretion to be sufficient to cure the default and thereafter continues and completes all reasonable and necessary steps sufficient to produce compliance as soon as reasonably practical.

**RIGHTS AND REMEDIES ON DEFAULT.** Subject to any applicable notice and cure provisions under Colorado law, if an Event of Default occurs under this Deed of Trust, at any time thereafter, Trustee or Lender may exercise any one or more of the following rights and remedies:

**Election of Remedies.** All of Lender's rights and remedies will be cumulative and may be exercised alone or together. An election by Lender to choose any one remedy will not bar Lender from using any other remedy. If Lender decides to spend money or to perform any of Grantor's obligations under this Deed of Trust, after Grantor's failure to do so, that decision by Lender will not effect Lender's right to declare Grantor in default and to exercise Lender's remedies.

**Accelerate Indebtedness.** Lender shall have the right at its option to declare the entire Indebtedness immediately due and payable, including any prepayment penalty which Grantor would be required to pay.

**Foreclosure.** Lender shall have the right to cause all or any part of the Real Property, and Personal Property, if Lender decides to proceed against it as if it were real property, to be sold by the Trustee according to the laws of the State of Colorado as respects foreclosures against real property. The Trustee shall give notice in accordance with the laws of Colorado. The Trustee shall apply the proceeds of the sale in the following order: (a) to all costs and expenses of the sale, including but not limited to Trustee's fees, attorneys' fees, and the cost of title evidence; (b) to all sums secured by this Deed of Trust; and (c) the excess,

If any, to the person or persons legally entitled to the excess.

**UCC Remedies.** With respect to all or any part of the Personal Property, Lender shall have all the rights and remedies of a secured party under the Uniform Commercial Code.

**Collect Rents.** Lender shall have the right to take possession of and manage the Property and collect the Rents, including amounts past due and unpaid, and apply the net proceeds, over and above Lender's costs, against the Indebtedness. In furtherance of this right, Lender may require any tenant or other user of the Property to make payments of rent or use fees directly to Lender. If the Rents are collected by Lender, then Grantor irrevocably designates Lender as Grantor's attorney-in-fact to endorse instruments received in payment thereof in the name of Grantor and to negotiate the same and collect the proceeds. Payments by tenants or other users to Lender in response to Lender's demand shall satisfy the obligations for which the payments are made, whether or not any proper grounds for the demand existed. Lender may exercise its rights under this subparagraph either in person, by agent, or through a receiver.

**Appoint Receiver.** Lender shall have the right to have a receiver appointed to take possession of all or any part of the Property, with the power to protect and preserve the Property, to operate the Property preceding foreclosure or sale, and to collect the Rents from the Property and apply the proceeds, over and above the cost of the receivership, against the Indebtedness. The receiver may serve without bond if permitted by law. Lender's right to the appointment of a receiver shall exist whether or not the apparent value of the Property exceeds the Indebtedness by a substantial amount. Employment by Lender shall not disqualify a person from serving as a receiver. Receiver may be appointed by a court of competent jurisdiction upon ex parte application and without notice, notice being expressly waived.

**Tenancy at Sufferance.** If Grantor remains in possession of the Property after the Property is sold as provided above or Lender otherwise becomes entitled to possession of the Property upon default of Grantor, Grantor shall become a tenant at sufferance of Lender or the purchaser of the Property and shall, at Lender's option, either (1) pay a reasonable rental for the use of the Property, or (2) vacate the Property immediately upon the demand of Lender.

**Other Remedies.** Trustee or Lender shall have any other right or remedy provided in this Deed of Trust or the Note or available at law or in equity.

**Sale of the Property.** In exercising its rights and remedies, Lender shall be free to designate on or before it files a notice of election and demand with the Trustee, that the Trustee sell all or any part of the Property together or separately, in one sale or by separate sales. Lender shall be entitled to bid at any public sale on all or any portion of the Property. Upon any sale of the Property, whether made under a power of sale granted in this Deed of Trust or pursuant to judicial proceedings, if the holder of the Note is a purchaser at such sale, it shall be entitled to use and apply all, or any portion of, the Indebtedness for or in settlement or payment of all, or any portion of, the purchase price of the Property purchased, and, in such case, this Deed of Trust, the Note, and any documents evidencing expenditures secured by this Deed of Trust shall be presented to the person conducting the sale in order that the amount of Indebtedness so used or applied may be credited thereon as having been paid.

**Attorneys' Fees; Expenses.** If Lender forecloses or institutes any suit or action to enforce any of the terms of this Deed of Trust, Lender shall be entitled to recover such sum as the court may adjudge reasonable as attorneys' fees at trial and upon any appeal. Whether or not any court action is involved, and to the extent not prohibited by law, all reasonable expenses Lender incurs that in Lender's opinion are necessary at any time for the protection of its interest or the enforcement of its rights shall become a part of the Indebtedness payable on demand and shall bear interest at the Note rate from the date of the expenditure until repaid. Expenses covered by this paragraph include, without limitation, however subject to any limits under applicable law, Lender's reasonable attorneys' fees not in excess of fifteen percent (15%) of the unpaid debt after default and referral to an attorney not Lender's salaried employee whether or not there is a lawsuit, including reasonable attorneys' fees and expenses for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), appeals, and any anticipated post-judgment collection services, the cost of searching records, obtaining title reports (including foreclosure reports), surveyors' reports, and appraisal fees, title insurance, and fees for the Trustee, to the extent permitted by applicable law. Grantor also will pay any court costs, in addition to all other sums provided by law.

**Rights of Trustee.** To the extent permitted by applicable law, Trustee shall have all of the rights and duties of Lender as set forth in this section.

**NOTICES.** Any notice required to be given under this Deed of Trust, including without limitation any notice of default and any notice of sale shall be given in writing, and shall be effective when actually delivered, when actually delivered, when actually received by telefacsimile (unless otherwise required by law), when deposited with a nationally recognized overnight courier, or, if mailed, when deposited in the United States mail, as first class, certified or registered mail postage prepaid, directed to the addresses shown near the beginning of this Deed of Trust. All copies of notices of foreclosure from the holder of any lien which has priority over this Deed of Trust shall be sent to Lender's address, as shown near the beginning of this Deed of Trust. Any person may change his or her address for notices under this Deed of Trust by giving formal written notice to the other person or persons, specifying that the purpose of the notice is to change the person's address. For notice purposes, Grantor agrees to keep Lender informed at all times of Grantor's current address. Unless otherwise provided or required by law, if there is more than one Grantor, any notice given by Lender to any Grantor is deemed to be notice given to all Grantors. It will be Grantor's responsibility to tell the others of the notice from Lender.

**MISCELLANEOUS PROVISIONS.** The following miscellaneous provisions are a part of this Deed of Trust:

**Amendments.** What is written in this Deed of Trust and in the Related Documents is Grantor's entire agreement with Lender concerning the matters covered by this Deed of Trust. To be effective, any change or amendment to this Deed of Trust must be in writing and must be signed by whoever will be bound or obligated by the change or amendment.

**Caption Headings.** Caption headings in this Deed of Trust are for convenience purposes only and are not to be used to interpret or define the provisions of this Deed of Trust.

**Merger.** There shall be no merger of the interest or estate created by this Deed of Trust with any other interest or estate in the Property at any time held by or for the benefit of Lender in any capacity, without the written consent of Lender.

**Governing Law.** This Deed of Trust will be governed by federal law applicable to Lender and, to the extent not preempted by federal law, the laws of the State of Colorado without regard to its conflicts of law provisions. This Deed of Trust has been accepted by Lender in the State of Colorado.

**Choice of Venue.** If there is a lawsuit, Grantor agrees upon Lender's request to submit to the jurisdiction of the courts of EL PASO County, State of Colorado.

**No Waiver by Lender.** Grantor understands Lender will not give up any of Lender's rights under this Deed of Trust unless Lender does so in writing. The fact that Lender delays or omits to exercise any right will not mean that Lender has given up that right. If Lender does agree in writing to give up one of Lender's rights, that does not mean Grantor will not have to comply with the other provisions of this Deed of Trust. Grantor also understands that if Lender does consent to a request, that does not mean that Grantor will not have to get Lender's consent again if the situation happens again. Grantor further understands that just because Lender consents to one or more of Grantor's requests, that does not mean Lender will be required to consent to any of Grantor's future requests. Grantor waives presentment, demand for payment, protest, and notice of dishonor. In the event Lender institutes legal process to obtain possession of the Property and to the extent permitted by law, Grantor hereby knowingly and voluntarily waives any right to a hearing prior to a court order granting Lender the right to take possession of the Property. Grantor waives all rights of exemption from execution or similar law in the Property, and Grantor agrees that the rights of Lender in the Property under this Deed of Trust are prior to Grantor's rights while this Deed of Trust remains in effect.

**DEED OF TRUST  
(Continued)**

**Severability.** If a court finds that any provision of this Deed of Trust is not valid or should not be enforced, that fact by itself will not mean that the rest of this Deed of Trust will not be valid or enforced. Therefore, a court will enforce the rest of the provisions of this Deed of Trust even if a provision of this Deed of Trust may be found to be invalid or unenforceable.

**Successors and Assigns.** Subject to any limitations stated in this Deed of Trust on transfer of Grantor's interest, this Deed of Trust shall be binding upon and inure to the benefit of the parties, their successors and assigns. If ownership of the Property becomes vested in a person other than Grantor, Lender, without notice to Grantor, may deal with Grantor's successors with reference to this Deed of Trust and the indebtedness by way of forbearance or extension without releasing Grantor from the obligations of this Deed of Trust or liability under the indebtedness.

**Time is of the Essence.** Time is of the essence in the performance of this Deed of Trust.

**Waive Jury.** All parties to this Deed of Trust hereby waive the right to any jury trial in any action, proceeding, or counterclaim brought by any party against any other party.

**Waiver of Homestead Exemption.** Grantor hereby releases and waives all rights and benefits of the homestead exemption laws of the State of Colorado as to all indebtedness secured by this Deed of Trust.

**DEFINITIONS.** The following words shall have the following meanings when used in this Deed of Trust:

**Beneficiary.** The word "Beneficiary" means COLORADO CAPITAL BANK, and its successors and assigns.

**Borrower.** The word "Borrower" means GARY J. DRAGUL and includes all co-signers and co-makers signing the Note and all their successors and assigns.

**Deed of Trust.** The words "Deed of Trust" mean this Deed of Trust among Grantor, Lender, and Trustee, and includes without limitation all assignment and security interest provisions relating to the Personal Property and Rents.

**Environmental Laws.** The words "Environmental Laws" mean any and all state, federal and local statutes, regulations and ordinances relating to the protection of human health or the environment, including without limitation the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. Section 9601, et seq. ("CERCLA"), the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499 ("SARA"), the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq., the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et seq., or other applicable state or federal laws, rules, or regulations adopted pursuant thereto.

**Event of Default.** The words "Event of Default" mean any of the events of default set forth in this Deed of Trust in the events of default section of this Deed of Trust.

**Existing Indebtedness.** The words "Existing Indebtedness" mean the indebtedness described in the Existing Liens provision of this Deed of Trust.

**Grantor.** The word "Grantor" means GARY J. DRAGUL.

**Guaranty.** The word "Guaranty" means the guaranty from guarantor, endorser, surety, or accommodation party to Lender, including without limitation a guaranty of all or part of the Note.

**Hazardous Substances.** The words "Hazardous Substances" mean materials that, because of their quantity, concentration or physical, chemical or infectious characteristics, may cause or pose a present or potential hazard to human health or the environment when improperly used, treated, stored, disposed of, generated, manufactured, transported or otherwise handled. The words "Hazardous Substances" are used in their very broadest sense and include without limitation any and all hazardous or toxic substances, materials or waste as defined by or listed under the Environmental Laws. The term "Hazardous Substances" also includes, without limitation, petroleum and petroleum by-products or any fraction thereof and asbestos.

**Improvements.** The word "Improvements" means all existing and future improvements, buildings, structures, mobile homes affixed on the Real Property, facilities, additions, replacements and other construction on the Real Property.

**Indebtedness.** The word "Indebtedness" means all principal, interest, and other amounts, costs and expenses payable under the Note or Related Documents, together with all renewals of, extensions of, modifications of, consolidations of and substitutions for the Note or Related Documents and any amounts expended or advanced by Lender to discharge Grantor's obligations or expenses incurred by Trustee or Lender to enforce Grantor's obligations under this Deed of Trust, together with interest on such amounts as provided in this Deed of Trust. Specifically, without limitation, indebtedness includes all amounts that may be indirectly secured by the Cross-Collateralization provision of this Deed of Trust.

**Lender.** The word "Lender" means COLORADO CAPITAL BANK, its successors and assigns. The words "successors or assigns" mean any person or company that acquires any interest in the Note.

**Note.** The word "Note" means the promissory note dated June 2, 2009, in the original principal amount of \$1,391,076.59 from Grantor to Lender, together with all renewals of, extensions of, modifications of, refinancings of, consolidations of, and substitutions for the promissory note or agreement.

**Personal Property.** The words "Personal Property" mean all equipment, fixtures, and other articles of personal property now or hereafter owned by Grantor, and now or hereafter attached or affixed to the Real Property; together with all accessions, parts, and additions to, all replacements of, and all substitutions for, any of such property; and together with all proceeds (including without limitation all insurance proceeds and refunds of premiums) from any sale or other disposition of the Property.

**Property.** The word "Property" means collectively the Real Property and the Personal Property.

**Real Property.** The words "Real Property" mean the real property, interests and rights, as further described in this Deed of Trust.

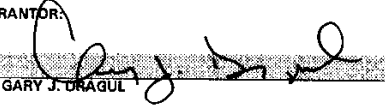
**Related Documents.** The words "Related Documents" mean all promissory notes, credit agreements, loan agreements, environmental agreements, guaranties, security agreements, mortgages, deeds of trust, security deeds, collateral mortgages, and all other instruments, agreements and documents, whether now or hereafter existing, executed in connection with the indebtedness.

**Rents.** The word "Rents" means all present and future rents, revenues, income, issues, royalties, profits, and other benefits derived from the Property.

**Trustee.** The word "Trustee" means the Public Trustee of the City and County of Denver, Colorado.

**GRANTOR ACKNOWLEDGES HAVING READ ALL THE PROVISIONS OF THIS DEED OF TRUST, AND GRANTOR AGREES TO ITS TERMS.**

GRANTOR:

X   
GARY J. DRAGUL

INDIVIDUAL ACKNOWLEDGMENT

STATE OF Colorado )  
 )  
COUNTY OF Arapahoe ) SS )

On this day before me, the undersigned Notary Public, personally appeared GARY J. DRAGUL, to me known to be the individual described in and who executed the Deed of Trust, and acknowledged that he or she signed the Deed of Trust as his or her free and voluntary act and deed, for the uses and purposes therein mentioned.

Given under my hand and official seal this 12<sup>th</sup> day of June, 2009  
By Sarah Frances M. Neel Residing at Aurora Colorado  
Notary Public in and for the State of Colorado My commission expires 7-10-2011

LASER PRO Lending, Ver. 5.44.00.102 Copr. Harland Financial Solutions, Inc. 1997, 2009. R:\HARLAND\FILPLG01.FC TR-6092 PR-65

**SARAH FRANCES M. NEEL**  
NOTARY PUBLIC  
STATE OF COLORADO  
My Commission Expires 07/10/2011

2 13

After Recording Return To:

COLORADO CAPITAL BANK  
TWO S. CASCADE AVENUE., #150  
COLORADO SPRINGS, COLORADO 80903  
Loan Number: 2019901038

2006199840  
 Page: 1 of 13  
 12/20/2006 10:15A  
 R66.00 DO.00  
 City & County Of Denver DOT

[Space Above This Line For Recording Data]

### DEED OF TRUST

MIN: 100486000000001728

#### DEFINITIONS

Words used in multiple sections of this document are defined below and other words are defined in Sections 3, 11, 13, 18, 20 and 21. Certain rules regarding the usage of words used in this document are also provided in Section 16.

- (A) "Security Instrument" means this document, which is dated NOVEMBER 30, 2006, together with all Riders to this document.
- (B) "Borrower" is GARY J. DRAGUL

Borrower is the trustor under this Security Instrument.

(C) "Lender" is COLORADO CAPITAL BANK

Lender is a COLORADO CORPORATION organized and existing under the laws of COLORADO Lender's address is TWO S. CASCADE AVENUE., #150, COLORADO SPRINGS, COLORADO 80903

(D) "Trustee" is the Public Trustee of DENVER County, Colorado.

(E) "MERS" is Mortgage Electronic Registration Systems, Inc. MERS is a separate corporation that is acting solely as a nominee for Lender and Lender's successors and assigns. MERS is the beneficiary under this Security Instrument. MERS is organized and existing under the laws of Delaware, and has an address and telephone number of P.O. Box 2026, Flint, MI 48501-2026, tel. (888) 679-MERS.

(F) "Note" means the promissory note signed by Borrower and dated NOVEMBER 30, 2006. The Note states that Borrower owes Lender TWO HUNDRED SEVENTEEN THOUSAND ONE HUNDRED TWENTY-FIVE AND 00/100 Dollars (U.S. \$ 217,125.00) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than JANUARY 1, 2037


(G) "Property" means the property that is described below under the heading "Transfer of Rights in the Property."

(H) "Loan" means the debt evidenced by the Note, plus interest, any prepayment charges and late charges due under the Note, and all sums due under this Security Instrument, plus interest.

(I) "Riders" means all Riders to this Security Instrument that are executed by Borrower. The following Riders are to be executed by Borrower [check box as applicable]:

- |  |   |
|--|---|
| <input type="checkbox"/> Adjustable Rate Rider       | <input type="checkbox"/> Planned Unit Development Rider |
| <input type="checkbox"/> Balloon Rider               | <input type="checkbox"/> Biweekly Payment Rider         |
| <input checked="" type="checkbox"/> 1-4 Family Rider | <input type="checkbox"/> Second Home Rider              |
| <input type="checkbox"/> Condominium Rider           | <input type="checkbox"/> Other(s) [specify]             |

(J) "Applicable Law" means all controlling applicable federal, state and local statutes, regulations, ordinances and administrative rules and orders (that have the effect of law) as well as all applicable non-appealable judicial opinions.

 70165195

(K) "Community Association Dues, Fees, and Assessments" means all dues, fees, assessments and other charges that are imposed on Borrower or the Property by a condominium association, homeowners association or similar organization.

(L) "Electronic Funds Transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, computer, or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account. Such term includes, but is not limited to, point-of-sale transfers, automated teller machine transactions, transfers initiated by telephone, wire transfers, and automated clearinghouse transfers.

(M) "Escrow Items" means those items that are described in Section 3.

(N) "Miscellaneous Proceeds" means any compensation, settlement, award of damages, or proceeds paid by any third party (other than insurance proceeds paid under the coverages described in Section 5) for: (i) damage to, or destruction of, the Property; (ii) condemnation or other taking of all or any part of the Property; (iii) conveyance in lieu of condemnation; or (iv) misrepresentations of, or omissions as to, the value and/or condition of the Property.

(O) "Mortgage Insurance" means insurance protecting Lender against the nonpayment of, or default on, the Loan.

(P) "Periodic Payment" means the regularly scheduled amount due for (i) principal and interest under the Note, plus (ii) any amounts under Section 3 of this Security Instrument.

(Q) "RESPA" means the Real Estate Settlement Procedures Act (12 U.S.C. §2601 et seq.) and its implementing regulation, Regulation X (24 C.F.R. Part 3500), as they might be amended from time to time, or any additional or successor legislation or regulation that governs the same subject matter. As used in this Security Instrument, "RESPA" refers to all requirements and restrictions that are imposed in regard to a "federally related mortgage loan" even if the Loan does not qualify as a "federally related mortgage loan" under RESPA.

(R) "Successor in Interest of Borrower" means any party that has taken title to the Property, whether or not that party has assumed Borrower's obligations under the Note and/or this Security Instrument.

#### TRANSFER OF RIGHTS IN THE PROPERTY

The beneficiary of this Security Instrument is MERS (solely as nominee for Lender and Lender's successors and assigns) and the successors and assigns of MERS. This Security Instrument secures to Lender: (i) the repayment of the Loan, and all renewals, extensions and modifications of the Note; and (ii) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower, in consideration of the debt and the trust herein created, irrevocably grants and conveys to Trustee, in trust, with power of sale, the following described property located in the

COUNTY of DENVER  
[Type of Recording Jurisdiction] [Name of Recording Jurisdiction]

LOT 1, BLOCK 4, HUTCHINSON HILLS FILING NO. 10, CITY AND COUNTY OF DENVER,  
STATE OF COLORADO.  
A.P.N. : 06294-02-001-000

which currently has the address of 2432 SOUTH NEWPORT STREET  
[Street]

DENVER, Colorado 80224 ("Property Address"):  
[City] [Zip Code]

TOGETHER WITH all the improvements now or hereafter erected on the property, and all easements, appurtenances, and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property." Borrower understands and agrees that MERS holds only legal title to the interests granted by Borrower in this Security Instrument, but, if necessary to comply with law or custom, MERS (as nominee for Lender and Lender's successors and assigns) has the right: to exercise any or all of those interests, including, but not limited to, the right to foreclose and sell the Property; and to take any action required of Lender including, but not limited to, releasing and canceling this Security Instrument.

BORROWER COVENANTS that Borrower is lawfully seized of the estate hereby conveyed and has the right to grant and convey the Property and that the Property is unencumbered, except for encumbrances of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record and liens for taxes for the current year not yet due and payable.

THIS SECURITY INSTRUMENT combines uniform covenants for national use and non-uniform covenants with limited variations by jurisdiction to constitute a uniform security instrument covering real property.

UNIFORM COVENANTS. Borrower and Lender covenant and agree as follows:

1. **Payment of Principal, Interest, Escrow Items, Prepayment Charges, and Late Charges.** Borrower shall pay when due the principal of, and interest on, the debt evidenced by the Note and any prepayment charges and late charges due under the Note. Borrower shall also pay funds for Escrow Items pursuant to Section 3. Payments due under the Note and this Security Instrument shall be made in U.S. currency. However, if any check or other



instrument received by Lender as payment under the Note or this Security Instrument is returned to Lender unpaid, Lender may require that any or all subsequent payments due under the Note and this Security Instrument be made in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality, or entity; or (d) Electronic Funds Transfer.

Payments are deemed received by Lender when received at the location designated in the Note or at such other location as may be designated by Lender in accordance with the notice provisions in Section 15. Lender may return any payment or partial payment if the payment or partial payments are insufficient to bring the Loan current. Lender may accept any payment or partial payment insufficient to bring the Loan current, without waiver of any rights hereunder or prejudice to its rights to refuse such payment or partial payments in the future, but Lender is not obligated to apply such payments at the time such payments are accepted. If each Periodic Payment is applied as of its scheduled due date, then Lender need not pay interest on unapplied funds. Lender may hold such unapplied funds until Borrower makes payment to bring the Loan current. If Borrower does not do so within a reasonable period of time, Lender shall either apply such funds or return them to Borrower. If not applied earlier, such funds will be applied to the outstanding principal balance under the Note immediately prior to foreclosure. No offset or claim which Borrower might have now or in the future against Lender shall relieve Borrower from making payments due under the Note and this Security Instrument or performing the covenants and agreements secured by this Security Instrument.

**2. Application of Payments or Proceeds.** Except as otherwise described in this Section 2, all payments accepted and applied by Lender shall be applied in the following order of priority: (a) interest due under the Note; (b) principal due under the Note; (c) amounts due under Section 3. Such payments shall be applied to each Periodic Payment in the order in which it became due. Any remaining amounts shall be applied first to late charges, second to any other amounts due under this Security Instrument, and then to reduce the principal balance of the Note.

If Lender receives a payment from Borrower for a delinquent Periodic Payment which includes a sufficient amount to pay any late charge due, the payment may be applied to the delinquent payment and the late charge. If more than one Periodic Payment is outstanding, Lender may apply any payment received from Borrower to the repayment of the Periodic Payments if, and to the extent that, each payment can be paid in full. To the extent that any excess exists after the payment is applied to the full payment of one or more Periodic Payments, such excess may be applied to any late charges due. Voluntary prepayments shall be applied first to any prepayment charges and then as described in the Note.

Any application of payments, insurance proceeds, or Miscellaneous Proceeds to principal due under the Note shall not extend or postpone the due date, or change the amount, of the Periodic Payments.

**3. Funds for Escrow Items.** Borrower shall pay to Lender on the day Periodic Payments are due under the Note, until the Note is paid in full, a sum (the "Funds") to provide for payment of amounts due for: (a) taxes and assessments and other items which can attain priority over this Security Instrument as a lien or encumbrance on the Property; (b) leasehold payments or ground rents on the Property, if any; (c) premiums for any and all insurance required by Lender under Section 5; and (d) Mortgage Insurance premiums, if any, or any sums payable by Borrower to Lender in lieu of the payment of Mortgage Insurance premiums in accordance with the provisions of Section 10. These items are called "Escrow Items." At origination or at any time during the term of the Loan, Lender may require that Community Association Dues, Fees, and Assessments, if any, be escrowed by Borrower, and such dues, fees and assessments shall be an Escrow Item. Borrower shall promptly furnish to Lender all notices of amounts to be paid under this Section. Borrower shall pay Lender the Funds for Escrow Items unless Lender waives Borrower's obligation to pay the Funds for any or all Escrow Items. Lender may waive Borrower's obligation to pay to Lender Funds for any or all Escrow Items at any time. Any such waiver may only be in writing. In the event of such waiver, Borrower shall pay directly, when and where payable, the amounts due for any Escrow Items for which payment of Funds has been waived by Lender and, if Lender requires, shall furnish to Lender receipts evidencing such payment within such time period as Lender may require. Borrower's obligation to make such payments and to provide receipts shall for all purposes be deemed to be a covenant and agreement contained in this Security Instrument, as the phrase "covenant and agreement" is used in Section 9. If Borrower is obligated to pay Escrow Items directly, pursuant to a waiver, and Borrower fails to pay the amount due for an Escrow Item, Lender may exercise its rights under Section 9 and pay such amount and Borrower shall then be obligated under Section 9 to repay to Lender any such amount. Lender may revoke the waiver as to any or all Escrow Items at any time by a notice given in accordance with Section 15 and, upon such revocation, Borrower shall pay to Lender all Funds, and in such amounts, that are then required under this Section 3.

Lender may, at any time, collect and hold Funds in an amount (a) sufficient to permit Lender to apply the Funds at the time specified under RESPA, and (b) not to exceed the maximum amount a lender can require under RESPA. Lender shall estimate the amount of Funds due on the basis of current data and reasonable estimates of expenditures of future Escrow Items or otherwise in accordance with Applicable Law.

The Funds shall be held in an institution whose deposits are insured by a federal agency, instrumentality, or entity (including Lender, if Lender is an institution whose deposits are so insured) or in any Federal Home Loan Bank. Lender shall apply the Funds to pay the Escrow Items no later than the time specified under RESPA. Lender shall not charge Borrower for holding and applying the Funds, annually analyzing the escrow account, or verifying the Escrow Items, unless Lender pays Borrower interest on the Funds and Applicable Law permits Lender to make such a charge. Unless an agreement is made in writing or Applicable Law requires interest to be paid on the Funds, Lender shall not be required to pay Borrower any interest or earnings on the Funds. Borrower and Lender can agree in writing, however, that interest shall be paid on the Funds. Lender shall give to Borrower, without charge, an annual accounting of the Funds as required by RESPA.

If there is a surplus of Funds held in escrow, as defined under RESPA, Lender shall account to Borrower for the excess funds in accordance with RESPA. If there is a shortage of Funds held in escrow, as defined under RESPA,

Lender shall notify Borrower as required by RESPA, and Borrower shall pay to Lender the amount necessary to make up the shortage in accordance with RESPA, but in no more than 12 monthly payments. If there is a deficiency of Funds held in escrow, as defined under RESPA, Lender shall notify Borrower as required by RESPA, and Borrower shall pay to Lender the amount necessary to make up the deficiency in accordance with RESPA, but in no more than 12 monthly payments.

Upon payment in full of all sums secured by this Security Instrument, Lender shall promptly refund to Borrower any Funds held by Lender.

**4. Charges; Liens.** Borrower shall pay all taxes, assessments, charges, fines, and impositions attributable to the Property which can attain priority over this Security Instrument, leasehold payments or ground rents on the Property, if any, and Community Association Dues, Fees, and Assessments, if any. To the extent that these items are Escrow Items, Borrower shall pay them in the manner provided in Section 3.

Borrower shall promptly discharge any lien which has priority over this Security Instrument unless Borrower: (a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Lender, but only so long as Borrower is performing such agreement; (b) contests the lien in good faith by, or defends against enforcement of the lien in, legal proceedings which in Lender's opinion operate to prevent the enforcement of the lien while those proceedings are pending, but only until such proceedings are concluded; or (c) secures from the holder of the lien an agreement satisfactory to Lender subordinating the lien to this Security Instrument. If Lender determines that any part of the Property is subject to a lien which can attain priority over this Security Instrument, Lender may give Borrower a notice identifying the lien. Within 10 days of the date on which that notice is given, Borrower shall satisfy the lien or take one or more of the actions set forth above in this Section 4.

Lender may require Borrower to pay a one-time charge for a real estate tax verification and/or reporting service used by Lender in connection with this Loan.

**5. Property Insurance.** Borrower shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, hazards included within the term "extended coverage," and any other hazards including, but not limited to, earthquakes and floods, for which Lender requires insurance. This insurance shall be maintained in the amounts (including deductible levels) and for the periods that Lender requires. What Lender requires pursuant to the preceding sentences can change during the term of the Loan. The insurance carrier providing the insurance shall be chosen by Borrower subject to Lender's right to disapprove Borrower's choice, which right shall not be exercised unreasonably. Lender may require Borrower to pay, in connection with this Loan, either: (a) a one-time charge for flood zone determination, certification and tracking services; or (b) a one-time charge for flood zone determination and certification services and subsequent charges each time remappings or similar changes occur which reasonably might affect such determination or certification. Borrower shall also be responsible for the payment of any fees imposed by the Federal Emergency Management Agency in connection with the review of any flood zone determination resulting from an objection by Borrower.

If Borrower fails to maintain any of the coverages described above, Lender may obtain insurance coverage, at Lender's option and Borrower's expense. Lender is under no obligation to purchase any particular type or amount of coverage. Therefore, such coverage shall cover Lender, but might or might not protect Borrower, Borrower's equity in the Property, or the contents of the Property, against any risk, hazard or liability and might provide greater or lesser coverage than was previously in effect. Borrower acknowledges that the cost of the insurance coverage so obtained might significantly exceed the cost of insurance that Borrower could have obtained. Any amounts disbursed by Lender under this Section 5 shall become additional debt of Borrower secured by this Security Instrument. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

All insurance policies required by Lender and renewals of such policies shall be subject to Lender's right to disapprove such policies, shall include a standard mortgage clause, and shall name Lender as mortgagee and/or as an additional loss payee. Lender shall have the right to hold the policies and renewal certificates. If Lender requires, Borrower shall promptly give to Lender all receipts of paid premiums and renewal notices. If Borrower obtains any form of insurance coverage, not otherwise required by Lender, for damage to, or destruction of, the Property, such policy shall include a standard mortgage clause and shall name Lender as mortgagee and/or as an additional loss payee.

In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower. Unless Lender and Borrower otherwise agree in writing, any insurance proceeds, whether or not the underlying insurance was required by Lender, shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such insurance proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such insurance proceeds, Lender shall not be required to pay Borrower any interest or earnings on such proceeds. Fees for public adjusters, or other third parties, retained by Borrower shall not be paid out of the insurance proceeds and shall be the sole obligation of Borrower. If the restoration or repair is not economically feasible or Lender's security would be lessened, the insurance proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower. Such insurance proceeds shall be applied in the order provided for in Section 2.

If Borrower abandons the Property, Lender may file, negotiate and settle any available insurance claim and related matters. If Borrower does not respond within 30 days to a notice from Lender that the insurance carrier has offered to settle a claim, then Lender may negotiate and settle the claim. The 30-day period will begin when the notice is given. In either event, or if Lender acquires the Property under Section 22 or otherwise, Borrower hereby assigns to Lender (a) Borrower's rights to any insurance proceeds in an amount not to exceed the amounts unpaid

under the Note or this Security Instrument, and (b) any other of Borrower's rights (other than the right to any refund of unearned premiums paid by Borrower) under all insurance policies covering the Property, insofar as such rights are applicable to the coverage of the Property. Lender may use the insurance proceeds either to repair or restore the Property or to pay amounts unpaid under the Note or this Security Instrument, whether or not then due.

**6. Occupancy.** Borrower shall occupy, establish, and use the Property as Borrower's principal residence within 60 days after the execution of this Security Instrument and shall continue to occupy the Property as Borrower's principal residence for at least one year after the date of occupancy, unless Lender otherwise agrees in writing, which consent shall not be unreasonably withheld, or unless extenuating circumstances exist which are beyond Borrower's control.

**7. Preservation, Maintenance and Protection of the Property; Inspections.** Borrower shall not destroy, damage or impair the Property, allow the Property to deteriorate or commit waste on the Property. Whether or not Borrower is residing in the Property, Borrower shall maintain the Property in order to prevent the Property from deteriorating or decreasing in value due to its condition. Unless it is determined pursuant to Section 5 that repair or restoration is not economically feasible, Borrower shall promptly repair the Property if damaged to avoid further deterioration or damage. If insurance or condemnation proceeds are paid in connection with damage to, or the taking of, the Property, Borrower shall be responsible for repairing or restoring the Property only if Lender has released proceeds for such purposes. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. If the insurance or condemnation proceeds are not sufficient to repair or restore the Property, Borrower is not relieved of Borrower's obligation for the completion of such repair or restoration.

Lender or its agent may make reasonable entries upon and inspections of the Property. If it has reasonable cause, Lender may inspect the interior of the improvements on the Property. Lender shall give Borrower notice at the time of or prior to such an interior inspection specifying such reasonable cause.

**8. Borrower's Loan Application.** Borrower shall be in default if, during the Loan application process, Borrower or any persons or entities acting at the direction of Borrower or with Borrower's knowledge or consent gave materially false, misleading, or inaccurate information or statements to Lender (or failed to provide Lender with material information) in connection with the Loan. Material representations include, but are not limited to, representations concerning Borrower's occupancy of the Property as Borrower's principal residence.

**9. Protection of Lender's Interest in the Property and Rights Under this Security Instrument.** If (a) Borrower fails to perform the covenants and agreements contained in this Security Instrument, (b) there is a legal proceeding that might significantly affect Lender's interest in the Property and/or rights under this Security Instrument (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture, for enforcement of a lien which may attain priority over this Security Instrument or to enforce laws or regulations), or (c) Borrower has abandoned the Property, then Lender may do and pay for whatever is reasonable or appropriate to protect Lender's interest in the Property and rights under this Security Instrument, including protecting and/or assessing the value of the Property, and securing and/or repairing the Property. Lender's actions can include, but are not limited to: (a) paying any sums secured by a lien which has priority over this Security Instrument; (b) appearing in court; and (c) paying reasonable attorneys' fees to protect its interest in the Property and/or rights under this Security Instrument, including its secured position in a bankruptcy proceeding. Securing the Property includes, but is not limited to, entering the Property to make repairs, change locks, replace or board up doors and windows, drain water from pipes, eliminate building or other code violations or dangerous conditions, and have utilities turned on or off. Although Lender may take action under this Section 9, Lender does not have to do so and is not under any duty or obligation to do so. It is agreed that Lender incurs no liability for not taking any or all actions authorized under this Section 9.

Any amounts disbursed by Lender under this Section 9 shall become additional debt of Borrower secured by this Security Instrument. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

If this Security Instrument is on a leasehold, Borrower shall comply with all the provisions of the lease. Borrower shall not surrender the leasehold estate and interests herein conveyed or terminate or cancel the ground lease. Borrower shall not, without the express written consent of Lender, alter or amend the ground lease. If Borrower acquires fee title to the Property, the leasehold and the fee title shall not merge unless Lender agrees to the merger in writing.

**10. Mortgage Insurance.** If Lender required Mortgage Insurance as a condition of making the Loan, Borrower shall pay the premiums required to maintain the Mortgage Insurance in effect. If, for any reason, the Mortgage Insurance coverage required by Lender ceases to be available from the mortgage insurer that previously provided such insurance and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower shall pay the premiums required to obtain coverage substantially equivalent to the Mortgage Insurance previously in effect, at a cost substantially equivalent to the cost to Borrower of the Mortgage Insurance previously in effect, from an alternate mortgage insurer selected by Lender. If substantially equivalent Mortgage Insurance coverage is not available, Borrower shall continue to pay to Lender the amount of the separately designated payments that were due when the insurance coverage ceased to be in effect. Lender will accept, use and retain these payments as a non-refundable loss reserve in lieu of Mortgage Insurance. Such loss reserve shall be non-refundable, notwithstanding the fact that the Loan is ultimately paid in full, and Lender shall not be required to pay Borrower any interest or earnings on such loss reserve. Lender can no longer require loss reserve payments if Mortgage Insurance coverage (in the amount and for the period that Lender requires) provided by an insurer selected by Lender again becomes available, is obtained, and Lender requires separately designated payments toward the premiums for Mortgage Insurance. If Lender required Mortgage Insurance as a condition of making the Loan and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower shall pay the premiums required to maintain Mortgage Insurance in effect, or to provide a non-refundable loss reserve, until Lender's requirement for Mortgage Insurance ends in accordance with any written agreement between Borrower and

Lender providing for such termination or until termination is required by Applicable Law. Nothing in this Section 10 affects Borrower's obligation to pay interest at the rate provided in the Note.

Mortgage Insurance reimburses Lender (or any entity that purchases the Note) for certain losses it may incur if Borrower does not repay the Loan as agreed. Borrower is not a party to the Mortgage Insurance.

Mortgage insurers evaluate their total risk on all such insurance in force from time to time, and may enter into agreements with other parties that share or modify their risk, or reduce losses. These agreements are on terms and conditions that are satisfactory to the mortgage insurer and the other party (or parties) to these agreements. These agreements may require the mortgage insurer to make payments using any source of funds that the mortgage insurer may have available (which may include funds obtained from Mortgage Insurance premiums).

As a result of these agreements, Lender, any purchaser of the Note, another insurer, any reinsurer, any other entity, or any affiliate of any of the foregoing, may receive (directly or indirectly) amounts that derive from (or might be characterized as) a portion of Borrower's payments for Mortgage Insurance, in exchange for sharing or modifying the mortgage insurer's risk, or reducing losses. If such agreement provides that an affiliate of Lender takes a share of the insurer's risk in exchange for a share of the premiums paid to the insurer, the arrangement is often termed "captive reinsurance." Further:

(a) Any such agreements will not affect the amounts that Borrower has agreed to pay for Mortgage Insurance, or any other terms of the Loan. Such agreements will not increase the amount Borrower will owe for Mortgage Insurance, and they will not entitle Borrower to any refund.

(b) Any such agreements will not affect the rights Borrower has - if any - with respect to the Mortgage Insurance under the Homeowners Protection Act of 1998 or any other law. These rights may include the right to receive certain disclosures, to request and obtain cancellation of the Mortgage Insurance, to have the Mortgage Insurance terminated automatically, and/or to receive a refund of any Mortgage Insurance premiums that were unearned at the time of such cancellation or termination.

**11. Assignment of Miscellaneous Proceeds; Forfeiture.** All Miscellaneous Proceeds are hereby assigned to and shall be paid to Lender.

If the Property is damaged, such Miscellaneous Proceeds shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such Miscellaneous Proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may pay for the repairs and restoration in a single disbursement or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such Miscellaneous Proceeds, Lender shall not be required to pay Borrower any interest or earnings on such Miscellaneous Proceeds. If the restoration or repair is not economically feasible or Lender's security would be lessened, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower. Such Miscellaneous Proceeds shall be applied in the order provided for in Section 2.

In the event of a total taking, destruction, or loss in value of the Property, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is equal to or greater than the amount of the sums secured by this Security Instrument immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the sums secured by this Security Instrument shall be reduced by the amount of the Miscellaneous Proceeds multiplied by the following fraction: (a) the total amount of the sums secured immediately before the partial taking, destruction, or loss in value divided by (b) the fair market value of the Property immediately before the partial taking, destruction, or loss in value. Any balance shall be paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is less than the amount of the sums secured immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument whether or not the sums are then due.

If the Property is abandoned by Borrower, or if, after notice by Lender to Borrower that the Opposing Party (as defined in the next sentence) offers to make an award to settle a claim for damages, Borrower fails to respond to Lender within 30 days after the date the notice is given, Lender is authorized to collect and apply the Miscellaneous Proceeds either to restoration or repair of the Property or to the sums secured by this Security Instrument, whether or not then due. "Opposing Party" means the third party that owes Borrower Miscellaneous Proceeds or the party against whom Borrower has a right of action in regard to Miscellaneous Proceeds.

Borrower shall be in default if any action or proceeding, whether civil or criminal, is begun that, in Lender's judgment, could result in forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Security Instrument. Borrower can cure such a default and, if acceleration has occurred, reinstate as provided in Section 19, by causing the action or proceeding to be dismissed with a ruling that, in Lender's judgment, precludes forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Security Instrument. The proceeds of any award or claim for damages that are attributable to the impairment of Lender's interest in the Property are hereby assigned and shall be paid to Lender.

All Miscellaneous Proceeds that are not applied to restoration or repair of the Property shall be applied in the order provided for in Section 2.

**12. Borrower Not Released; Forbearance By Lender Not a Waiver.** Extension of the time for payment or modification of amortization of the sums secured by this Security Instrument granted by Lender to Borrower or any Successor in Interest of Borrower shall not operate to release the liability of Borrower or any Successors in Interest

of Borrower. Lender shall not be required to commence proceedings against any Successor in Interest of Borrower or to refuse to extend time for payment or otherwise modify amortization of the sums secured by this Security Instrument by reason of any demand made by the original Borrower or any Successors in Interest of Borrower. Any forbearance by Lender in exercising any right or remedy including, without limitation, Lender's acceptance of payments from third persons, entities or Successors in Interest of Borrower or in amounts less than the amount then due, shall not be a waiver of or preclude the exercise of any right or remedy.

**13. Joint and Several Liability; Co-signers; Successors and Assigns Bound.** Borrower covenants and agrees that Borrower's obligations and liability shall be joint and several. However, any Borrower who co-signs this Security Instrument but does not execute the Note (a "co-signer"): (a) is co-signing this Security Instrument only to mortgage, grant and convey the co-signer's interest in the Property under the terms of this Security Instrument; (b) is not personally obligated to pay the sums secured by this Security Instrument; and (c) agrees that Lender and any other Borrower can agree to extend, modify, forbear or make any accommodations with regard to the terms of this Security Instrument or the Note without the co-signer's consent.

Subject to the provisions of Section 18, any Successor in Interest of Borrower who assumes Borrower's obligations under this Security Instrument in writing, and is approved by Lender, shall obtain all of Borrower's rights and benefits under this Security Instrument. Borrower shall not be released from Borrower's obligations and liability under this Security Instrument unless Lender agrees to such release in writing. The covenants and agreements of this Security Instrument shall bind (except as provided in Section 20) and benefit the successors and assigns of Lender.

**14. Loan Charges.** Lender may charge Borrower fees for services performed in connection with Borrower's default, for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument, including, but not limited to, attorneys' fees, property inspection and valuation fees. In regard to any other fees, the absence of express authority in this Security Instrument to charge a specific fee to Borrower shall not be construed as a prohibition on the charging of such fee. Lender may not charge fees that are expressly prohibited by this Security Instrument or by Applicable Law.

If the Loan is subject to a law which sets maximum loan charges, and that law is finally interpreted so that the interest or other loan charges collected or to be collected in connection with the Loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from Borrower which exceeded permitted limits will be refunded to Borrower. Lender may choose to make this refund by reducing the principal owed under the Note or by making a direct payment to Borrower. If a refund reduces principal, the reduction will be treated as a partial prepayment without any prepayment charge (whether or not a prepayment charge is provided for under the Note). Borrower's acceptance of any such refund made by direct payment to Borrower will constitute a waiver of any right of action Borrower might have arising out of such overcharge.

**15. Notices.** All notices given by Borrower or Lender in connection with this Security Instrument must be in writing. Any notice to Borrower in connection with this Security Instrument shall be deemed to have been given to Borrower when mailed by first class mail or when actually delivered to Borrower's notice address if sent by other means. Notice to any one Borrower shall constitute notice to all Borrowers unless Applicable Law expressly requires otherwise. The notice address shall be the Property Address unless Borrower has designated a substitute notice address by notice to Lender. Borrower shall promptly notify Lender of Borrower's change of address. If Lender specifies a procedure for reporting Borrower's change of address, then Borrower shall only report a change of address through that specified procedure. There may be only one designated notice address under this Security Instrument at any one time. Any notice to Lender shall be given by delivering it or by mailing it by first class mail to Lender's address stated herein unless Lender has designated another address by notice to Borrower. Any notice in connection with this Security Instrument shall not be deemed to have been given to Lender until actually received by Lender. If any notice required by this Security Instrument is also required under Applicable Law, the Applicable Law requirement will satisfy the corresponding requirement under this Security Instrument.

**16. Governing Law; Severability; Rules of Construction.** This Security Instrument shall be governed by federal law and the law of the jurisdiction in which the Property is located. All rights and obligations contained in this Security Instrument are subject to any requirements and limitations of Applicable Law. Applicable Law might explicitly or implicitly allow the parties to agree by contract or it might be silent, but such silence shall not be construed as a prohibition against agreement by contract. In the event that any provision or clause of this Security Instrument or the Note conflicts with Applicable Law, such conflict shall not affect other provisions of this Security Instrument or the Note which can be given effect without the conflicting provision.

As used in this Security Instrument: (a) words of the masculine gender shall mean and include corresponding neuter words or words of the feminine gender; (b) words in the singular shall mean and include the plural and vice versa; and (c) the word "may" gives sole discretion without any obligation to take any action.

**17. Borrower's Copy.** Borrower shall be given one copy of the Note and of this Security Instrument.

**18. Transfer of the Property or a Beneficial Interest in Borrower.** As used in this Section 18, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser.

If all or any part of the Property or any Interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of

this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

**19. Borrower's Right to Reinstate After Acceleration.** If Borrower meets certain conditions, Borrower shall have the right to have enforcement of this Security Instrument discontinued at any time prior to the earliest of: (a) five days before sale of the Property pursuant to any power of sale contained in this Security Instrument; (b) such other period as Applicable Law might specify for the termination of Borrower's right to reinstate; or (c) entry of a judgment enforcing this Security Instrument. Those conditions are that Borrower: (a) pays Lender all sums which then would be due under this Security Instrument and the Note as if no acceleration had occurred; (b) cures any default of any other covenants or agreements; (c) pays all expenses incurred in enforcing this Security Instrument, including, but not limited to, reasonable attorneys' fees, property inspection and valuation fees, and other fees incurred for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument; and (d) takes such action as Lender may reasonably require to assure that Lender's interest in the Property and rights under this Security Instrument, and Borrower's obligation to pay the sums secured by this Security Instrument, shall continue unchanged. Lender may require that Borrower pay such reinstatement sums and expenses in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality or entity; or (d) Electronic Funds Transfer. Upon reinstatement by Borrower, this Security Instrument and obligations secured hereby shall remain fully effective as if no acceleration had occurred. However, this right to reinstate shall not apply in the case of acceleration under Section 18.

**20. Sale of Note; Change of Loan Servicer; Notice of Grievance.** The Note or a partial interest in the Note (together with this Security Instrument) can be sold one or more times without prior notice to Borrower. A sale might result in a change in the entity (known as the "Loan Servicer") that collects Periodic Payments due under the Note and this Security Instrument and performs other mortgage loan servicing obligations under the Note, this Security Instrument, and Applicable Law. There also might be one or more changes of the Loan Servicer unrelated to a sale of the Note. If there is a change of the Loan Servicer, Borrower will be given written notice of the change which will state the name and address of the new Loan Servicer, the address to which payments should be made and any other information RESPA requires in connection with a notice of transfer of servicing. If the Note is sold and thereafter the Loan is serviced by a Loan Servicer other than the purchaser of the Note, the mortgage loan servicing obligations to Borrower will remain with the Loan Servicer or be transferred to a successor Loan Servicer and are not assumed by the Note purchaser unless otherwise provided by the Note purchaser.

Neither Borrower nor Lender may commence, join, or be joined to any judicial action (as either an individual litigant or the member of a class) that arises from the other party's actions pursuant to this Security Instrument or that alleges that the other party has breached any provision of, or any duty owed by reason of, this Security Instrument, until such Borrower or Lender has notified the other party (with such notice given in compliance with the requirements of Section 15) of such alleged breach and afforded the other party hereto a reasonable period after the giving of such notice to take corrective action. If Applicable Law provides a time period which must elapse before certain action can be taken, that time period will be deemed to be reasonable for purposes of this paragraph. The notice of acceleration and opportunity to cure given to Borrower pursuant to Section 22 and the notice of acceleration given to Borrower pursuant to Section 18 shall be deemed to satisfy the notice and opportunity to take corrective action provisions of this Section 20.

**21. Hazardous Substances.** As used in this Section 21: (a) "Hazardous Substances" are those substances defined as toxic or hazardous substances, pollutants, or wastes by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials; (b) "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection; (c) "Environmental Cleanup" includes any response action, remedial action, or removal action, as defined in Environmental Law; and (d) an "Environmental Condition" means a condition that can cause, contribute to, or otherwise trigger an Environmental Cleanup.

Borrower shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances, or threaten to release any Hazardous Substances, on or in the Property. Borrower shall not do, nor allow anyone else to do, anything affecting the Property (a) that is in violation of any Environmental Law, (b) which creates an Environmental Condition, or (c) which, due to the presence, use, or release of a Hazardous Substance, creates a condition that adversely affects the value of the Property. The preceding two sentences shall not apply to the presence, use, or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and to maintenance of the Property (including, but not limited to, hazardous substances in consumer products).

Borrower shall promptly give Lender written notice of (a) any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which Borrower has actual knowledge, (b) any Environmental Condition, including but not limited to, any spilling, leaking, discharge, release or threat of release of any Hazardous Substance, and (c) any condition caused by the presence, use or release of a Hazardous Substance which adversely affects the value of the Property. If Borrower learns, or is notified by any governmental or regulatory authority, or any private party, that any removal or other remediation of any Hazardous Substance affecting the Property is necessary, Borrower shall promptly take all necessary remedial actions in accordance with Environmental Law. Nothing herein shall create any obligation on Lender for an Environmental Cleanup.

**NON-UNIFORM COVENANTS.** Borrower and Lender further covenant and agree as follows:

**22. Acceleration; Remedies.** Lender shall give notice to Borrower prior to acceleration following Borrower's breach of any covenant or agreement in this Security Instrument (but not prior to acceleration under

Section 18 unless Applicable Law provides otherwise). The notice shall specify: (a) the default; (b) the action required to cure the default; (c) a date, not less than 30 days from the date the notice is given to Borrower, by which the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Security Instrument and sale of the Property. The notice shall further inform Borrower of the right to reinstate after acceleration and the right to assert in the foreclosure proceeding the non-existence of a default or any other defense of Borrower to acceleration and sale. If the default is not cured on or before the date specified in the notice, Lender at its option may require immediate payment in full of all sums secured by this Security Instrument without further demand and may invoke the power of sale and any other remedies permitted by Applicable Law. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this Section 22, including, but not limited to, reasonable attorneys' fees and costs of title evidence.

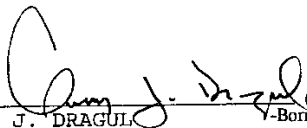
If Lender invokes the power of sale, Lender shall give written notice to Trustee of the occurrence of an event of default and of Lender's election to cause the Property to be sold. Lender shall mail a copy of the notice to Borrower as provided in Section 15. Trustee shall record a copy of the notice in the county in which the Property is located. Trustee shall publish a notice of sale for the time and in the manner provided by Applicable Law and shall mail copies of the notice of sale in the manner prescribed by Applicable Law to Borrower and to the other persons prescribed by Applicable Law. After the time required by Applicable Law, Trustee, without demand on Borrower, shall sell the Property at public auction to the highest bidder for cash at the time and place and under the terms designated in the notice of sale in one or more parcels and in any order Trustee determines. Trustee may postpone sale of any parcel of the Property by public announcement at the time and place of any previously scheduled sale. Lender or its designee may purchase the Property at any sale.

Trustee shall deliver to the purchaser Trustee's certificate describing the Property and the time the purchaser will be entitled to Trustee's deed. The recitals in the Trustee's deed shall be prima facie evidence of the truth of the statements made therein. Trustee shall apply the proceeds of the sale in the following order: (a) to all expenses of the sale, including, but not limited to, reasonable Trustee's and attorneys' fees; (b) to all sums secured by this Security Instrument; and (c) any excess to the person or persons legally entitled to it.

23. Release. Upon payment of all sums secured by this Security Instrument, Lender shall request that Trustee release this Security Instrument and shall produce for Trustee, duly cancelled, all notes evidencing debts secured by this Security Instrument. Trustee shall release this Security Instrument without further inquiry or liability. Borrower shall pay any recordation costs and the statutory Trustee's fees.

24. Waiver of Homestead. Borrower waives all right of homestead exemption in the Property.

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Security Instrument and in any Rider executed by Borrower and recorded with it.

 (Seal)  
 GARY J. DRAGUL -Borrower

\_\_\_\_\_ (Seal)  
 -Borrower

\_\_\_\_\_ (Seal)  
 -Borrower

\_\_\_\_\_ (Seal)  
 -Borrower

\_\_\_\_\_ (Seal)  
 -Borrower

\_\_\_\_\_ (Seal)  
 -Borrower

Witness:

Witness:

\_\_\_\_\_

\_\_\_\_\_

State of Colorado  
County of ~~DENVER~~ *Arapahoe*

The foregoing instrument was acknowledged before me this  
by GARY J. DRAGUL

*12/1/06*

SHERRY CAMPBELL  
NOTARY PUBLIC  
STATE OF COLORADO

My Commission Expires July 8, 2010

*Sherry Campbell*  
Signature of Person Taking Acknowledgment

*Closing Agent*  
Title

*n/a*

Serial Number, if any

My commission expires: *7/8/10*

(Seal)



Loan Number: 2019901038

**1-4 FAMILY RIDER  
(Assignment of Rents)**

THIS 1-4 FAMILY RIDER is made this 30th day of NOVEMBER, 2006, and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust, or Security Deed (the "Security Instrument") of the same date given by the undersigned (the "Borrower") to secure Borrower's Note to COLORADO CAPITAL BANK, A COLORADO CORPORATION (the "Lender") of the same date and covering the Property described in the Security Instrument and located at:

2432 SOUTH NEWPORT STREET, DENVER, COLORADO 80224  
[Property Address]

**1-4 FAMILY COVENANTS.** In addition to the covenants and agreements made in the Security Instrument, Borrower and Lender further covenant and agree as follows:

**A. ADDITIONAL PROPERTY SUBJECT TO THE SECURITY INSTRUMENT.** In addition to the Property described in Security Instrument, the following items now or hereafter attached to the Property to the extent they are fixtures are added to the Property description, and shall also constitute the Property covered by the Security Instrument: building materials, appliances and goods of every nature whatsoever now or hereafter located in, on, or used, or intended to be used in connection with the Property, including, but not limited to, those for the purposes of supplying or distributing heating, cooling, electricity, gas, water, air and light, fire prevention and extinguishing apparatus, security and access control apparatus, plumbing, bath tubs, water heaters, water closets, sinks, ranges, stoves, refrigerators, dishwashers, disposals, washers, dryers, awnings, storm windows, storm doors, screens, blinds, shades, curtains and curtain rods, attached mirrors, cabinets, paneling and attached floor coverings, all of which, including replacements and additions thereto, shall be deemed to be and remain a part of the Property covered by the Security Instrument. All of the foregoing together with the Property described in the Security Instrument (or the leasehold estate if the Security Instrument is on a leasehold) are referred to in this 1-4 Family Rider and the Security Instrument as the "Property."

**B. USE OF PROPERTY; COMPLIANCE WITH LAW.** Borrower shall not seek, agree to or make a change in the use of the Property or its zoning classification, unless Lender has agreed in writing to the change. Borrower shall comply with all laws, ordinances, regulations and requirements of any governmental body applicable to the Property.

**C. SUBORDINATE LIENS.** Except as permitted by federal law, Borrower shall not allow any lien inferior to the Security Instrument to be perfected against the Property without Lender's prior written permission.

**D. RENT LOSS INSURANCE.** Borrower shall maintain insurance against rent loss in addition to the other hazards for which insurance is required by Section 5.

E. "BORROWER'S RIGHT TO REINSTATE" DELETED. Section 19 is deleted.

F. **BORROWER'S OCCUPANCY.** Unless Lender and Borrower otherwise agree in writing, Section 6 concerning Borrower's occupancy of the Property is deleted.

G. **ASSIGNMENT OF LEASES.** Upon Lender's request after default, Borrower shall assign to Lender all leases of the Property and all security deposits made in connection with leases of the Property. Upon the assignment, Lender shall have the right to modify, extend or terminate the existing leases and to execute new leases, in Lender's sole discretion. As used in this paragraph G, the word "lease" shall mean "sublease" if the Security Instrument is on a leasehold.

H. **ASSIGNMENT OF RENTS; APPOINTMENT OF RECEIVER; LENDER IN POSSESSION.** Borrower absolutely and unconditionally assigns and transfers to Lender all the rents and revenues ("Rents") of the Property, regardless of to whom the Rents of the Property are payable. Borrower authorizes Lender or Lender's agents to collect the Rents, and agrees that each tenant of the Property shall pay the Rents to Lender or Lender's agents. However, Borrower shall receive the Rents until (i) Lender has given Borrower notice of default pursuant to Section 22 of the Security Instrument and (ii) Lender has given notice to the tenant(s) that the Rents are to be paid to Lender or Lender's agent. This assignment of Rents constitutes an absolute assignment and not an assignment for additional security only.

If Lender gives notice of default to Borrower: (i) all Rents received by Borrower shall be held by Borrower as trustee for the benefit of Lender only, to be applied to the sums secured by the Security Instrument; (ii) Lender shall be entitled to collect and receive all of the Rents of the Property; (iii) Borrower agrees that each tenant of the Property shall pay all Rents due and unpaid to Lender or Lender's agents upon Lender's written demand to the tenant; (iv) unless applicable law provides otherwise, all Rents collected by Lender or Lender's agents shall be applied first to the costs of taking control of and managing the Property and collecting the Rents, including, but not limited to, attorney's fees, receiver's fees, premiums on receiver's bonds, repair and maintenance costs, insurance premiums, taxes, assessments and other charges on the Property, and then to the sums secured by the Security Instrument; (v) Lender, Lender's agents or any judicially appointed receiver shall be liable to account for only those Rents actually received; and (vi) Lender shall be entitled to have a receiver appointed to take possession of and manage the Property and collect the Rents and profits derived from the Property without any showing as to the inadequacy of the Property as security.

If the Rents of the Property are not sufficient to cover the costs of taking control of and managing the Property and of collecting the Rents any funds expended by Lender for such purposes shall become indebtedness of Borrower to Lender secured by the Security Instrument pursuant to Section 9.

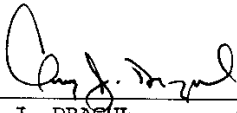
Borrower represents and warrants that Borrower has not executed any prior assignment of the Rents and has not performed, and will not perform, any act that would prevent Lender from exercising its rights under this paragraph.

Lender, or Lender's agents or a judicially appointed receiver, shall not be required to enter upon, take control of or maintain the Property before or after giving notice of default to Borrower. However, Lender, or Lender's agents or a judicially appointed receiver, may do so at any time when a default occurs. Any application of Rents shall not cure or waive any default

or invalidate any other right or remedy of Lender. This assignment of Rents of the Property shall terminate when all the sums secured by the Security Instrument are paid in full.

**I. CROSS-DEFAULT PROVISION.** Borrower's default or breach under any note or agreement in which Lender has an interest shall be a breach under the Security Instrument and Lender may invoke any of the remedies permitted by the Security Instrument.

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this 1-4 Family Rider.

  
\_\_\_\_\_  
GARY J. DRAGUL (Seal)  
-Borrower

\_\_\_\_\_  
(Seal)  
-Borrower

\_\_\_\_\_  
(Seal)  
-Borrower

\_\_\_\_\_  
(Seal)  
-Borrower

\_\_\_\_\_  
(Seal)  
-Borrower

\_\_\_\_\_  
(Seal)  
-Borrower



**\$50K investment in GDA Clearwater 15, LLC (funds received 7/15/15)**

GDA Clearwater	10/1/2015	2013	\$	300.27
	10/20/2015	2028	\$	465.42
	11/20/2015	2040	\$	465.42
	12/20/2015	2053	\$	465.42
	1/20/2016	2066	\$	465.42
	2/20/2016	2079	\$	465.42
	3/20/2016	2097	\$	465.42
	4/20/2016	2107	\$	465.42
	5/20/2016	2122	\$	465.42
	6/20/2016	2137	\$	465.42
	7/20/2016	2158	\$	465.42
	<b>TOTAL GDA CLEARWATER</b>		<b>\$</b>	<b>4,954.47</b>

**\$50K investment in Rose LLC**

Rose LLC	7/31/2015	6320	\$	476.07
	8/31/2015	6368	\$	476.07
	9/30/2015	6416	\$	476.07
	10/31/2015	6467	\$	476.07
	11/30/2015	6505	\$	476.07
	12/31/2015	6558	\$	476.07
	1/31/2016	6604	\$	476.07
	2/29/2016	6654	\$	476.07
	3/31/2016	6707	\$	476.07
	4/30/2016	6756	\$	476.07
	5/31/2016	6803	\$	476.07
	6/30/2016	6852	\$	476.07
	<b>TOTAL ROSE LLC</b>		<b>\$</b>	<b>5,712.84</b>

**\$100K investment in Plaza Georgia North (transferred from Rose LLC 9/01/13)**

Plaza Mall North	7/20/2015	56578	\$	666.67
	8/20/2015	56674	\$	666.67
	9/20/2015	56770	\$	666.67
	10/20/2015	56908	\$	666.67
	11/20/2015	57007	\$	666.67
	12/20/2015	57099	\$	666.67
	1/20/2016	57194	\$	666.67
	2/20/2016	57294	\$	666.67
	3/20/2016	57387	\$	666.67
	4/20/2016	57480	\$	666.67
	5/20/2016	57576	\$	666.67
	6/20/2016	57678	\$	666.67
	<b>TOTAL PLAZA MALL NORTH</b>		<b>\$</b>	<b>8,000.04</b>

**TOTAL INVESTMENT PAYMENTS**    \$                    18,667.35

**TOTAL LOAN & INVESTMENT**    \$                    267,851.52

**FIDELITY NATIONAL TITLE COMPANY**

4643 South Ulster Street, Suite 500, Denver, CO 80237

Phone: (303) 889-8200 Fax: (303) 833-1988

Sellers Settlement Statement

FINAL

DATE FILED: July 25, 2019 12:21 PM

FILING ID: 77481DCDF1332

CASE NUMBER: 2018CV33011

Escrow No: F0804420 - 158 MR1 Close Date: 04/16/2018 Proration Date: 04/16/2018 Disbursement Date: 04/16/2018

Buyer(s)/Borrower(s): Lauren DeGraw  
 Seller(s): 3418 South Cherry 05, LLC, a Colorado limited liability company  
 Property: 3418 South Cherry Street  
 Denver, CO 80222-7219  
 Brief Legal: L 4 & S 1/2 OF L 3 BLK 7 S UNIVERSITY PLACE

Description	Debit	Credit
<b>TOTAL CONSIDERATION:</b>		
Sale Price of Property		472,000.00
Seller Credit	2,000.00	
<b>PAYOFFS:</b>		
Payoff to PHH Mortgage	219,256.71	
Principal balance	217,970.75	
Interest due to 04/23/18	1,212.96	
Recording fee	28.00	
Release fee	45.00	
Payoff to Laffin Investment Company	0.00	
<b>RECORDING FEES:</b>		
Recording Fee For Release to Fidelity National Title Company	26.00	
Recording Fee For SOA to Fidelity National Title Company	13.00	
<b>ADDITIONAL CHARGES:</b>		
2nd Half of 2017 County Property Taxes Due to Denver County Treasurer	1,042.07	
Admin Fee to RE/MAX Professionals Inc.	250.00	
Invoice - Olson Real Estate Services, LLC to Olson Real Estate Services, LLC	5,000.00	
Judgment payoff (City/County of Denver) to Community Planning and Development	150.00	
Professional Fee to GDA Real Estate Services, LLC	215,000.00	
Utilities - ESCROW Final Water Payment Due to Denver Water	400.00	
<b>PRORATIONS AND ADJUSTMENTS:</b>		
Wastewater Proration from 4/16/2018 to 7/22/2018 based on the Semi-Annual amount of \$69.87		37.37
County Taxes from 1/1/2018 to 4/16/2018 based on the Annual amount of \$2,084.16	598.55	
<b>COMMISSIONS:</b>		
Commission	23,600.00	
\$13,216.00 (2.8% of \$472,000.00) to Equity Colorado		
\$10,384.00 (2.2% of \$472,000.00) to RE/MAX Professionals Inc.		
<b>Sub Totals</b>	467,337.33	472,037.37
Proceeds Due Seller	4,700.04	
<b>Totals</b>	472,037.37	472,037.37

APPROVED AND ACCEPTED

Sales or use taxes on personal property not included. Fidelity National Title Company assumes no responsibility for the adjustment of special taxes or assessments unless they are shown on the Treasurer's Certificate of Taxes Due. The condition of title to the property is to be determined by reference to the title evidence provided by Seller or by personal investigation. The above statement of settlement is approved as of the settlement date shown above and Escrow Holder is hereby authorized to disburse as Trustee funds as indicated.

**FIDELITY NATIONAL TITLE COMPANY**

4643 South Ulster Street, Suite 500, Denver, CO 80237

Phone: (303) 889-8200 Fax: (303) 633-1986

**Sellers Settlement Statement**

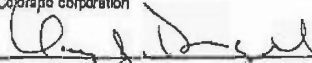
**FINAL**

Escrow No: F0804420- 158 MR1    Close Date: 04/16/2018    Proration Date: 04/16/2018    Disbursement Date: 04/16/2018

**Seller(s):**

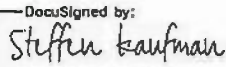
3416 South Cherry 05, LLC, a Colorado limited liability company

By: GD Housing Management, Inc.,  
a Colorado corporation

  
By: Gary J. Drsgul, President

**Broker/Agent:**

RE/MAX Professionals Inc.

DocuSigned by:  
  
C91976A37C6847F...

**Closing Agent:**

FIDELITY NATIONAL TITLE COMPANY

  
by Mary Romano

1 The printed portions of this form, except differentiated additions, have been approved by the Colorado Real Estate Commission  
2 (TD72-8-10) (Mandatory 1-11)

DATE FILED: July 25, 2019 2:21 PM

FILING ID: 77481DCDF1332

CASE NUMBER: 2018CV33011

4 IF THIS FORM IS USED IN A CONSUMER CREDIT TRANSACTION, CONSULT LEGAL COUNSEL.

5 THIS IS A LEGAL INSTRUMENT. IF NOT UNDERSTOOD, LEGAL, TAX OR OTHER COUNSEL SHOULD BE CONSULTED  
6 BEFORE SIGNING.

## 8 SECOND DEED OF TRUST

(Due on Transfer – Strict)

10 THIS SECOND DEED OF TRUST (Deed of Trust) is made this 24th day of January, 2017, between Gary J. Dragul (Borrower);  
11 and the Public Trustee of the County in which the Property (see § 1) is situated (Trustee); for the benefit of Leftin Investment  
12 Company (Lender).

14 Borrower and Lender covenant and agree as follows:

15 **1. Property in Trust.** Borrower, in consideration of the indebtedness herein recited and the trust herein created, hereby  
16 grants and conveys to Trustee in trust, with power of sale, its interest in the following legally described property located in the City  
17 and County of Arapahoe, State of Colorado:

18 LOTS 4 AND 5, AND THE SOUTH HALF OF LOT 3, BLOCK 7, SOUTH UNIVERSITY PLACE, CITY AND COUNTY OF DENVER,  
19 STATE OF COLORADO.

20 known as No. 3416 South Cherry Street	Denver	Colorado	80222
21 Street Address	City	State	Zip

22 together with all its appurtenances (Property).

23 **2. Note: Other Obligations Secured.** This Deed of Trust is given to secure to Lender:

24 **2.1.** the repayment of the indebtedness evidenced by promissory notes (Note) dated January 24, 2017 made by GDA  
25 Real Estate Services, LLC to Lender in the collective principal sum of Two Hundred Thousand and 00/100 Dollars (U.S.  
26 \$200,000);

27 **2.2.** the payment of all other sums, with interest thereon at 10% per annum, disbursed by Lender in accordance with  
28 this Deed of Trust to protect the security of this Deed of Trust; and

29 **2.3.** the performance of the covenants and agreements of Borrower herein contained.

30 **3. Title.** Borrower covenants that Borrower owns and has the right to grant and convey its interest in the Property, and  
31 warrants title to the same, subject to general real estate taxes for the current year, easements of record or in existence, and recorded  
32 declarations, restrictions, reservations and covenants, if any, as of this date.

33 **4. Payment of Principal and Interest.** Maker is to promptly pay when due the principal of and interest on the  
34 indebtedness evidenced by the Note, and late charges as provided in the Note and to perform all of Maker's other covenants  
35 contained in the Note.

36 **5. Application of Payments.** All payments received by Lender under the terms hereof shall be applied by Lender first  
37 in payment of amounts due pursuant to § 23 (Escrow Funds for Taxes and Insurance), then to amounts disbursed by Lender  
38 pursuant to § 9 (Protection of Lender's Security), and the balance in accordance with the terms and conditions of the Note.

39 **6. Prior Mortgages and Deeds of Trust; Charges; Liens.** Borrower shall perform all of Borrower's obligations under  
40 any prior deed of trust and any other prior liens. Borrower shall pay all taxes, assessments and other charges, fines and impositions  
41 attributable to the Property which may have or attain a priority over this Deed of Trust, and leasehold payments or ground rents, if  
42 any, in the manner set out in § 23 (Escrow Funds for Taxes and Insurance) or, if not required to be paid in such manner, by  
43 Borrower making payment when due, directly to the payee thereof. Despite the foregoing, Borrower shall not be required to make  
44 payments otherwise required by this section if Borrower, after notice to Lender, shall in good faith contest such obligation by, or  
45 defend enforcement of such obligation in, legal proceedings which operate to prevent the enforcement of the obligation or  
46 forfeiture of the Property or any part thereof, only upon Borrower making all such contested payments and other payments as  
47 ordered by the court to the registry of the court in which such proceedings are filed.

48 **7. Property Insurance.** Borrower shall keep the improvements now existing or hereafter erected on the Property insured  
49 against loss by fire or hazards included within the term "extended coverage" in an amount at least equal to the lesser of (a) the  
50 insurable value of the Property or (b) an amount sufficient to pay the sums secured by this Deed of Trust as well as any prior  
51 encumbrances on the Property. All of the foregoing shall be known as "Property Insurance."

52 The insurance carrier providing the insurance shall be qualified to write Property Insurance in Colorado and shall be chosen  
53 by Borrower subject to Lender's right to reject the chosen carrier for reasonable cause. All insurance policies and renewals thereof  
54



57 shall include a standard mortgage clause in favor of Lender, and shall provide that the insurance carrier shall notify Lender at  
58 least ten (10) days before cancellation, termination or any material change of coverage. Insurance policies shall be furnished to  
59 Lender at or before closing. Lender shall have the right to hold the policies and renewals thereof.

60 In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss  
61 if not made promptly by Borrower.

62 Insurance proceeds shall be applied to restoration or repair of the Property damaged, provided said restoration or repair is  
63 economically feasible and the security of this Deed of Trust is not thereby impaired. If such restoration or repair is not  
64 economically feasible or if the security of this Deed of Trust would be impaired, the insurance proceeds shall be applied to the  
65 sums secured by this Deed of Trust, with the excess, if any, paid to Borrower. If the Property is abandoned by Borrower, or if  
66 Borrower fails to respond to Lender within 30 days from the date notice is given in accordance with § 16 (Notice) by Lender to  
67 Borrower that the insurance carrier offers to settle a claim for insurance benefits, Lender is authorized to collect and apply the  
68 insurance proceeds, at Lender's option, either to restoration or repair of the Property or to the sums secured by this Deed of Trust.

69 Any such application of proceeds to principal shall not extend or postpone the due date of the installments referred to in §§ 4  
70 (Payment of Principal and Interest) and 23 (Escrow Funds for Taxes and Insurance) or change the amount of such installments.  
71 Notwithstanding anything herein to the contrary, if under § 18 (Acceleration; Foreclosure; Other Remedies) the Property is  
72 acquired by Lender, all right, title and interest of Borrower in and to any insurance policies and in and to the proceeds thereof  
73 resulting from damage to the Property prior to the sale or acquisition shall pass to Lender to the extent of the sums secured by this  
74 Deed of Trust immediately prior to such sale or acquisition.

75 All of the rights of Borrower and Lender hereunder with respect to insurance carriers, insurance policies and insurance proceeds  
76 are subject to the rights of any holder of a prior deed of trust with respect to said insurance carriers, policies and proceeds.

77 **8. Preservation and Maintenance of Property.** Borrower shall keep the Property in good repair and shall not commit  
78 waste or permit impairment or deterioration of the Property and shall comply with the provisions of any lease if this Deed of Trust  
79 is on a leasehold. Borrower shall perform all of Borrower's obligations under any declarations, covenants, by-laws, rules, or other  
80 documents governing the use, ownership or occupancy of the Property.

81 **9. Protection of Lender's Security.** Except when Borrower has exercised Borrower's rights under § 6 above, if  
82 Borrower fails to perform the covenants and agreements contained in this Deed of Trust, or if a default occurs in a prior lien, or  
83 if any action or proceeding is commenced which materially affects Lender's interest in the Property, then Lender, at Lender's  
84 option, with notice to Borrower if required by law, may make such appearances, disburse such sums and take such action as is  
85 necessary to protect Lender's interest, including, but not limited to:

- 86 **9.1.** any general or special taxes or ditch or water assessments levied or accruing against the Property;
- 87 **9.2.** the premiums on any insurance necessary to protect any improvements comprising a part of the Property;
- 88 **9.3.** sums due on any prior lien or encumbrance on the Property;
- 89 **9.4.** if the Property is a leasehold or is subject to a lease, all sums due under such lease;
- 90 **9.5.** the reasonable costs and expenses of defending, protecting, and maintaining the Property and Lender's interest  
91 in the Property, including repair and maintenance costs and expenses, costs and expenses of protecting and securing the Property,  
92 receiver's fees and expenses, inspection fees, appraisal fees, court costs, attorney fees and costs, and fees and costs of an attorney  
93 in the employment of Lender or holder of the certificate of purchase;
- 94 **9.6.** all other costs and expenses allowable by the evidence of debt or this Deed of Trust; and
- 95 **9.7.** such other costs and expenses which may be authorized by a court of competent jurisdiction.

96 Borrower hereby assigns to Lender any right Borrower may have by reason of any prior encumbrance on the Property or by  
97 law or otherwise to cure any default under said prior encumbrance.

