**SHARED APPRECIATION NOTE**

# $ , 20

**THIS NOTE** (the “Note”) is given on

, 20

by and between

whose address is

(whether one or more person, hereinafter referred to as **“Borrower”**) and **,** whose address is (hereinafter referred to as the **“Lender”**).

1. **Borrower’s Promise to Pay**. Upon any disposition of all or any part of the Property or any beneficial interest in the Property excluding sales to one or more persons where such person or persons are not a related party to the Borrower (the “Maturity Event”), the Borrower hereby promises to pay to the order of the Lender principal in the amount of percent ( %) of the appreciation of the Property with appreciation being equivalent to the appraised value at the time of the Maturity Event less Capital Improvements (as defined below) less the appraised value of the Property as of the date of this Agreement.

Upon a sale of all or any part of the Property or any beneficial interest in the Property to one or more persons where such person or persons are not a related party to the Borrower (the “Maturity Event”), the Borrower hereby promises to pay to the order of the Lender principal based on percent ( %) of the appreciation of the Property with appreciation equivalent to the gross proceeds from the sale of the Property less Capital Improvements (as defined herein below) less allowable settlement costs. Allowable settlement costs consist of the following:

* real estate sales commission consistent with the prevailing rate but not to exceed

percent ( %) of the contract sales price;

* local/state transfer tax stamps and other closing costs customarily paid by the seller and
* other actual, customary closing costs customarily paid by the seller not to exceed

percent ( %) of the contract sales price.

Maturity Event shall not include the following:

* 1. a transfer by devise, descent, or operation of law on the death of a joint tenant or tenant by the entirety;
  2. a transfer to a relative resulting from the death of the Borrower;
  3. a transfer where the spouse of the Borrower becomes an owner of the property;
  4. a transfer resulting from a decree of a dissolution of marriage, legal separation agreement, or from an incidental property settlement agreement, by which the spouse of the Borrower becomes an owner of the property;
  5. a transfer into an intervivos trust in which the borrower is and remains a beneficiary and which does not relate to a transfer of rights of occupancy in the property; or
  6. .

1. **Interest**. This Note shall not bear interest unless the principal amount due upon occurrence of a Maturity Event is not paid to Lender. If principal amount due is not paid, the principal sum due pursuant Paragraph 1 of this Note shall bear interest from the date of the Maturity Event at the prime rate as published in the “Money Rates” column of *The Wall Street Journal* on the date of the Maturity Event.
2. **Capital Improvements**. percent ( %) of the cumulative sum expended by the Borrower on completed capital improvement projects that significantly changed and enhanced the value of the Property (not inclusive of sweat equity) as of the date herein until the occurrence of a Maturity Event in which the cumulative amount expended for each type of improvement project is in excess of dollars ($ ) and provided such amounts expended are supported by contractor invoices and/or receipts shall be referred to herein as “Capital Improvements.”
3. **Appraisal**. Upon the occurrence of a Maturity Event or a notice of default provided to the Borrower by the Lender, Lender shall obtain an independent appraisal of the Property for the purpose of determining the principal amount required to satisfy this Note for the purpose of acceleration and foreclosure.
4. **Mortgage**. This Note is secured by a SAM, deed of trust, or similar security instrument of even date herewith between Borrower and Lender (the “Security Instrument”). The Security Instrument encumbers certain real property located at

(the “Property Address”) and

more fully described in the Security Instrument (the “Property”).

# Payment.

* 1. No regular monthly payments are due under this Note. A payment is due upon the occurrence of a Maturity Event pursuant to the terms and schedule provided in Paragraph 1 of this Note.

This Note is a deferred contingent liability. Principal and any interest on this Note and all other sums, which may or shall become due under this Note and the Security Instrument, shall be due and payable upon the occurrence of the Maturity Event (Maturity Date) if (1) not otherwise satisfied in accordance with the provisions of the Security Instrument, or (2) there is an Event of Default (defined below).

* 1. Payment shall be made at , or at such place as Lender may designate in writing by notice to Borrower.

1. **Prepayment**. Borrower shall not have the right to prepay this Note, in whole or in part.
2. **Default**. The term “Event of Default” shall mean the violation of any term of this Note or the Security Instrument. The terms of the Security Instrument are incorporated herein by reference as though set forth herein.
3. **Acceleration**. Upon the occurrence of any Event of Default, Lender may declare, without notice, the principal and interest on this Note, together with all other sums which may or shall become due under this Note and the Security Instrument, immediately due and payable.

