

1 **BERK & MOSKOWITZ, P.C.**  
2 **14220 N. Northsight Blvd.**  
3 **Suite 135**  
4 **Scottsdale, Arizona 85260**  
5 **Telephone (480) 607-7900**  
6 **Facsimile (480) 607-7300**  
7 **Kent@BerkMoskowitz.com**

8 Kent S. Berk, #014336  
9 Attorneys for Plaintiff

**COPY**

**DEC 19 2013**



**MICHAEL K. JENSEN, CLERK**  
**DEPUTY CLERK**

10 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**  
11 **IN AND FOR THE COUNTY OF MARICOPA**

12 **SCOTT ARMSTRONG,**

13 Plaintiff,

14 vs.

15 **DUKE RODRIGUEZ; SOLD BY**  
16 **GROUP, LLC, an Arizona limited**  
17 **liability company,**

18 Defendants.

**NO. CV2013-055265**

**COMPLAINT**

**(Breach of Contract; and Tort Non-Motor  
Vehicle)**

19 Plaintiff, as and for his Complaint, hereby alleges as follows:

20 **JURISDICTION and VENUE**

21 1. Plaintiff SCOTT ARMSTRONG, also known as B. SCOTT ARMSTRONG,  
22 is a resident of Maricopa County, Arizona.

23 2. