

**PREPARED BY:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**SECOND MORTGAGE**

THIS SECOND MORTGAGE (“Security Instrument”) is made on \_\_\_\_\_, 20\_\_\_\_.  
The Mortgagor is/are \_\_\_\_\_, whose  
address is \_\_\_\_\_ (“Borrower”) and  
the Mortgagee is the Housing Finance Authority of Lee County, Florida, whose address is 2449 First  
Street, Fort Myers, Florida 33901 (“Lender”).

Borrower owes Lender the principal sum of \_\_\_\_\_  
\_\_\_\_\_ Dollars (U.S. \$\_\_\_\_\_). This debt is  
evidenced by Borrower’s note dated the same date as this Security Instrument (“Promissory Note”). This  
Security Instrument secures to Lender: (a) the repayment of the debt evidenced by the Promissory Note  
(the “Note”), and all renewals, extensions and modifications of this Mortgage; (b) the payment of all other  
sums, advanced under Paragraph 5 to protect the security of this Security Instrument; and (c) the  
performance of Borrower’s covenants and agreements under this Security Instrument and the Note. For  
this purpose, Borrower irrevocably grants and conveys to Lender, in trust, with power of sale, the  
following described property located in \_\_\_\_\_ County, Florida which has the address  
of \_\_\_\_\_, Florida  
 (“Property Address”):

[LEGAL DESCRIPTION]

TOGETHER WITH all the improvements now or hereafter erected on the property, and all easements,  
rights, appurtenances, grants, 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 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 as otherwise herein  
stated and 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.

Borrower and Lender covenant and agree as follows:

**1. Payment.** Borrower shall promptly pay when due the indebtedness evidenced by the Note.

**2. Prior Mortgages; Charges; Liens.** Borrower shall perform all of Borrower’s obligations  
under the First Mortgage of even date and any other mortgage, or other security agreement with a lien  
which has priority over this Mortgage, including Borrower’s covenants to make payments when due.  
Borrower shall pay or cause to be paid all taxes, assessments and other charges, fines and impositions

attributable to the Property which may attain a priority over this Mortgage, and leasehold payments or ground rents, if any.

**3. Hazard Insurance.** Borrower shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire and other hazards included within the term "extended coverage". All insurance policies and renewals thereof shall include a standard mortgage clause in favor of the Lender as a named insured. In the event of loss, Borrower shall give prompt notice to the insurance carrier and to Lender. Lender may make proof of loss if not made promptly by Borrower.

**4. Protection of Lender's Security.** If Borrower fails to perform the covenants and agreements contained in this Mortgage, or if any action or proceeding is commenced which materially affects Lender's interest in the Property, then Lender, at Lender's option, upon notice to Borrower, may make such appearances, disburse such sums, including reasonable attorneys' and paralegal fees, and take such action as is necessary to protect Lender's interest in the Property. If Lender has required mortgage insurance as a condition of making the Loan secured by this Mortgage, Borrower shall pay the premiums required to maintain such insurance in effect until such time as the requirement for such insurance terminates in accordance with Borrower's and Lender's written agreement or applicable law.

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

**6. Condemnation.** The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of the Property, or part thereof, or for conveyance in lieu of condemnation, are hereby assigned and shall be paid to Lender, subject to the terms of any mortgage, deed of trust or other security agreement with a lien which has priority over this Mortgage.

**7. Borrower Not Released; Forbearance by Lender Not a Waiver.** Extension of the time for payment or modification of the sums secured by this Mortgage granted by Lender to any successor in interest of Borrower shall not operate to release, in any manner, the liability of the original Borrower and Borrower's successors in interest. Lender shall not be required to commence proceedings against such successor or refuse to extend time for repayment or otherwise modify amortization of the sums secured by this Mortgage by reason of any demand made by the original Borrower and Borrower's successors in interest. Any forbearance by Lender in exercising any right or remedy hereunder, or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any such right or remedy.

**8. Successors and Assigns Bound; Joint and Several Liability; Co-Signers.** The covenants and agreements herein contained shall bind, and the rights hereunder shall inure to, the respective successors and assigns of Lender and Borrower. If more than one Borrower executes this Mortgage, all covenants, representations, warranties and agreements of Borrower shall be joint and several. Any Borrower who co-signs this Mortgage, but does not execute the Note; (a) is co-signing this Mortgage only to mortgage, grant and convey that Borrower's interest in the property to Lender under the terms of this Mortgage, (b) is not personally liable on the Note or under this Mortgage, and (c) agrees that Lender and any other Borrower hereunder may agree to extend, modify, forbear, or make any other accommodations with regard to the terms of this Mortgage or the Note without that Borrower's consent and without releasing that Borrower or modifying this Mortgage as to that Borrower's interest in the Property.

**9. Notice.** Except for any notice required under applicable law to be given in another manner, any and all notices, elections, demands, or requests permitted or required to be made under this Mortgage shall be in writing, signed by the party giving such notice, election, demand or request, and shall be delivered personally, or sent by registered, certified, or Express United States mail, postage prepaid, or by Federal Express or similar nationally recognized delivery service requiring a receipt, to the other party at the address stated above, or to such other party and at such other address within the United States of

America as any party may designate in writing as provided herein. The date of receipt of such notice, election, demand or request shall be the earliest of (i) the date of actual receipt, (ii) three (3) business days after the date of mailing by registered or certified mail, (iii) one (1) business day after the date of sending via overnight delivery by Express Mail, Federal Express or another similar service requiring a receipt, or (iv) the date of personal delivery (or refusal by or on behalf of the addressee upon presentation for delivery of a properly addressed notice).

**10. Governing Law; Severability; Costs.** This Mortgage shall be governed by the laws of the State of Florida, and, to the extent applicable hereto, the laws and regulations of the United States of America. In the event that any provision or clause of this Mortgage or the Note conflicts with applicable law, such conflict shall not affect other provisions of this Mortgage or the Note which can be given effect without the conflicting provision, and to this end the provisions of this Mortgage and the Note are declared to be severable. As used herein, “costs,” “expenses,” and “attorneys’ and paralegal fees” include all sums to the extent not prohibited by applicable law or limited herein.

**11. Borrower’s Copy.** Borrower shall be furnished a conformed copy of the Note and of this Mortgage at the time of execution or after recordation thereof.

**12. Transfer of the Property; Receipt of Tax Credit.** If all or any part of the Property or any interest in it is sold, transferred, gifted or otherwise conveyed, whether by voluntary act, involuntarily, by operation of law or otherwise, or if Borrower is divested of title by judicial sale, levy or other proceeding, or if foreclosure action is instituted against the property, or if the First Mortgage is satisfied or refinanced, or if the Property is leased or rented, or if Borrower receives a federal tax credit refund under the American Recovery and Reinvestment Act, all sums secured by this Mortgage shall immediately become due and payable as provided herein.

**13. Acceleration; Remedies.** Except as provided in Paragraph 12 hereof, each of the following shall be deemed an event of default by Borrower (each, an “Event of Default”): (i) Borrower’s breach of any covenant, condition, obligation or agreement of Borrower in this Mortgage, including the covenants to pay when due any sums secured by this Mortgage, (ii) Borrower shall have made material misrepresentations or material omissions in his/her/their application for a Down Payment Assistance Loan, (iii) Borrower’s breach of any covenant, condition, obligation or agreement contained in the Note or any of the other Loan Documents, and (iv) any default occurs under the Note or any of the other Loan Documents.

Upon the occurrence and during the continuance of an Event of Default, (a) Lender shall have all rights and remedies of a secured party in, to and against the Property available at law or in equity, including, without limitation: (i) the right to declare any or all payments due under this Mortgage, the Note, any of the other Loan Documents and all other documents evidencing the obligations immediately due and payable; (ii) the right to foreclose this Mortgage in accordance with applicable law; and (iii) the right to recover all fees and expenses (including reasonable attorney’s and paralegal fees) in connection with the collection or enforcement of the obligations due under this Mortgage, the Note, and the other Loan Documents, which fees and expenses shall constitute additional obligations of Borrower hereunder. Provided, however, upon the occurrence of a monetary Event of Default, Lender shall not be entitled to exercise its rights and remedies set forth above unless and until Lender shall have given Borrower notice thereof and a period of thirty (30) days from the delivery of such notice shall have elapsed without such monetary Event of Default being cured.

**14. Release.** Upon payment of all sums secured by this Mortgage, Lender shall release this Mortgage. Borrower shall pay all costs of preparation or recordation of the satisfaction, if any.

**15. Attorneys’ Fees.** As used in this Mortgage and in the Note, “attorneys’ and paralegal fees” shall include attorneys’ and paralegal fees, if any, incurred in connection with the collection or

enforcement of this Mortgage or of the Note, whether or not suit is brought and whether incurred at trial, on appeal, in bankruptcy proceedings or otherwise.

**16. Special Down Payment Assistance Program Covenants, Representations.** Borrower covenants, represents and warrants to Lender that: (a) Borrower, along with his/her/their family, intends to reside as a household in the Property; (b) the Property is a single-family residence and (c) Borrower is eligible to participate in Lender's Single Family Loan Program and its Down Payment Assistance Loan Program thereunder.

**17. Subordination.** Lender and Borrower acknowledge and agree that this Security Instrument is subject and subordinate in all respects to the liens, terms, covenants and conditions of the First Mortgage of even date and to all advances heretofore made or which may hereafter be made pursuant to the First Mortgage including all sums advanced for the purpose of (a) protecting or further securing the lien of the First Mortgage, curing defaults by Borrower under the First Mortgage, or for any other purpose expressly permitted by the First Mortgage or (b) constructing, renovating, repairing, furnishing, fixturing or equipping the Property. The terms and provisions of the First Mortgage are paramount and controlling, and they supersede any other terms and provisions hereof in conflict therewith. In the event of a foreclosure or deed in lieu of foreclosure of the First Mortgage, any provisions herein or any provisions in any other collateral agreement restricting the use of the Property to low or moderate income households or otherwise restricting Borrower's ability to sell the Property shall have no further force or effect on subsequent owners or purchasers of the Property. Any person, including his successors or assigns (other than Borrower or a related entity of Borrower), receiving title to the Property through a foreclosure or deed in lieu of foreclosure of the First Mortgage shall receive title to the property free and clear from such restrictions.

Further, if the Senior Lien Holder acquires title to the Property pursuant to a deed in lieu of foreclosure, the lien of this Security Instrument shall terminate at the discretion of Lender upon the Senior Lien Holder's acquisition of title, such termination will not be unreasonably withheld provided that (i) Lender has been given written notice of a default under the First Mortgage, (ii) Lender shall not have cured the default under the First Mortgage within the 30-day period provided in such notice sent to Lender, and (iii) there is not sufficient equity in the Property to satisfy the senior lien (assuming reasonable costs) and the lien of this Down Payment Assistance Loan.

**18. Other Amounts Secured.** At all times, this Mortgage secures, in addition to the Note, all other obligations, together with moneys advanced by Mortgagee to protect and preserve the lien of this Mortgage, as aforesaid. Any additional sum or sums advanced by the then holder of the Note to the then owner of the Property at any time within twenty (20) years from the date of this Mortgage, with interest thereon at the rate agreed upon at the time of each additional loan or advance, will constitute a portion of, be equally secured with, and have the same priority as the obligations and will be subject to all of the terms and provisions of this Mortgage, whether or not such additional loan or advance is evidenced by a promissory note of Borrower and whether or not identified by a recital that it is secured by this Mortgage; provided, however, that the aggregate amount of principal indebtedness outstanding at any one time and secured by this Mortgage shall not exceed \$\_\_\_\_\_. The provisions of this Paragraph shall apply regardless of whether any such advance is characterized as obligatory or discretionary, but nothing contained in this Paragraph obligates Borrower to make any additional loans or advances.

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EXECUTION AND ACKNOWLEDGEMENT PAGE FOLLOWS]