In the event the Lender provides the Borrower with a notice of default, the Lender shall order an independent appraisal of the Property for the purpose of determining the principal amount required to satisfy this Note upon acceleration (the “Acceleration Appraisal”). The principal amount due shall be equivalent to the difference between the Acceleration Appraisal and the appraised value on the Date of Insurance.

1. **Payment of Lender’s Costs and Expenses**. If Lender has required immediate payment in full, as described above, Lender may require Borrower to pay costs and expenses including reasonable and customary attorney’s fees for enforcing this Note to the extent not prohibited by applicable law. Such fees and costs shall bear interest from the date of disbursement at a rate of the current value of funds rate as published in the “Money Rates” column of *The Wall Street Journal*, on the date of the date of disbursement, and, at the option of Lender, shall be immediately due and payable.
2. **Modifications**. This Note shall not be modified, amended, changed, discharged, or terminated orally. This Note may only be modified, amended, changed, discharged, or terminated by an agreement in writing signed by the party against whom enforcement of such modification, amendment, change, discharge, or termination is sought.
3. **Cumulative Rights**. No delay on the part of Lender or other holder of this Note in the exercise of any power or right under this Note, under the Security Instrument, or under any other Loan Document, shall operate as a waiver thereof, nor shall a single or partial exercise of any power or right preclude other or further exercise thereof or exercise of any other power or right. Enforcement by Lender or other holder of this Note of any security for the payment hereof shall not constitute any election by it of remedies so as to preclude the exercise of any other remedy available to it.
4. **Attorneys' Fees and Costs**. If this Note is not paid when due and the same is placed in the hands of an attorney for collection, or if this Note is collected by suit or through bankruptcy, probate or other proceedings, Borrower agrees to pay the reasonable attorneys' fees of the holder of this Note, together with all actual expenses of collection and litigation and costs of court incurred by the holder of this Note.
5. **Notices.** Any notice to Borrower provided for in this Note shall be given by delivering it or by mailing it by first class mail unless applicable law requires use of another method. The notice shall be directed to the Property Address or any other address Borrower designates by notice to Lender. Any notice to Lender shall be given by first class mail to Lender's address stated herein or any address Lender designates by notice to Borrower. Any notice provided for in this Security Instrument shall be deemed to have been given to Borrower or Lender when given as provided in this paragraph.
6. **Time of the Essence**. Time is of the essence as to all dates set forth herein.
7. **Waivers**. Borrower and all endorsers, sureties and guarantors jointly and severally waive presentation for payment, demand for payment, notice of nonpayment, notice of protest, notice of dishonor, protest, notice of protest, and any and all lack of diligence or delays in collection or enforcement of this Note.
8. **Successors and Assigns Bound**. The covenants and agreements of this Note shall bind and benefit the successors and assigns of Lender and Borrower. The covenants and agreements of Borrower under this Note are not assignable without the prior written consent of Lender.
9. **Severability**. In case any of the provisions of this Note shall for any reason be held to be invalid, illegal or unenforceable, such invalidity, illegality or unenforceability shall not affect any other provision hereof and this Note shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.
10. **GOVERNING LAW**. THIS NOTE SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF AND THE LAWS OF THE UNITED STATES APPLICABLE TO TRANSACTIONS IN

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1. **JURISDICTION AND VENUE**. ALL ACTS CONTEMPLATED BY THIS NOTE SHALL BE PERFORMABLE IN COUNTY, , AND ALL

SUMS PAYABLE UNDER THIS NOTE SHALL BE PAYABLE IN

COUNTY, . BORROWER HEREBY CONFIRMS AND AGREES THAT ALL LEGAL ACTIONS INVOLVING THE VALIDITY OR ENFORCEMENT OF THIS NOTE SHALL HAVE JURISDICTION AND VENUE IN COUNTY, .

1. **Headings**. The headings of the paragraphs of this Note are inserted for convenience only and shall not be deemed to constitute a part hereof.
2. **Authority to Execute**. The representative of Borrower executing this Note represents that he/she has full power, authority and legal right to execute and deliver this Note and that the debt hereunder constitutes a valid and binding obligation of Borrower.

BY SIGNING BELOW, Borrower accepts and agrees under seal to the terms and covenants contained in this Note.

# Borrower:

**, a**

By: \_

, its

Borrower Acknowledgment

State of ) County of )

On the day of in the year \_ before me

Then personally appeared before me , the duly authorized

of , and acknowledged the foregoing instrument by him so executed to be his free act and deed in his said capacity and the free act and deed of such .

Notary Public

Printed Name

My commission expires: