

Tax Parcel No.: \_\_\_\_\_

Prepared By: Delaware State Housing Authority

Return to: Delaware State Housing Authority  
820 North French Street, 10<sup>th</sup> Floor  
Wilmington, DE 19801

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OFFICIAL USE ONLY ABOVE THIS LINE

DELAWARE STATE HOUSING AUTHORITY  
DOWN PAYMENT ASSISTANCE SECOND MORTGAGE LOAN PROGRAM

**MORTGAGE**

**THIS MORTGAGE** is made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, between \_\_\_\_\_ Mortgageor (herein "Borrower"), and Mortgagee, DELAWARE STATE HOUSING AUTHORITY, a public corporation organized and existing under the laws of the State of Delaware whose address is 18 The Green, Dover, Delaware 19901 (herein "Lender").

**WHEREAS**, Borrower is indebted to Lender in the principal sum of \_\_\_\_\_ U.S. (\$\_\_\_\_\_) which indebtedness is evidenced by Borrower's note of even date herewith and extensions and renewals thereof (herein "Note"), providing for payment of principal which, if not sooner paid, shall be due and payable on the Maturity Date as defined therein.

**TO SECURE** to Lender the repayment of the indebtedness evidenced by the Note and the payment of all other sums advanced in accordance herewith to protect the security of this Mortgage, and the performance of the covenants and agreements of Borrower herein contained, Borrower does hereby mortgage, grant and convey to Lender the following described property located in the County of \_\_\_\_\_, State of Delaware, more particularly bounded and described on Exhibit "A" attached hereto, which has the address of \_\_\_\_\_

\_\_\_\_\_ (herein "Property Address"):

**TOGETHER** with all of the improvements now or hereafter erected on the property, all fixtures, machinery, equipment and other articles of real, personal or mixed property now or hereafter attached to, situate or installed in or upon, or used in the operation or maintenance of the property, whether or not such real, personal or mixed property is or shall be affixed to the same, and all replacements, substitutions, accretions and proceeds of the foregoing, and all easements, rights, appurtenances and rents, all of which shall be deemed to be and remain part of the property covered by this Mortgage, all proceeds of any of the above-described property, which term shall have the meaning given to it in the Uniform Commercial Code as enacted in the State of Delaware ("UCC"), and all of the foregoing, together with said property (or the leasehold estate if this Mortgage is on a leasehold) are hereinafter referred to as the "Property".

Borrower covenants that Borrower is lawfully seized of the estate hereby conveyed and has the right to mortgage, grant and convey the Property, and the Property is unencumbered, except for encumbrances of record. Borrower covenants that Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to encumbrances of record.

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

**1. Payment of Principal.** Borrower shall promptly pay when due the principal on the indebtedness evidenced by the Note and late charges, if any, as provided in the Note. Borrower shall also give Lender ten (10) days prior written notice of a Maturity Date event as provided in the Note.

**2. Prior Mortgages and Deeds of Trust; Charges; Liens.** Borrower shall perform all of Borrower's obligations under any mortgage, deed of trust 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. Borrower shall not create any lien or encumbrance subordinate to this Mortgage without the written consent of Lender.

**3. Hazard 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 such other hazards as Lender may require and in such amounts and for such periods as Lender may require and should otherwise be sufficient to prevent Borrower from being a coinsurer.

The insurance carrier providing the insurance shall be chosen by Borrower subject to approval by Lender provided that such approval shall not be unreasonably withheld. All insurance policies and renewals thereof shall be in a form acceptable to Lender and shall include a standard mortgagee clause in favor of and in a form acceptable to Lender. Lender shall have the right to hold the policies and renewals thereof, subject to the terms of any mortgage, deed of trust or other security agreement with a lien which has priority over this Mortgage.

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.

If the Property is abandoned by Borrower, or if Borrower fails to respond to Lender within thirty (30) days from the date notice is mailed by Lender to Borrower that the insurance carrier offers to settle a claim for insurance benefits, Lender is authorized to collect and apply the insurance proceeds at Lender's option either to restoration or repair of the Property or to the sums secured by this Mortgage.

**4. Preservation and Maintenance of Property; Leaseholds; Condominiums; Planned Unit Developments.** Borrower shall keep the Property in good repair and shall not commit waste or permit impairment or deterioration of the Property and shall comply with the provisions of any lease if this Mortgage is on a leasehold. If this Mortgage is on a unit in a condominium or a planned unit development, Borrower shall perform all of Borrower's obligations under the declaration or covenants creating or governing the condominium or planned unit development, the by-laws and regulations of the condominium or planned unit development, and constituent documents.

**5. 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 attorney's fees, and take such action as is necessary to protect Lender's interest.

Any amounts disbursed by Lender pursuant to this Paragraph 5 shall become additional indebtedness of Borrower secured by this Mortgage. Unless Borrower and Lender agree to other terms of payment, such amounts shall be payable upon notice from Lender to Borrower requesting payment thereof. Nothing contained in this paragraph 5 shall require Lender to incur any expense or take any action hereunder.

**6. 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.

**7. 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.

**8. Borrower Not Released; Forbearance By Lender Not a Waiver.** Extension of the time for payment of 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 payment 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.

**9. Successors and Assigns Bound; Joint and Several Liability.** The covenants and agreements herein contained shall bind, and the rights hereunder shall inure to, the respective successors and assigns of Lender and Borrower, subject to the provisions of Paragraph 13 hereof. All covenants and agreements of Borrower shall be joint and several.

**10. Notice.** Except for any notice required under applicable law to be given in another manner, (a) any notice to Borrower provided for in this Mortgage shall be given by delivering it or by mailing such notice by certified mail addressed to Borrower at the Property address or at such other address as Borrower may designate by notice to Lender as provided herein, and (b) any notice to Lender shall be given by certified mail to Lender's address stated herein or to such other address as Lender may designate by notice to Borrower as provided herein. Any notice provided for in this Mortgage shall be deemed to have been given to Borrower or Lender when given in the manner designated herein.

**11. Governing Law; Severability.** The state and local laws applicable to this Mortgage shall be the laws of the jurisdiction in which the Property is located. The foregoing sentence shall not limit the applicability of federal law to this Mortgage. 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' fees" include all sums to the extent not prohibited by applicable law or limited herein.

**12. 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 hereof.

**13. Transfer of Property.** If all or any of the Property or any interest in it is sold or transferred, or if Borrower fails to occupy the Property as his/her primary residence, or if the first mortgage lien upon the mortgaged premises is refinanced or otherwise paid in full, Lender shall require immediate payment in full of all sums secured by this Mortgage, unless such requirement is prohibited by federal law as of the date of this Mortgage.

Borrower and Lender further covenant and agree as follows:

**14. Acceleration; Remedies.** Upon Borrower's breach of any covenant or agreement of Borrower in this Mortgage, including the covenants to pay when due any sums secured by this Mortgage, Lender prior to acceleration shall give notice to Borrower as provided in Paragraph 10 hereof specifying: (1) the breach; (2) the action required to cure such breach; (3) a date, not less than ten (10) days from the date the notice is mailed to Borrower, by which such breach must be cured; and (4) that failure to cure such breach on or before the date specified in the notice may result in acceleration of the sums secured by this Mortgage, foreclosure by judicial proceeding, and sale of the Property. The notice shall further inform Borrower of the right, if any, to reinstate after acceleration and the right to assert in the foreclosure proceedings the nonexistence of a default or any other defense of Borrower to acceleration and foreclosure. If the breach is not cured on or before the date specified in the notice, Lender, at Lender's option, may declare all of the sums secured by this Mortgage to be immediately due and payable without further demand and may foreclose this Mortgage by judicial proceeding. Lender shall be entitled to collect in such proceeding all expenses of foreclosure, including, but not limited to, reasonable attorney's fees of twenty percent (20%) of the amount decreed, which fee shall be allowed and paid as part of the decree of judgment in such proceeding, and costs of abstracts, title reports and documentary evidence.

**15. Borrower's Right to Reinstate.** Notwithstanding Lender's acceleration of the sums secured by this Mortgage due to Borrower's breach, Borrower shall have the right to have any proceedings begun by Lender to enforce this Mortgage discontinued at any time prior to entry of a judgment enforcing this Mortgage if: (a) Borrower pays Lender all sums which would then be due under this Mortgage and the Note had no acceleration occurred; (b) Borrower cures all breaches of any other covenants or agreements of Borrower contained in this Mortgage; (c) Borrower pays all reasonable expenses incurred by Lender in enforcing the covenants and agreements of Borrower contained in this Mortgage and in enforcing Lender's remedies as provided in Paragraph 14 hereof, including, but not limited to, reasonable attorneys' fees; and (d) Borrower takes such action as Lender may reasonably require to assure that the lien of this Mortgage, Lender's interest in the Property and Borrower's obligation to pay the sums secured by this Mortgage shall continue unimpaired. Upon such payment and cure by Borrower, this Mortgage and the obligations secured hereby shall remain in full force and effect as if no acceleration had occurred.

**16. Assignment of Rents; Appointment of Receiver.** As additional security hereunder, Borrower hereby assigns to Lender the rents of the Property, provided that Borrower shall, prior to acceleration under Paragraph 14 hereof or abandonment of the Property, have the right to collect and retain such rents as they become due and payable.

Upon acceleration under Paragraph 14 hereof or abandonment of the Property, Lender shall be entitled to have a receiver appointed by a court to enter upon, take possession of and manage the Property and to collect the rents of the Property including those past due. All rents collected by the receiver shall be applied first to payment of the costs of management of the Property and collection of rents, including, but not limited to, receiver's fees, premiums on receiver's bonds and reasonable attorneys' fees, and then to the sums secured by this Mortgage. The receiver shall be liable to account only for those rents actually received.

**17. Release.** Upon payment of all sums secured by this Mortgage, Lender shall release this Mortgage without charge to Borrower. Borrower shall pay all costs of recordation, if any.

**18. Subordination.** Lender and Borrower acknowledge and agree that this Mortgage is subject and subordinate in all respects to the liens, terms, covenants and conditions of the first mortgage loan of even date herewith which is secured by a first mortgage lien on the Property (the "First Mortgage") and to all advances made or that may be made pursuant to the First Mortgage.

**19. Security Agreement.** This Mortgage is also a security agreement under the UCC. Borrower grants, and Lender shall have and may enforce, a security interest in all those property interests included in the Property which may be "personal property" or "fixtures" to secure payment and performance of all obligations of Borrower hereunder. The recordation of this Mortgage shall also constitute a fixture filing in accordance with the provisions of the UCC.

**20. Waiver of Jury Trial.** EACH AND EVERY PARTY HEREBY KNOWINGLY, EXPRESSLY, VOLUNTARILY AND INTENTIONALLY WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY SUCH SUIT, ACTION OR PROCEEDING. FURTHER, EACH AND EVERY PARTY WAIVES ANY RIGHT IT MAY HAVE TO CLAIM OR RECOVER, IN ANY SUCH SUIT, ACTION OR PROCEEDING, ANY SPECIAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES OR ANY DAMAGES OTHER THAN, OR IN ADDITION TO, ACTUAL DAMAGES.