98 Any amounts disbursed by Lender pursuant to this § 9, with interest thereon, shall become additional indebtedness of Borrower  
99 secured by this Deed of Trust. Such amounts shall be payable upon notice from Lender to Borrower requesting payment thereof, and  
100 Lender may bring suit to collect any amounts so disbursed plus interest specified in § 2.2 (Note: Other Obligations Secured). Nothing  
101 contained in this § 9 shall require Lender to incur any expense or take any action hereunder.

102 **10. Inspection.** Lender may make or cause to be made reasonable entries upon and inspection of the Property, provided  
103 that Lender shall give Borrower notice prior to any such inspection specifying reasonable cause therefore related to Lender's  
104 interest in the Property.

105 **11. Condemnation.** The proceeds of any award or claim for damages, direct or consequential, in connection with any  
106 condemnation or other taking of the Property, or part thereof, or for conveyance in lieu of condemnation, are hereby assigned and  
107 shall be paid to Lender as herein provided. However, all of the rights of Borrower and Lender hereunder with respect to such  
108 proceeds are subject to the rights of any holder of a prior deed of trust.

109 In the event of a total taking of the Property, the proceeds shall be applied to the sums secured by this Deed of Trust, with the  
110 excess, if any, paid to Borrower. In the event of a partial taking of the Property, the proceeds remaining after taking out any part  
111 of the award due any prior lien holder (net award) shall be divided between Lender and Borrower, in the same ratio as the amount  
112 of the sums secured by this Deed of Trust immediately prior to the date of taking bears to Borrower's equity in the Property

113 immediately prior to the date of taking. Borrower's equity in the Property means the fair market value of the Property less the  
114 amount of sums secured by both this Deed of Trust and all prior liens (except taxes) that are to receive any of the award, all at the  
115 value immediately prior to the date of taking.

116 If the Property is abandoned by Borrower or if, after notice by Lender to Borrower that the condemnor offers to make an  
117 award or settle a claim for damages, Borrower fails to respond to Lender within 30 days after the date such notice is given, Lender  
118 is authorized to collect and apply the proceeds, at Lender's option, either to restoration or repair of the Property or to the sums  
119 secured by this Deed of Trust.

120 Any such application of proceeds to principal shall not extend or postpone the due date of the installments referred to in §§ 4  
121 (Payment of Principal and Interest) and 23 (Escrow Funds for Taxes and Insurance) nor change the amount of such installments.

122 **12. Borrower not Released.** Extension of the time for payment or modification of amortization of the sums secured by this  
123 Deed of Trust granted by Lender to any successor in interest of Borrower shall not operate to release, in any manner, the liability of  
124 the original Borrower, nor Borrower's successors in interest, from the original terms of this Deed of Trust. Lender shall not be  
125 required to commence proceedings against such successor or refuse to extend time for payment or otherwise modify amortization of  
126 the sums secured by this Deed of Trust by reason of any demand made by the original Borrower nor Borrower's successors in interest.

127 **13. Forbearance by Lender Not a Waiver.** Any forbearance by Lender in exercising any right or remedy hereunder, or  
128 otherwise afforded by law, shall not be a waiver or preclude the exercise of any such right or remedy.

129 **14. Remedies Cumulative.** Each remedy provided in the Note and this Deed of Trust is distinct from and cumulative to  
130 all other rights or remedies under the Note and this Deed of Trust or afforded by law or equity, and may be exercised concurrently,  
131 independently or successively.

132 **15. Successors and Assigns Bound; Joint and Several Liability; Captions.** The covenants and agreements herein  
133 contained shall bind, and the rights hereunder shall inure to, the respective successors and assigns of Lender and Borrower, subject  
134 to the provisions of § 24 (Transfer of the Property; Assumption). All covenants and agreements of Borrower shall be joint and  
135 several. The captions and headings of the sections in this Deed of Trust are for convenience only and are not to be used to interpret  
136 or define the provisions hereof.

137 **16. Notice.** Except for any notice required by law to be given in another manner, (a) any notice to Borrower provided for  
138 in this Deed of Trust shall be in writing and shall be given and be effective upon (1) delivery to Borrower or (2) mailing such  
139 notice by first class U.S. mail, addressed to Borrower at Borrower's address stated herein or at such other address as Borrower  
140 may designate by notice to Lender as provided herein, and (b) any notice to Lender shall be in writing and shall be given and be  
141 effective upon (1) delivery to Lender or (2) mailing such notice by first class U.S. mail, to Lender's address stated herein or to  
142 such other address as Lender may designate by notice to Borrower as provided herein. Any notice provided for in this Deed of  
143 Trust shall be deemed to have been given to Borrower or Lender when given in any manner designated herein.

144 **17. Governing Law; Severability.** The Note and this Deed of Trust shall be governed by the law of Colorado. In the  
145 event that any provision or clause of this Deed of Trust or the Note conflicts with the law, such conflict shall not affect other  
146 provisions of this Deed of Trust or the Note which can be given effect without the conflicting provision, and to this end the  
147 provisions of the Deed of Trust and Note are declared to be severable.

148 **18. Acceleration; Foreclosure; Other Remedies.** Except as provided in § 24 (Transfer of the Property; Assumption),  
149 upon Borrower's breach of any covenant or agreement of Borrower in this Deed of Trust, or upon any default in a prior lien upon  
150 the Property, (unless Borrower has exercised Borrower's rights under § 6 above), at Lender's option, all of the sums secured by  
151 this Deed of Trust shall be immediately due and payable (Acceleration). To exercise this option, Lender may invoke the power of  
152 sale and any other remedies permitted by law. Lender shall be entitled to collect all reasonable costs and expenses incurred in  
153 pursuing the remedies provided in this Deed of Trust, including, but not limited to, reasonable attorney's fees.

154 If Lender invokes the power of sale, Lender shall give written notice to Trustee of such election. Trustee shall give such  
155 notice to Borrower of Borrower's rights as is provided by law. Trustee shall record a copy of such notice and shall cause  
156 publication of the legal notice as required by law in a legal newspaper of general circulation in each county in which the Property  
157 is situated, and shall mail copies of such notice of sale to Borrower and other persons as prescribed by law. After the lapse of such  
158 time as may be required by law, Trustee, without demand on Borrower, shall sell the Property at public auction to the highest  
159 bidder for cash at the time and place (which may be on the Property or any part thereof as permitted by law) in one or more parcels  
160 as Trustee may think best and in such order as Trustee may determine. Lender or Lender's designee may purchase the Property  
161 at any sale. It shall not be obligatory upon the purchaser at any such sale to see to the application of the purchase money.

162 Trustee shall apply the proceeds of the sale in the following order: (a) to all reasonable costs and expenses of the sale,  
163 including, but not limited to, reasonable Trustee's and attorney's fees and costs of title evidence; (b) to all sums secured by this  
164 Deed of Trust; and (c) the excess, if any, to the person or persons legally entitled thereto.

165 **19. Borrower's Right to Cure Default.** Whenever foreclosure is commenced for nonpayment of any sums due hereunder,  
166 the owners of the Property or parties liable hereon shall be entitled to cure said defaults by paying all delinquent principal and  
167 interest payments due as of the date of cure, costs, expenses, late charges, attorney's fees and other fees all in the manner provided

168 by law. Upon such payment, this Deed of Trust and the obligations secured hereby shall remain in full force and effect as though  
169 no Acceleration had occurred, and the foreclosure proceedings shall be discontinued.

170 **20. Assignment of Rents; Appointment of Receiver; Lender in Possession.** As additional security hereunder, Borrower  
171 hereby assigns to Lender the rents of the Property; however, Borrower shall, prior to Acceleration under § 18 (Acceleration;  
172 Foreclosure; Other Remedies) or abandonment of the Property, have the right to collect and retain such rents as they become due  
173 and payable.

174 Lender or the holder of the Trustee's certificate of purchase shall be entitled to a receiver for the Property after Acceleration  
175 under § 18 (Acceleration; Foreclosure; Other Remedies), and shall also be so entitled during the time covered by foreclosure  
176 proceedings and the period of redemption, if any; and shall be entitled thereto as a matter of right without regard to the solvency or  
177 insolvency of Borrower or of the then owner of the Property, and without regard to the value thereof. Such receiver may be appointed  
178 by any Court of competent jurisdiction upon ex parte application and without notice; notice being hereby expressly waived.

179 Upon Acceleration under § 18 (Acceleration; Foreclosure; Other Remedies) or abandonment of the Property, Lender, in  
180 person, by agent or by judicially-appointed receiver, shall be entitled to enter upon, take possession of and manage the Property  
181 and to collect the rents of the Property including those past due. All rents collected by Lender or the receiver shall be applied, first  
182 to payment of the costs of preservation and management of the Property, second to payments due upon prior liens, and then to the  
183 sums secured by this Deed of Trust. Lender and the receiver shall be liable to account only for those rents actually received.

184 **21. Release.** Upon payment of all sums secured by this Deed of Trust, Lender shall cause Trustee to release this Deed of  
185 Trust and shall produce for Trustee the Note. Borrower shall pay all costs of recordation and shall pay the statutory Trustee's fees.  
186 If Lender shall not produce the Note as aforesaid, then Lender, upon notice in accordance with § 16 (Notice) from Borrower to  
187 Lender, shall obtain, at Lender's expense, and file any lost instrument bond required by Trustee or pay the cost thereof to effect  
188 the release of this Deed of Trust.

189 **22. Waiver of Exemptions.** Borrower hereby waives all right of homestead and any other exemption in the Property  
190 under state or federal law presently existing or hereafter enacted.

191 **23. Escrow Funds for Taxes and Insurance.** This § 23 is not applicable if Funds, as defined below, are being paid pursuant  
192 to a prior encumbrance. Subject to applicable law, and upon request by Lender, Borrower shall pay to Lender, on each day  
193 installments of principal and interest are payable under the Note, until the Note is paid in full, a sum (herein referred to as "Funds")  
194 equal one twelfth of the yearly taxes and assessments which may attain priority over this Deed of Trust, plus yearly premium  
195 installments for Property Insurance, all as reasonably estimated initially and from time to time by Lender on the basis of  
196 assessments and bills and reasonable estimates thereof, taking into account any excess Funds not used or shortages.

197 If the amount of the Funds held by Lender shall not be sufficient to pay taxes, assessments and insurance premiums as they  
198 fall due, Borrower shall pay to Lender any amount necessary to make up the deficiency within 30 days from the date notice is  
199 given in accordance with § 16 (Notice) by Lender to Borrower requesting payment thereof. Provided however, if the loan secured  
200 by this Deed of Trust is subject to RESPA or other laws regulating Escrow Accounts, such deficiency, surplus or any other  
201 required adjustment shall be paid, credited or adjusted in compliance with such applicable laws.

202 Upon payment in full of all sums secured by this Deed of Trust, Lender shall simultaneously refund to Borrower any Funds held  
203 by Lender. If under § 18 (Acceleration; Foreclosure; Other Remedies) the Property is sold or the Property is otherwise acquired by  
204 Lender, Lender shall apply, no later than immediately prior to the sale of the Property or its acquisition by Lender, whichever occurs  
205 first, any Funds held by Lender at the time of application as a credit against the sums secured by this Deed of Trust.

206 **24. Transfer of the Property; Assumption.** The following events shall be referred to herein as a "Transfer": (i) a transfer  
207 or conveyance of title (or any portion thereof, legal or equitable) of the portion of the Property (or any part thereof or interest  
208 therein) owned by Borrower; (ii) the execution of a contract or agreement creating a right to title (or any portion thereof, legal or  
209 equitable) in the portion of the Property (or any part thereof or interest therein) owned by Borrower; (iii) or an agreement granting  
210 a possessory right in the portion of the Property (or any portion thereof) owned by Borrower, in excess of 3 years; and (iv) the  
211 reorganization, liquidation or dissolution of Borrower. Not to be included as a Transfer are (x) the creation of a lien or  
212 encumbrance subordinate to this Deed of Trust; (y) the creation of a purchase money security interest for household appliances;  
213 or (z) a transfer by devise, descent or by operation of the law upon the death of a joint tenant. At the election of Lender, in the  
214 event of each and every Transfer:

215 **24.1.** All sums secured by this Deed of Trust shall become immediately due and payable (Acceleration).

216 **24.2.** If a Transfer occurs and should Lender not exercise Lender's option pursuant to this § 24 to Accelerate,  
217 Transferee shall be deemed to have assumed all of the obligations of Borrower under this Deed of Trust including all sums secured  
218 hereby whether or not the instrument evidencing such conveyance, contract or grant expressly so provides. This covenant shall  
219 run with the Property and remain in full force and effect until said sums are paid in full. Lender may without notice to Borrower  
220 deal with Transferee in the same manner as with Borrower with reference to said sums including the payment or credit to  
221 Transferee of undisbursed reserve Funds on payment in full of said sums, without in any way altering or discharging Borrower's  
222 liability hereunder for the obligations hereby secured.

