

RESOLUTION NO. 2817

**A RESOLUTION OF THE PAYSON TOWN COUNCIL APPROVING AND AUTHORIZING THE MAYOR TO EXECUTE A SUBORDINATION AGREEMENT WITH LYNNE O'DONNELL (RE REFINANCING OF PROPERTY SUBJECT TO A COMMUNITY DEVELOPMENT BLOCK GRANT LIEN).**

**WHEREAS**, in September 2008, Lynne Odonnell ("Odonnell") entered into an agreement with the Town of Payson ("Town") whereby the Town awarded Odonnell Community Development Block Grant and HOME Funds (collectively "CDBG Funds") in the form of a forgivable loan to make improvements to her home; and

**WHEREAS**, said loan was secured by a Deferred Payment Loan Agreement and a Deed of Trust (see Exhibit 1); and

**WHEREAS**, the Town has adopted Housing Rehab Guidelines that govern applicants and persons receiving CDBG funds; and

**WHEREAS**, the Housing Rehab Guidelines allow the Town to subordinate its interest in certain situations (such as the borrower obtaining more favorable terms on his/her first mortgage) and preclude subordination in other situations (such as debt consolidation or cash out situations); and

**WHEREAS**, Odonnell desires to refinance her home to lower her mortgage interest rate and has requested that the Town subordinate its lien to the proposed new lender, New Penn financial, LLC; and

**WHEREAS**, for such purpose, a Subordination Agreement has been prepared,

**NOW, THEREFORE, THE MAYOR AND COMMON COUNCIL OF THE TOWN OF PAYSON, ARIZONA, DO HEREBY RESOLVE AS FOLLOWS:**

- Section 1. That the Subordination Agreement between the Town of Payson and New Penn Financial LLC, attached as Exhibit 2, is approved in substantially the form attached.
- Section 2. That Kenny J. Evans, Mayor of the Town of Payson, is authorized to execute the Subordination Agreement in substantially the form attached contingent upon Odonnell's refinancing complying with the Town's Housing Rehab Guidelines.
- Section 3. That the Town of Payson is authorized to take such other actions as may be necessary to fulfill the intent of this Resolution.

NOV 20 2014 2, 47

PASSED AND ADOPTED BY THE MAYOR AND COMMON COUNCIL OF THE  
TOWN OF PAYSON, ARIZONA, this \_\_\_\_ day of \_\_\_\_\_, 2014, by the following  
vote:

AYES \_\_\_\_\_ NOES \_\_\_\_\_ ABSTENTIONS \_\_\_\_\_ ABSENT \_\_\_\_\_

ATTEST:

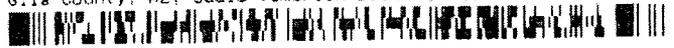
\_\_\_\_\_  
Silvia Smith, Town Clerk

\_\_\_\_\_  
Kenny J. Evans, Mayor

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Timothy M. Wright, Town Attorney

**Exhibit 1**  
**to**  
**Resolution 2817**



When recorded, return to:  
Town of Payson  
Attn: Doni Wilbanks  
303 North Beeline Highway  
Payson, AZ 85541



Original bClerk  
10/19/11

## DEFERRED PAYMENT LOAN AGREEMENT

This Agreement ("Agreement") is made and entered into effective this 14<sup>th</sup> day of September 2011, by and between Lynne O'Donnell ("Applicant") and the Town of Payson, an Arizona municipal corporation ("Town").

WHEREAS, the Town, by and through the Community Development Department, has made available through the Community Development Block Grant Fund and/or HOME program certain funds to be administered as Deferred Payment Loans ("Loan"); and

WHEREAS, the Town provides this Loan for low to moderate income individuals for the purpose of rehabilitating real property within the Town; and

WHEREAS, the Applicant has applied for this Loan; and

WHEREAS, the Town, having reviewed the Applicant's application, has determined that the Applicant qualifies for this particular financial assistance,

NOW THEREFORE, in consideration of the foregoing premises and mutual covenants and promises contained herein, the parties agree as follows:

1. Deferred Payment Loan. The Town agrees to provide a Loan to Applicant in the amount of \$28,109.86 which Applicant shall use to satisfy obligations the Applicant has incurred under the Rehabilitation Project Contract in Case Number 07082011-02 between Applicant and TechnaFrame Inc., said agreement providing for rehabilitation or improvements on the following described real property ("Subject Property"):

LOT 78, PAYSON NORTH UNIT THREE, PLAT 419 SW¼ SEC 34 T11N R10E = 0.14 AC

2. Change Orders. The Town and Applicant acknowledge that from time to time, change orders to the Rehabilitation Project Contract may be necessary. If such change orders require additional funds and the Town has additional funds available, the Town and Applicant may agree in writing to such change orders so long as the additional costs of such change orders do not exceed 20% of the amount of the Rehabilitation Project Contract. Any additional funds for such change orders shall be added to the loan amount listed in paragraph 1 above.

3. Interest Rate. The Deed of Trust that accompanies this Agreement ("Note"), it is made at no interest.

4. Payment Deferral. For each calendar year after the date of signing this Agreement, repayment of 10 % of the amount loaned shall be waived and for as long as the Applicant or a qualifying immediate family member who has inherited the Subject Property occupies the Subject Property as his/her principal place of residence, and complies with the terms of this Agreement.

5. Property Maintenance. The Applicant agrees and understands that periodic site inspections can and will be made by Town staff upon twenty-four (24) hours notice for outside inspections, and forty-eight (48) hours notice for inside inspections. Said inspection will be for the purpose of determining whether adequate maintenance of the Subject Property is being performed by the Applicant. In consideration of the Loan, the Applicant promises to

maintain the Subject Property in compliance with Town standards, as set forth in the Unified Development Code. The Town shall give Applicant thirty (30) days notice in order to cure any deficiencies in property maintenance as determined by the Town. If such deficiencies are not cured, the Town may declare a default and exercise the remedies set forth in paragraph five here under.

6. Loan Repayment. Up until the time that the Loan has been entirely deferred, the Town reserves the right to call the non-deferred portion of the Loan upon the occurrence of any of the following:

- a. Transfer, voluntary or involuntary, including by operation of law, of any interest in the Subject Property by the Applicant, except pursuant to Paragraph 5.1.
- b. Failure of the Applicant or qualified immediate family member who inherited the Subject Property to use and occupy the Subject Property as his/her principal place of residence.
- c. Upon death of the Applicant, unless transferred pursuant to Paragraph 5.1.
- d. Failure of the Applicant to comply with any term of this Agreement.
- e. Assignment in violation of Paragraph 13.

6.1 Qualified Transfer. The Subject Property may be transferred without requiring the repayment of the non-deferred portion of the Loan, provided the receiving party maintains the Subject Property as its principal residence and would qualify to receive the Loan in the same manner in which the Applicant was qualified, according to income limits revised to be current at the time of transfer.

6.2 Notice. After proper notice of the Town's intent to call the Loan, the Town may with consent of the Town Council, require the Applicant to repay the non-deferred portion of the Loan or the Town may foreclose upon the non-deferred portion of the Loan.

7. Security. The Applicant agrees that the Loan shall be secured by a Real Estate Mortgage or Deed of Trust and Promissory Note executed by the Applicant, which shall be duly recorded in the Office of the County Recorder of Gila County, Arizona.

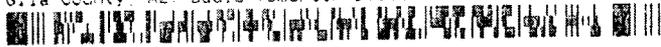
8. Insurance. The Applicant shall maintain fire and extended coverage insurance in an amount sufficient to cover any and all loan indebtedness against the Subject Property and shall provide the Town with a certificate attesting to such insurance.

9. Condemnation. In the event the Subject Property is taken by condemnation, the proceeds of such condemnation shall be first paid to the Town as holder of the Note which secures the Loan, up to the amount of the Loan.

10. Dispute Resolution. Any dispute, controversy, claim, or cause of action arising out of or related to this Contract shall be governed by Arizona law and may, but in no event need, be settled by submission, with the written consent of both parties, to binding arbitration in accordance with the rules of the American Arbitration Association and the Arizona Uniform Arbitration Act, A.R.S. § 12-1501, et seq., and judgment upon any award rendered by the arbitrator(s) shall be entered in the Superior Court of Gila County, Arizona, or any such dispute, controversy, claim or cause of action may be litigated in a court. The parties agree that the jurisdiction and venue for any such dispute, controversy, claim, litigation, or cause of action shall be Gila County, Arizona, and each party waives the right to object to Gila County, Arizona, as an appropriate forum or venue. Neither party shall be entitled to recover from the other party any of its attorneys' fees, costs, or expert witness fees incurred in any such dispute, controversy, claims, litigation, or cause of action, but each party shall bear its own attorneys' fees, whether the same is resolved through arbitration, litigation in a court, or otherwise.

11. Severability. If any provision of this Agreement is declared void or unenforceable, such provision shall be severed from this Agreement, which shall otherwise remain in effect.

12. Notices. All notices, requests, payments, and other communications hereunder shall be deemed given if personally delivered or mailed to the following addresses:



To Town

Town of Payson  
Attn: Town Manager  
303 North Beeline Highway  
Payson, Arizona 85541

To Applicant

Lynne O'Donnell  
808 N. Ponderosa Circle  
Payson, AZ 85541

13. Assignment. This Agreement or any part thereof shall not be assigned by either party; any assignment other than pursuant to paragraph 6.1. in violation of this Paragraph 13 shall invoke the provisions of Paragraph 5 hereinabove and terminate this Agreement when the Loan is fully repaid.

14. Conflicts of Interest. This Agreement is subject to the provisions of A.R.S. § 38.511, the terms of which are incorporated herein.

15. Recordation. This Agreement shall be duly recorded in the Office of County Recorder of Gila County, Arizona not later than thirty (30) days after it is executed by the Town and the Applicant.

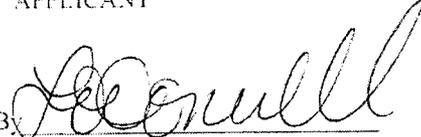
16. Entire Agreement. This Agreement constitutes the entire agreement between the parties hereto pertaining to the subject matter contained in this Agreement. All prior and contemporaneous agreements, representations and understandings of the parties, oral or written are superceded by and merged into this Agreement. No supplement, modification or amendment of this Agreement shall be binding unless in writing and executed by Town and Applicant.

17. Headings and Counterparts. The headings used in this Agreement are for purposes of reference only and shall not limit or define the meaning of any provision of this Agreement. This Agreement may be executed in any number of counterparts, each of which shall be an original but all of which shall constitute one and the same instrument.

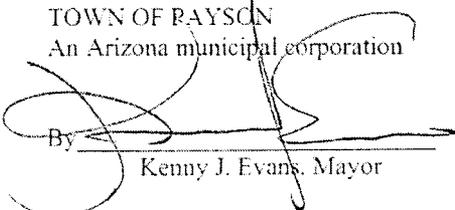
18. Construction of Agreement. This Agreement shall be construed and interpreted according to its plain meaning, and no presumption shall be deemed to apply in favor of or against the party drafting this Agreement. The parties acknowledge and agree that each has had the opportunity to seek and utilize legal counsel in the drafting of, review of, and entry into this Agreement.

IN WITNESS THEREOF, the parties have executed this Agreement or caused their duly authorized official to execute this Agreement.

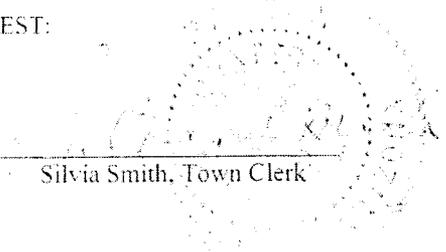
APPLICANT

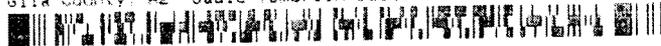
By   
Lynne O'Donnell  
808 N. Ponderosa Circle  
Payson, AZ 85541

TOWN OF PAYSON  
An Arizona municipal corporation

By   
Kenny J. Evans, Mayor

ATTEST:

By   
Silvia Smith, Town Clerk



APPROVAL AS TO FORM

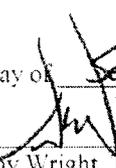
The Town of Payson Legal Department has reviewed this Agreement and approved it as to form. When reviewing this Agreement for form, the Legal Department considers whether the following Situations have been addressed:

- Identification of parties;
- Offer and acceptance;
- Existence of consideration (we do not review to determine if consideration is adequate);

That certain provisions specifically required by statute are included (i.e., provisions concerning non-availability of interest, A.R.S. § 38-511).

We have not reviewed the Agreement for other issues. Therefore, approval as to form should not be considered as approval of the appropriateness of the terms or conditions of the Agreement or the underlying transaction. In addition, approval as to the form should not be considered approval of the underlying policy considerations addressed by the Agreement.

Dated this 15 day of September, 2011.

By   
Timothy Wright, Town Attorney



RECORDING REQUESTED BY:  
Town of Payson

WHEN RECORDED, MAIL TO:  
Doni Wilbanks  
Town of Payson Community Development Department  
303 North Beeline Highway  
Payson, Arizona 85541  
Telephone: 928-474-5242

original to clerk  
10/19/11

SPACE ABOVE THIS LINE FOR RECORDER'S USE

## DEED OF TRUST

This Deed of Trust, made this 14<sup>th</sup> day of September between Lynne O'Donnell, whose mailing address is 808 N. Ponderosa Circle, Payson, Arizona 85541, herein called Trustor, PIONEER TITLE AGENCY, INC., whose mailing address is P. O. Box 332, Payson, Arizona 85547, herein called Trustee, and the TOWN OF PAYSON, an Arizona municipal corporation, whose mailing address is 303 North Beeline Highway, Payson, Arizona 85541, herein called Beneficiary.

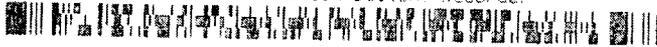
WITNESSETH: That Trustor conveys, transfers, and assigns to Trustee in Trust, with Power of Sale, real property located in Gila County, Arizona, as described on Exhibit "A" attached hereto and by this reference herein incorporated ("Property").

This Deed of Trust, made on the above date between the Trustor, Trustee, and Beneficiary above named,

WITNESSETH: That Trustor irrevocably grants and conveys to Trustee in Trust, with Power of Sale, the Property described on Exhibit "A" hereto, subject to existing taxes, assessments, liens, encumbrances, covenants, conditions, restrictions, rights of way, and easements of record.

### FOR THE PURPOSE OF SECURING:

- A. Performance of each agreement of Trustor, in that certain Deferred Payment Loan Agreement recorded concurrently herewith with respect to the Property dated Sept. 14, 2011 (the "Agreement").
- B. Performance of each agreement of Trustor herein contained.
- C. Payment of the indebtedness evidenced by promissory note herewith (the "Note"), and any extension or renewal thereof, executed by Trustor in favor of Beneficiary, in the principal sum of twenty-eight thousand one hundred nine & 86/100 Dollars (\$28,109.86) plus any additional amounts expended for agreed upon Change Orders pursuant to paragraph 4 of the Note.



**TO PROTECT THE SECURITY OF THIS DEED OF TRUST, TRUSTOR AGREES:**

1. To pay when due, without demand, all amounts required to be paid under the Note and the Agreement.
2. To perform each and every agreement contained in the Agreement and contained herein.
3. To keep the Property in good condition and repair; to complete or restore promptly and in good and workmanlike manner any building which may be constructed, damaged, or destroyed thereon, and to pay when due all claims for labor performed and materials furnished therefore; to comply with all laws affecting the Property or requiring any alterations or improvements to be made thereon; not to commit or permit waste thereof; not to commit, suffer, or permit any act upon the Property in violation of law; and do all other acts which from the character or use of the Property may be reasonably necessary, the specific enumerations herein not excluding the general.
4. To provide, maintain, and deliver to Beneficiary fire, general liability, and extended coverage insurance in an amount equal to the full insurable value of all improvements on the Property and such other hazard insurance as Beneficiary may require, all with such policy provisions and with such companies as may be approved by Beneficiary, with Beneficiary named as an additional insured and, if requested by Beneficiary, to assign and deliver such policies of insurance to Beneficiary. The amount collected under any such insurance shall be released to Trustor, so long as Trustor is not in default under the Note, this Deed of Trust, or the Agreement. If Trustor is in default, the amounts so collected shall be delivered to Beneficiary.
5. To appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; and to pay all costs and expenses of Beneficiary and Trustee, including cost of evidence of title and attorneys' fees in a reasonable sum, in any such action or proceeding in which Beneficiary or Trustee may appear or be named, and in any suit brought by Beneficiary or Trustee to foreclose this Deed of Trust.
6. To pay before delinquent, all taxes and assessments affecting the Property; to pay when due, all encumbrances, charges, and liens, with interest, on the Property or any part thereof, all costs, fees, and expenses of this Trust, including, without limiting the generality of the foregoing, the fees of Trustee for issuance of any Deed of Partial Release and Partial Reconveyance or Deed of Release and Full Reconveyance, and all lawful charges, costs, and expenses in the event of reinstatement of, following default in, this Deed of Trust or the obligations secured hereby, and not to permit or suffer any other lien against the Property, except with the prior written consent of Beneficiary.
7. Should Trustor fail to make any payment or to do any act as herein provided, then Beneficiary or Trustee, but without obligation so to do and without notice to or demand upon Trustor and without releasing Trustor from any obligation hereof, may make or do the same in such manner and to such extent as either may deem necessary to protect the security hereof, Beneficiary or Trustee being authorized to enter upon the Property for such purposes; appear in and defend any action or proceeding purporting to protect the security hereof or the rights or powers of Beneficiary or Trustee; pay, purchase, contest, or compromise any encumbrance, charge, or lien; and, in exercising any such powers, pay necessary expenses, employ counsel, and pay reasonable fees. Any sums advanced or costs and expenses incurred by Beneficiary in connection with the foregoing, including attorneys' fees, shall become due immediately without notice, and shall be due and payable by Trustor to Beneficiary without demand.
8. To pay immediately and without demand all sums expended by Beneficiary or Trustee pursuant to the provisions hereof. Any amount so paid by Beneficiary or Trustee shall become a part of the debt secured by this Deed of Trust and a lien on the Property and shall be immediately due and payable.

**IT IS MUTUALLY AGREED:**

9. That any award of damages, or amounts received in lieu of such award, in connection with any condemnation or any such taking, or for injury to the Property by reason of public use, or for damages for private trespass or injury thereto, is assigned and shall be paid to Beneficiary as further security for all obligations secured hereby (reserving unto the Trustor, however, the right to sue therefore and the ownership thereof subject to this Deed of Trust), and upon receipt of such moneys Beneficiary may hold the same as such further security, or may apply the same to the payment or, in the discretion of Beneficiary, prepayment, of the indebtedness evidenced by the Note.

10. That time is of the essence of this Deed of Trust, and that by accepting payment of any sum secured hereby after its due date, Beneficiary does not waive its right either to require prompt payment when due of all other sums so secured or to declare default for failure so to pay.

11. That at any time or from time to time, and without notice, upon written request of Beneficiary and presentation of this Deed of Trust and said note(s) for endorsement, and without liability therefor, and without affecting the personal liability of any person for payment of the indebtedness secured hereby, and without affecting the security hereof for the full amount secured hereby on the Property subject hereto, and without the necessity that any sum representing the value or any portion thereof of the Property affected by the Trustee's action be credited on the indebtedness, and upon payment of its fees, the Trustee may: (a) release and reconvey all or any part of the Property; (b) consent to the making and recording, or either, of any map or plat of the Property or any part thereof; (c) join in granting any easement thereon; (d) join in or consent to any extension agreement or any agreement subordinating the lien, encumbrance, or charge hereof.

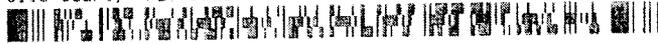
12. That upon written request of Beneficiary stating that all sums secured hereby have been paid, and upon surrender of this Deed of Trust and said note(s) to Trustee for cancellation and retention, and upon payment of its fees, Trustee shall release and reconvey, without covenant or warranty, express or implied, the Property then held hereunder. The recitals in such reconveyance of any matters or facts shall be conclusive proof of the truthfulness thereof. The grantee in such reconveyance may be described as "the person or persons legally entitled thereto."

13. In the event that Trustors commits a default in the performance of any obligation of Trustor to be performed under this Deed of Trust, the Note, or the Agreement, then the Beneficiary, as the holder of the Note may, at its option, declare that the entire principal balance of the Note shall be due and payable within thirty (30) days after delivery of written notice of such declaration to Trustor.

14. The Property (except for leases of apartment units to occupants as their personal residence) cannot be transferred or sold by Trustor without the written consent of the Beneficiary and such consent shall not be unreasonably withheld. If Trustor shall otherwise lease, sell, contract to sell, or otherwise transfer all or any part of the Property without the prior written consent of Beneficiary, the then-entire remaining principal balance, together with interest accrued thereon, under the Note, shall be immediately due and payable at the election of the Beneficiary. Trustor shall notify Beneficiary of any such proposed lease, sale, contract to sell, or other transfer of all or any part of the Property within ten (10) days of the occurrence of the same.

15. A default under any deed of trust that is a lien and charge prior and superior to the lien and charge hereunder shall constitute a default under this Deed of Trust.

16. That upon default by Trustor in the payment of any indebtedness secured hereby or in performance of any agreement hereunder, Beneficiary may declare all sums secured hereby immediately due and payable by delivery to Trustee or written notice thereof, setting forth the nature thereof, and of election to cause to be sold the Property under this Deed of Trust. Beneficiary also shall deposit with Trustee this Deed of Trust, said note(s), and all documents evidencing expenditures secured hereby.



Trustee shall record and give notice of Trustee's sale in the manner required by law, and after the lapse of such time as may then be required by law, Trustee shall sell, in the manner required by law, the Property at public auction at the time and place fixed by it in said notice of trustee's sale to the highest bidder for cash in lawful money of the United States, payable at time of sale. Trustee may postpone or continue the sale by giving notice of postponement or continuance by public declaration at the time and place last appointed for the sale. Trustee shall deliver to such purchaser its deed conveying the Property so sold, but without any covenant or warranty, expressed or implied. Any persons, including Trustor, Trustee, or Beneficiary, may purchase at such sale.

After deducting all costs, fees, and expenses of Trustee and of this Trust, including cost of evidence of title in connection with sale and reasonable attorney's fees, Trustee shall apply the proceeds of sale to payment of: All sums then secured hereby and all other sums due under the terms hereof, with accrued interest; and the remainder, if any, to the person or persons legally entitled thereto, or as provided in A.R.S. §33-812.

17. That Beneficiary may appoint a successor Trustee in the manner prescribed by law. A successor Trustee herein shall, without conveyance from the predecessor Trustee, succeed to all the predecessor's title, estate, rights, powers, and duties. Trustee may resign by mailing or delivering notice thereof to Beneficiary and Trustor.

18. That this Deed of Trust applies to, inures to the benefit of, and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, successors, and assigns. The term Beneficiary shall mean the owner and holder of the note(s) secured hereby, whether or not named as Beneficiary herein. In this Deed of Trust, whenever the context so required, the masculine gender includes the feminine and neuter, and the singular number includes the plural.

19. That Trustee accepts this Trust when this Deed of Trust, duly executed and acknowledged, is made a public record as provided by law.

20. Notices required or permitted hereunder shall be given in writing and personally delivered or sent by certified mail, return receipt requested, postage prepaid, or by a nationally recognized overnight courier service addressed as follows:

To Trustor: Lynne O'Donnell  
808 N. Ponderosa Circle  
Payson, Arizona 85541

To Beneficiary: Town of Payson  
303 North Beeline Highway  
Payson, AZ 85541  
Attn: Town Manager

With Copy To Beneficiary's  
Counsel: Town of Payson  
303L North Beeline Highway  
Payson, AZ 85541  
Attn: Town Attorney

To Trustee: Pioneer Title Agency, Inc.  
P. O. Box 332  
Payson, AZ 85547

or any other address designated by Trustor or Beneficiary, in writing, and any such notice or communications shall be deemed to have been given on the date of delivery, if hand or courier delivered, or as of three (3) days after the date of mailing, if mailed certified, return receipt requested, postage prepaid. Copies of all notice or communications to Trustor or Beneficiary shall be hand or courier delivered or mailed, in the manner set forth above, to any commercial lender contemplated by Paragraph 15 of this Deed of Trust who then holds a lien and charge on the

Property, and copies of all notices or communications by Trustor or Beneficiary to such commercial lender or State agency with respect to its lien and charge on the Property shall be hand or courier delivered or mailed, in the manner set forth above, to the other party.

21. This Deed of Trust is entered into in Arizona and shall be construed and interpreted under the laws of the State of Arizona. In particular, this Deed of Trust is subject to the provisions of A.R.S. §38-511.

TRUSTOR:

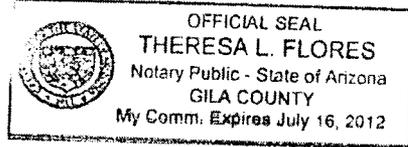
By: *[Handwritten Signature]*

STATE OF ARIZONA )  
 ) ss.  
County of Gila )

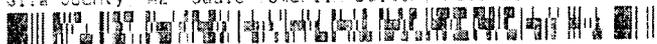
This instrument was acknowledged before me this 14 day of Sept, 2011, by Lynne O'Donnel.

*Theresa L. Flores*  
Notary Public

My Commission Expires:  
July 16, 2012



2011-010449 DOT f : 6 of 6  
09/22/2011 10:16:13 AM Receipt # 11-5552  
Rec Fee \$11.50 Town Of Payson  
Gila County Az Sadie Tomerlin Dalton Recorder



## EXHIBIT "A"

LOT 7S, PAYSON NORTH UNIT THREE, PLAT 419 SW¼ SEC 34 T11N R10E = 0.14 AC

**Exhibit 2**  
**to**  
**Resolution 2817**

## SUBORDINATION AGREEMENT

File Number: 2614100012

Borrower Name: **Lynne O'Donnell**  
Property Address: **808 N. Ponderosa Circle**  
**Payson, AZ 85541**

NOTICE: THIS SUBORDINATION AGREEMENT RESULTS IN YOUR SECURITY INTEREST IN THE PROPERTY BECOMING SUBJECT TO AND OF LOWER PRIORITY THAN THE LIEN OF SOME OTHER OR LATER SECURITY INSTRUMENT.

### SUBORDINATION AGREEMENT

THIS SUBORDINATION AGREEMENT is made this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by

**Town of Payson** ("Subordinating Lienholder"), with a place of business at: 303 North Beeline Highway, Payson, AZ 85541.

And

**New Penn Financial, LLC**, ("Lender"), with a place of business at:  
**4000 Chemical Road, Plymouth Meeting, PA 19462**

WHEREAS, **Lynne O'Donnell** ("Borrower"), executed and delivered to Subordinating Lienholder, a Mortgage/Deed of Trust (the **Existing Lien**) in the sum of **\$28,109.86** dated **09/14/2011**, recorded **09/22/2011**, in **Instrument no. 2011-010449** in the Land Records of **Gila County, Arizona**, as security for a loan, which Existing Lien is a valid and existing lien on the real property located at **808 N. Ponderosa Circle Payson, AZ 85541** and further described on Legal Description attached.

WHEREAS, Borrowers executed and delivered to **New Penn Financial, LLC**, ("Lender"), a Mortgage/Deed of Trust (the "New Security Instrument") in the amount not to exceed **\$115,000.00**, which Mortgage/Deed of Trust is intended to be recorded herewith in the records of **Gila County**, state of **Arizona**, as security for a loan (the "New Loan");

WHEREAS, it is a condition precedent to obtaining the New Loan that the lien of the New Loan shall unconditionally be and remain at all times a lien or charge upon the land hereinbefore described, prior and superior to the lien of the Existing Lien; and

WHEREAS, Lender is willing to make said loan provided the lien securing the New Loan is a lien or charge upon the described property prior and superior to the lien of the Existing Loan and provided that Subordinating Lienholder will specifically and unconditionally subordinate the lien of the Existing Lien to the lien of the New Loan; and

WHEREAS, it is to the mutual benefit of the parties hereto that Lender make such a loan to Borrowers; and Subordinating Lienholder is willing that the lien securing the New Loan shall, when recorded, constitute a lien or charge upon said land which is unconditionally prior and superior to the lien securing the Existing Lien.

NOW, THEREFORE, in consideration of the mutual benefits accruing to the parties hereto and other valuable consideration, the receipt and sufficiency of which consideration is hereby acknowledged, and in order to induce Lender to make the loan above referred to, it is hereby declared, understood and agreed as follows:

- (1) That the New Security Instrument, and any renewals or extensions thereof, shall unconditionally be and remain at all times a lien or charge on the property therein described, prior and superior to the Existing Lien.
- (2) That Lender would not make the New Loan without this subordination agreement.
- (3) That this agreement shall be the whole and only agreement with regard to the subordination of the Existing Lien to the New Security Instrument and shall supersede and cancel, but only insofar as would affect the priority between the security instruments hereinbefore specifically described, any prior agreements as to such subordination including, but not limited to, those provisions, if any, contained in the Existing Lien above mentioned, which provide for the subordination of the lien to another security instrument, deed of trust or mortgage.

Subordinating Lienholder declares, agrees and acknowledges that:

- (a) It consents to and approves (i) all provision of the note and New Security Instrument in favor of Lender above referred to, and (ii) all agreements, including but not limited to any loan or escrow agreements, between Borrowers and Lender for the disbursement of the proceeds of the New Loan;
- (b) Lender making disbursements pursuant to any such agreement is under no obligation or duty to, nor has Lender represented that it will, see to the application of such proceeds by the person or persons to whom Lender disburses such proceeds and any application or use of such proceeds for purposes other than those provided for in such agreement or agreements shall not defeat the subordination herein made in whole or in part; and
- (c) It intentionally and unconditionally waives, relinquishes and subordinates the lien of the Existing Lien in favor of the lien or charge upon said land of the New Security Instrument and understands that in reliance upon, and in consideration of, this waiver, relinquishment and subordination specific loans and advances are being and will be

made and, as part and parcel thereof, specific monetary and other obligations are being and will be entered into which would not be made or entered into but for said reliance upon this waiver, relinquishment and subordination.

NOTICE: THIS SUBORDINATION AGREEMENT CONTAINS A PROVISION WHICH ALLOWS THE PERSON OBLIGATED ON YOUR REAL PROPERTY SECURITY TO OBTAIN A LOAN, A PORTION OF WHICH MAY BE EXPENDED FOR OTHER PURPOSES THAN IMPROVEMENT OF THE LAND

**Town of Payson**

By: \_\_\_\_\_  
Signature

Its: \_\_\_\_\_  
Position of Authorized Signatory

STATE OF: \_\_\_\_\_

COUNTY OF: \_\_\_\_\_

Before me, a Notary Public, on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ personally appeared \_\_\_\_\_ (Name of Authorized Signatory), who acknowledged to be the \_\_\_\_\_ (Position of Authorized Signatory) of **Town of Payson** and, as such officer, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of the Corporation/Entity by themselves as such officer.

IN WITNESS WHEREOF, I hereunto set my hand and official seal as of the day and year above written.

\_\_\_\_\_  
Notary Public  
My Commission Expires:

**EXHIBIT "A"**