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

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

**DEED OF TRUST  
(Due on Transfer – Strict)**

THIS DEED OF TRUST is made this 25<sup>th</sup> day of May, 2005 between Gilbert A. Lopez, Joseph A. Lopez and Priscilla M. Lopez (Borrowers), whose address is 836 Struthers Avenue, Grand Junction, CO 81501 and the Public Trustee of the County in which the Property (see paragraph 1) is situated (Trustee); for the benefit of the CITY OF GRAND JUNCTION, a Colorado home rule municipality (Lender), whose address is: Real Estate Division, 250 North Fifth Street, Grand Junction, Colorado 81501.

Borrowers and Lender covenant and agree as follows:

1. **Property in Trust.** Borrowers, in consideration of the indebtedness herein recited and the trust herein created, hereby grants and conveys to Trustee in trust for the benefit of Lender, with power of sale, the following described property located in the County of Mesa, State of Colorado:
 

Lots 19 and 20 in Block 14 of the Amended Plat of Benton Canon's First Subdivision,

which has the address of 836 Struthers Avenue, Grand Junction, Colorado 81501 (Property Address), together with all its appurtenances (Property).
2. **Note; Other Obligations Secured.** This Deed of Trust is given to secure to Lender:
  - a. the repayment of the indebtedness evidence by Borrowers' note (Note) dated May 25, 2005, in the principal amount of SIXTY THOUSAND AND NO/100 U.S. DOLLARS (U.S. \$60,000.00), with interest on the unpaid principal balance from N/A, until paid, at the rate of ZERO percent (0%) per annum, with principal and interest payable at: City of Grand Junction, Real Estate Division, 250 North Fifth Street, Grand Junction, Colorado 81501 or such other place as the Lender may designate, in one (1) payment of SIXTY THOUSAND AND NO/100 U.S. DOLLARS (U.S. \$60,000.00) due on August 31, 2005; and Borrowers have the right to prepay the principal amount outstanding under said Note, in whole or in part, at any time without penalty except: NONE.
  - b. the performance of the covenants and agreements of Borrowers herein contained.
3. **Title.** Borrowers covenant that Borrowers own and have the right to grant and convey the Property, and warrant title to the same, subject to general real estate taxes for the current year, easements of record or in existence, and recorded declarations, restrictions, reservations and covenants, if any, as of this date and except: NONE.
4. **Payment of Principal and Interest.** Borrowers shall promptly pay when due the principal of and interest on the indebtedness evidenced by the Note, and any late charges as provided in the Note and shall perform all of Borrowers' other covenants contained in the Note.
5. **Application of Payments.** All payments received by Lender under the terms hereof shall be applied by Lender to amounts disbursed by Lender pursuant to paragraph 9 (Protection of Lender's Security), and the balance in accordance with the terms and conditions of the Note.
6. **Prior Mortgages and Deeds of trust; Charges; Liens.** Borrowers shall perform all of Borrowers' obligations under any prior deed of trust and any other prior liens. Borrowers shall pay all taxes, assessments and other charges, fines and impositions attributable to the Property which may have or attain a priority over this Deed of Trust, and leasehold payments or ground rents, if any, by Borrowers making payment when due, directly to the payee thereof. Despite the foregoing, Borrowers shall not be required to make payments otherwise required by this paragraph if Borrowers, after notice to Lender, shall in good faith contest such obligation by, or defend enforcement of such obligation in, legal proceedings which operate to prevent the enforcement of the obligation or forfeiture of the Property or any part thereof, only upon Borrowers making all such contested payments and other payments as ordered by the court to the registry of the court in which such proceedings are first filed.
7. **Property Insurance.** Borrowers shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire or hazards included within the term "extended coverage" in an amount at least equal to the lesser of (1) the insurable value of the Property or (2) an amount sufficient to pay the sums secured by this Deed of Trust as well as any prior encumbrances of the Property. All of the foregoing shall be known as "Property Insurance".

The insurance carrier providing the insurance shall be qualified to write Property Insurance in Colorado and shall be chosen by Borrowers subject to Lender's right to reject the chosen carrier for reasonable cause. All insurance policies and renewals thereof shall include a standard mortgage clause in favor of Lender, and shall provide that the insurance carrier shall notify Lender at least ten (10) days before cancellation, termination or any material change of coverage. Insurance policies shall be furnished to Lender at or before closing. Lender shall have the right to hold the policies and renewals thereof.

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

Insurance proceeds shall be applied to restoration or repair of the Property damaged, provided such restoration or repair is economically feasible and the security of this Deed of Trust is not thereby impaired. If such restoration or repair is not economically feasible or if the security of this Deed of Trust would be impaired, the insurance proceeds shall be applied to the sums secured by this Deed of Trust, with the excess, if any, paid to Borrowers. If the Property is abandoned by Borrowers, or if Borrowers fails to respond to Lender within 30 days from the date notice is given in accordance with paragraph 16 (Notice) by Lender to Borrowers 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 Deed of Trust.

Any such application of proceeds to principal shall not extend or postpone the due date of the installments referred to in paragraphs 4 (Payment of Principal and Interest) or change the amount of such installments. Notwithstanding anything herein to the contrary, if under paragraph 18 (Acceleration; Foreclosure; Other Remedies) the Property is acquired by Lender, all right, title and interest of Borrowers in and to any insurance policies and in and to the proceeds thereof 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 Deed of Trust immediately prior to such sale or acquisition.

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

8. **Preservation and Maintenance of Property.** Borrowers 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 Deed of Trust is on a Leasehold. Borrowers shall perform all of Borrowers' obligations under any declarations, covenants, by-laws, rules, or other documents governing the use, ownership or occupancy of the Property.
9. **Protection of Lender's Security.** Except when Borrowers have exercised Borrowers' rights under paragraph 6 above, if the Borrowers fail to perform the covenants and agreements contained in this Deed of Trust, or if a default occurs in a prior lien, or if any action or proceeding is commenced which materially affects Lender's interest in the Property, then Lender, at Lender's option, with notice to Borrowers if required by law, may make such appearances, disburse such sums and take such action as is necessary to protect Lender's interest, including, but not limited to:
  - a. any general or special taxes or ditch or water assessments levied or accruing against the Property;
  - b. the premiums on any insurance necessary to protect any improvements comprising a part of the Property;
  - c. sums due on any prior lien or encumbrance on the Property;
  - d. if the Property is a leasehold or is subject to a lease, all sums due under such lease;
  - e. the reasonable costs and expenses of defending, protecting, and maintaining the Property and Lender's interest in the Property, including repair and maintenance costs and expenses, costs and expenses of protecting and securing the Property, receiver's fees and expenses, inspection fees, appraisal fees, court costs, attorney fees and costs, and fees and costs of any attorney in the employment of the Lender or holder of the certificate of purchase;
  - f. all other costs and expenses allowable by the evidence of debt or this Deed of Trust, and
  - g. such other costs and expenses which may be authorized by a court of competent jurisdiction.

Borrowers hereby assign to Lender any right Borrowers may have by reason of any prior encumbrance on the Property or by law or otherwise to cure any default under said prior encumbrance.

Any amounts disbursed by Lender pursuant to this paragraph 9, with interest thereon, shall become additional indebtedness of Borrowers secured by this Deed of Trust. Such amounts shall be payable upon notice from Lender to Borrowers requesting payment thereof, and Lender may bring suit to collect any amounts so disbursed plus interest specified in paragraph 2 (Note; Other Obligations Secured). Nothing contained in this paragraph 9 shall require Lender to incur any expense or take any action hereunder.

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

**11. 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 as herein provided. However, all of the rights of Borrowers and Lender hereunder with respect to such proceeds are subject to the rights of any holder of a prior deed of trust.

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 excess, if any, paid to Borrowers. In the event of a partial taking of the Property, the proceeds remaining after taking out any part of the award due any prior lien holder (net award) shall be divided between Lender and Borrowers, in the same ratio as the amount of the sums secured by this Deed of Trust immediately prior to the date of taking bears to Borrowers' equity in the Property immediately prior to the date of taking. Borrowers' equity in the Property means the fair market value of the Property less the 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 value immediately prior to the date of taking.

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

Any such application of proceeds to principal shall not extend or postpone the due date of the installments referred to in paragraphs 4 (Payment of Principal and Interest) nor change the amount of such installments.

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

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

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

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

**16. Notice.** Except for any notice required by law to be given in another manner, (a) any notice to Borrowers provided for in this Deed of Trust shall be in writing and shall be given and be effective upon (1) delivery to Borrowers or (2) mailing such notice by first-class U.S. mail, addressed to Borrowers at Borrowers' address stated herein or at such other address as Borrowers 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 effective upon (1) delivery to Lender or (2) mailing such notice by first-class U.S. mail, to Lender's address stated herein and to: City Attorney, 250 North Fifth Street, Grand Junction, CO 81501 or to such other address as Lender may designate by notice to Borrowers as provided herein. Any notice provided for in this Deed of Trust shall be deemed to have been given to Borrowers or Lender when given in any manner designated herein.

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

**18. Acceleration; Foreclosure; Other Remedies.** Except as provided in paragraph 24 (Transfer of the Property; Assumption), upon Borrowers' breach of any covenant or agreement of Borrowers in this Deed of Trust, or upon any default in a prior lien upon the Property, (unless Borrowers have exercised Borrowers' rights under paragraph 6 above), at Lender's option, all of the

sums secured by this Deed of Trust shall be immediately due and payable (Acceleration). To exercise this option, Lender may invoke the power of sale and any other remedies permitted by law. Lender shall be entitled to collect all reasonable costs and expenses incurred in pursuing the remedies provided in this Deed of Trust, including, but not limited to, reasonable attorney's fees.

If Lender invokes the power of sale, Lender shall give written notice to Trustee of such election. Trustee shall give such notice to Borrowers of Borrowers' rights as is provided by law. Trustee shall record a copy of such notice as required by law. Trustee shall advertise the time and place of the sale of the Property, for not less than four weeks in a newspaper of general circulation in each county in which the Property is situated, and shall mail copies of such notice of sale to Borrowers and other persons as prescribed by law. After the lapse of such time as may be required by law, Trustee, without demand on Borrowers, shall sell the Property at public auction to the highest 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 as Trustee may think best and in such order as Trustee may determine. Lender or Lender's designee may purchase the Property at any sale. It shall not be obligatory upon the purchaser at any such sale to see to the application of the purchase money.

Trustee shall apply the proceeds of the sale in the following order: (a) to all reasonable costs and expenses of the sale, including, but not limited to, reasonable Trustee's and attorney's fees and costs 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 thereto.

- 19. Borrower's Right to Cure Default.** Whenever foreclosure is commenced for nonpayment of any sums due hereunder, the owners of the Property or parties liable hereon shall be entitled to cure said defaults by paying all delinquent principal and interest payments due as of the date of cure, costs, expenses, late charges, attorney's fees and other fees all in the manner provided by law. Upon such payment, this Deed of Trust and the obligations secured hereby shall remain in full force and effect as though no Acceleration had occurred, and the foreclosure proceedings shall be discontinued.
- 20. Assignment of Rents; Appointment of Receiver; Lender in Possession.** As additional security hereunder, Borrowers hereby assign to Lender any rents of the Property; however, Borrowers shall, prior to Acceleration under paragraph 18 (Acceleration; Foreclosure; Other Remedies) or abandonment of the Property, have the right to collect and retain such rents as they become due and payable.

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

Upon Acceleration under paragraph 18 (Acceleration; Foreclosure; Other Remedies) or abandonment of the Property, Lender, in person, by agent or by judicially-appointed receiver, shall be entitled 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 Lender or the receiver shall be applied, first, to payment of the costs of preservation and management of the Property, second, to payments due upon prior liens, and then to the sums secured by this Deed of Trust. Lender and the receiver shall be liable to account only for those rents actually received.

- 21. Release.** Upon payment of all sums secured by this Deed of Trust, Lender shall cause Trustee to release this Deed of Trust and shall produce for Trustee the Note. Borrowers shall pay all costs of recordation and shall pay the statutory Trustee's fees. If Lender shall not produce the Note as aforesaid, then Lender, upon notice in accordance with paragraph 16 (Notice) from Borrowers to Lender, shall obtain, at Lender's expense, and file any lost instrument bond required by Trustee or pay the cost thereof to effect the release of this Deed of Trust.
- 22. Waiver of Exemptions.** Borrowers hereby waive all right of homestead and any other exemption in the Property under state or federal law presently existing or hereafter enacted.
- 23. Escrow Funds for Taxes and Insurance.** Borrowers shall pay their own property taxes and assessments and premium installments for Property Insurance. Borrowers shall provide evidence of insurance on the Property and noncancelability. Lender will not hold on behalf of Borrowers any amounts in escrow funds for taxes or insurance.
- 24. Transfer of the Property; Assumption.** The following events shall be referred to herein as a "Transfer"(i) a transfer or conveyance of title (or any portion thereof, legal or equitable) of the Property (or any part thereof or interest therein), (ii) the execution of a contract or agreement creating a right to title (or any portion thereof, legal or equitable) in the Property (or any part thereof or interest therein), (iii) or an agreement granting a possessory right in the Property (or any portion thereof), in excess of three years, (iv) a sale or transfer of, or the execution of a contract or agreement creating a right to acquire or receive,

more than fifty percent (50%) of the controlling interest or more than fifty percent (50%) of the beneficial interest in the Borrowers, (v) the reorganization, liquidation or dissolution of the Borrowers. Not to be included as a Transfer are (i) the creation of a lien or encumbrance subordinate to this Deed of Trust, (ii) the creation of a purchase money security interest for household appliances, or (iii) 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 event of each and every transfer:

- (a) All sums secured by this Deed of Trust shall become immediately due and payable (Acceleration).
- (b) If a Transfer occurs and should Lender not exercise Lender's option pursuant to this paragraph 24 to Accelerate, Transferee shall be deemed to have assumed all of the obligations of Borrowers under this Deed of Trust including all sums secured hereby whether or not the instrument evidencing such conveyance, contract or grant expressly so provides. This covenant shall run with the Property and remain in full force and effect until said sums are paid in full. The Lender may without notice to the Borrowers deal with Transferee in the same manner as with the Borrowers with reference to said sums including the payment or credit to Transferee of undisbursed reserve Funds on payment in full of said sums, without in any way altering or discharging the Borrowers' liability hereunder for the obligations hereby secured.
- (c) Should Lender not elect to Accelerate upon the occurrence of such Transfer then, subject to (b) above, the 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 constructive notice of such Transfer, shall not be deemed a waiver of Lender's right to make such election nor shall Lender be estopped therefrom by virtue thereof. The issuance on behalf of the Lender of a routine statement showing the status of the loan, whether or not Lender had actual or constructive notice of such Transfer, shall not be a waiver or estoppel of Lender's said rights.

25. Borrowers' Copy. Borrowers acknowledge receipt of a copy of the Note and this Deed of Trust.

EXECUTED BY BORROWERS.

Gilbert A. Lopez  
 Gilbert A. Lopez  
Priscilla M. Lopez  
 Priscilla M. Lopez

Joseph A. Lopez  
 Joseph A. Lopez

STATE OF COLORADO )  
 ) SS.  
 County of Mesa )

The foregoing instrument was acknowledged before me this 25 day of May, 2005 by Gilbert a. Lopez, Joseph A. Lopez and Priscilla M. Lopez.

Witness my hand and official seal.  
 My commission expires: 10/17/2005



Claudia D. Rossmann  
 Notary Public  
2529 High Country Ct. Co 81501  
 Address

No. _____	<b>DEED OF TRUST</b>	From _____	To <b>THE PUBLIC TRUSTEE</b> For the use of _____	STATE OF COLORADO ) COUNTY OF _____ ) SS.	I hereby certify that this instrument was filed for record in my office at _____ o'clock _____ M., and is duly recorded in book _____, page _____, film no. _____, reception no. _____	By _____ Clerk and Recorder	Deputy _____	Fees \$ _____
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