223           **24.3.** Should Lender not elect to Accelerate upon the occurrence of such Transfer then, subject to § 24.2 above, the  
224 mere fact of a lapse of time or the acceptance of payment subsequent to any of such events, whether or not Lender had actual or  
225 constructive notice of such Transfer, shall not be deemed a waiver of Lender's right to make such election nor shall Lender be  
226 estopped therefrom by virtue thereof. The issuance on behalf of Lender of a routine statement showing the status of the loan,  
227 whether or not Lender had actual or constructive notice of such Transfer, shall not be a waiver or estoppel of Lender's said rights.

228       **25. Borrower's Copy.** Borrower acknowledges receipt of a copy of the Note and this Deed of Trust.  
229

230   EXECUTED BY BORROWER.

  
\_\_\_\_\_  
Gary J. Dragul

231 STATE OF COLORADO    )  
232   ) ss.  
233 County of ARAPAHOE   )  
234

235           The foregoing instrument was acknowledged before me this 24th day of January, 2017, by Gary J. Dragul.  
236

237 Witness my hand and official seal.

238 My commission expires: 7-13-2019

240 

<b>SARAH FRANCES M. NEEL</b>
<b>NOTARY PUBLIC</b>
<b>STATE OF COLORADO</b>
<b>NOTARY ID # 20074026543</b>
<b>MY COMMISSION EXPIRES JULY 13, 2019</b>

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

Cornerstar Wine & Liquor, LLC  
General Ledger  
All Transactions

	Type	Date	Num	Name	Memo	Split	Amount	Balance
<b>Canvas Credit Union</b>								
	Check	09/28/2018	19014	Spencer Dragul		Contract Hourly	-2,884.61	-2,884.61
	Check	11/09/2018	19132	Spencer Dragul		Contract Hourly	-2,884.61	-5,769.22
	Check	11/23/2018	19183	Spencer Dragul		Contract Hourly	-2,884.61	-8,653.83
	Check	12/07/2018	19239	Spencer Dragul		Contract Hourly	-2,884.61	-11,538.44
Total Canvas Credit Union							-11,538.44	-11,538.44
<b>Front Range Bank</b>								
	Check	04/28/2017	ACH	Samuel Dragul	Distribution	Sam Dragul	-400.00	-400.00
	Check	04/28/2017	ACH	Spencer Dragul	Distribution	Spencer Dragul	-400.00	-800.00
	Check	04/28/2017	ACH	Charli Dragul	Distribution	Charli Dragul	-400.00	-1,200.00
	Check	05/20/2017	ACH	Charli Dragul	Distribution	Charli Dragul	-400.00	-1,600.00
	Check	05/20/2017	ACH	Spencer Dragul	Distribution	Spencer Dragul	-400.00	-2,000.00
	Check	05/20/2017	ACH	Samuel Dragul	Distribution	Sam Dragul	-400.00	-2,400.00
	Check	06/20/2017	ACH	Charli Dragul	Distribution	Charli Dragul	-400.00	-2,800.00
	Check	06/20/2017	ACH	Spencer Dragul	Distribution	Spencer Dragul	-400.00	-3,200.00
	Check	06/20/2017	ACH	Samuel Dragul	Distribution	Sam Dragul	-400.00	-3,600.00
	Check	07/20/2017	ACH	Charli Dragul	Distribution	Charli Dragul	-400.00	-4,000.00
	Check	07/20/2017	ACH	Spencer Dragul	Distribution	Spencer Dragul	-400.00	-4,400.00
	Check	07/20/2017	ACH	Samuel Dragul	Distribution	Sam Dragul	-400.00	-4,800.00
	Check	08/20/2017	ACH	Charli Dragul	Distribution	Charli Dragul	-400.00	-5,200.00
	Check	08/20/2017	ACH	Spencer Dragul	Distribution	Spencer Dragul	-400.00	-5,600.00
	Check	08/20/2017	ACH	Samuel Dragul	Distribution	Sam Dragul	-400.00	-6,000.00
	Check	09/20/2017	ACH	Charli Dragul	Distribution	Charli Dragul	-400.00	-6,400.00
	Check	09/20/2017	ACH	Spencer Dragul	Distribution	Spencer Dragul	-400.00	-6,800.00
	Check	09/20/2017	ACH	Samuel Dragul	Distribution	Sam Dragul	-400.00	-7,200.00
	Check	10/20/2017	ACH	Charli Dragul	Distribution	Charli Dragul	-400.00	-7,600.00
	Check	10/20/2017	ACH	Spencer Dragul	Distribution	Spencer Dragul	-400.00	-8,000.00
	Check	10/20/2017	ACH	Samuel Dragul	Distribution	Sam Dragul	-400.00	-8,400.00
	Check	11/20/2017	ACH	Charli Dragul	Distribution	Charli Dragul	-400.00	-8,800.00
	Check	11/20/2017	ACH	Spencer Dragul	Distribution	Spencer Dragul	-400.00	-9,200.00
	Check	11/20/2017	ACH	Samuel Dragul	Distribution	Sam Dragul	-400.00	-9,600.00
	Check	12/20/2017	ACH	Charli Dragul	Distribution	Charli Dragul	-400.00	-10,000.00
	Check	12/20/2017	ACH	Spencer Dragul	Distribution	Spencer Dragul	-400.00	-10,400.00
	Check	12/20/2017	ACH	Samuel Dragul	Distribution	Sam Dragul	-400.00	-10,800.00
	Check	01/20/2018	ACH	Charli Dragul	Distribution	Charli Dragul	-400.00	-11,200.00
	Check	01/20/2018	ACH	Spencer Dragul	Distribution	Spencer Dragul	-400.00	-11,600.00
	Check	01/20/2018	ACH	Samuel Dragul	Distribution	Sam Dragul	-400.00	-12,000.00
	Check	02/20/2018	ACH	Charli Dragul	Distribution	Charli Dragul	-400.00	-12,400.00
	Check	02/20/2018	ACH	Spencer Dragul	Distribution	Spencer Dragul	-400.00	-12,800.00
	Check	02/20/2018	ACH	Samuel Dragul	Distribution	Sam Dragul	-400.00	-13,200.00
	Check	03/20/2018	ACH	Charli Dragul	Distribution	Charli Dragul	-400.00	-13,600.00
	Check	03/20/2018	ACH	Spencer Dragul	Distribution	Spencer Dragul	-400.00	-14,000.00
	Check	03/20/2018	ACH	Samuel Dragul	Distribution	Sam Dragul	-400.00	-14,400.00
	Check	04/20/2018	ACH	Charli Dragul	Distribution	Charli Dragul	-400.00	-14,800.00
	Check	04/20/2018	ACH	Spencer Dragul	Distribution	Spencer Dragul	-400.00	-15,200.00
	Check	04/20/2018	ACH	Samuel Dragul	Distribution	Sam Dragul	-400.00	-15,600.00
Total Front Range Bank							-15,600.00	-15,600.00
<b>Member</b>								
<b>Charli Dragul</b>								
	Check	04/28/2017	ACH	Charli Dragul	Distribution	Front Range Bank	400.00	400.00
	Check	05/20/2017	ACH	Charli Dragul	Distribution	Front Range Bank	400.00	800.00
	Check	06/20/2017	ACH	Charli Dragul	Distribution	Front Range Bank	400.00	1,200.00
	Check	07/20/2017	ACH	Charli Dragul	Distribution	Front Range Bank	400.00	1,600.00
	Check	08/20/2017	ACH	Charli Dragul	Distribution	Front Range Bank	400.00	2,000.00
	Check	09/20/2017	ACH	Charli Dragul	Distribution	Front Range Bank	400.00	2,400.00
	Check	10/20/2017	ACH	Charli Dragul	Distribution	Front Range Bank	400.00	2,800.00
	Check	11/20/2017	ACH	Charli Dragul	Distribution	Front Range Bank	400.00	3,200.00
	Check	12/20/2017	ACH	Charli Dragul	Distribution	Front Range Bank	400.00	3,600.00
	Check	01/20/2018	ACH	Charli Dragul	Distribution	Front Range Bank	400.00	4,000.00
	Check	02/20/2018	ACH	Charli Dragul	Distribution	Front Range Bank	400.00	4,400.00
	Check	03/20/2018	ACH	Charli Dragul	Distribution	Front Range Bank	400.00	4,800.00
	Check	04/20/2018	ACH	Charli Dragul	Distribution	Front Range Bank	400.00	5,200.00
Total Charli Dragul							5,200.00	5,200.00
<b>Sam Dragul</b>								
	Check	04/28/2017	ACH	Samuel Dragul	Distribution	Front Range Bank	400.00	400.00

DATE FILED: July 25, 2019 12:21 PM  
 FILING ID: 77481DCDF1332  
 CASE NUMBER: 2018CV33011

Cornerstar Wine & Liquor, LLC  
General Ledger  
All Transactions

Type	Date	Num	Name	Memo	Split	Amount	Balance
Check	05/20/2017	ACH	Samuel Dragul	Distribution	Front Range Bank	400.00	800.00
Check	06/20/2017	ACH	Samuel Dragul	Distribution	Front Range Bank	400.00	1,200.00
Check	07/20/2017	ACH	Samuel Dragul	Distribution	Front Range Bank	400.00	1,600.00
Check	08/20/2017	ACH	Samuel Dragul	Distribution	Front Range Bank	400.00	2,000.00
Check	09/20/2017	ACH	Samuel Dragul	Distribution	Front Range Bank	400.00	2,400.00
Check	10/20/2017	ACH	Samuel Dragul	Distribution	Front Range Bank	400.00	2,800.00
Check	11/20/2017	ACH	Samuel Dragul	Distribution	Front Range Bank	400.00	3,200.00
Check	12/20/2017	ACH	Samuel Dragul	Distribution	Front Range Bank	400.00	3,600.00
Check	01/20/2018	ACH	Samuel Dragul	Distribution	Front Range Bank	400.00	4,000.00
Check	02/20/2018	ACH	Samuel Dragul	Distribution	Front Range Bank	400.00	4,400.00
Check	03/20/2018	ACH	Samuel Dragul	Distribution	Front Range Bank	400.00	4,800.00
Check	04/20/2018	ACH	Samuel Dragul	Distribution	Front Range Bank	400.00	5,200.00
Total Sam Dragul						5,200.00	5,200.00
<b>Spencer Dragul</b>							
Check	04/28/2017	ACH	Spencer Dragul	Distribution	Front Range Bank	400.00	400.00
Check	05/20/2017	ACH	Spencer Dragul	Distribution	Front Range Bank	400.00	800.00
Check	06/20/2017	ACH	Spencer Dragul	Distribution	Front Range Bank	400.00	1,200.00
Check	07/20/2017	ACH	Spencer Dragul	Distribution	Front Range Bank	400.00	1,600.00
Check	08/20/2017	ACH	Spencer Dragul	Distribution	Front Range Bank	400.00	2,000.00
Check	09/20/2017	ACH	Spencer Dragul	Distribution	Front Range Bank	400.00	2,400.00
Check	10/20/2017	ACH	Spencer Dragul	Distribution	Front Range Bank	400.00	2,800.00
Check	11/20/2017	ACH	Spencer Dragul	Distribution	Front Range Bank	400.00	3,200.00
Check	12/20/2017	ACH	Spencer Dragul	Distribution	Front Range Bank	400.00	3,600.00
Check	01/20/2018	ACH	Spencer Dragul	Distribution	Front Range Bank	400.00	4,000.00
Check	02/20/2018	ACH	Spencer Dragul	Distribution	Front Range Bank	400.00	4,400.00
Check	03/20/2018	ACH	Spencer Dragul	Distribution	Front Range Bank	400.00	4,800.00
Check	04/20/2018	ACH	Spencer Dragul	Distribution	Front Range Bank	400.00	5,200.00
Total Spencer Dragul						5,200.00	5,200.00
<b>Contract Hourly</b>							
Check	09/28/2018	19014	Spencer Dragul		Canvas Credit Union	2,884.61	2,884.61
Check	11/09/2018	19132	Spencer Dragul		Canvas Credit Union	2,884.61	5,769.22
Check	11/23/2018	19183	Spencer Dragul		Canvas Credit Union	2,884.61	8,653.83
Check	12/07/2018	19239	Spencer Dragul		Canvas Credit Union	2,884.61	11,538.44
General Journal	12/21/2018	12/21/2018	Spencer Dragul	12/21/18 - Payment on behalf of Shelly Dragul	Shelly Dragul	2,884.61	14,423.05
General Journal	01/04/2019	01/04/2019	Spencer Dragul	01/04/19 - Payment on behalf of Shelly Dragul- peric	Shelly Dragul	2,884.61	17,307.66
Total Contract Hourly						17,307.66	17,307.66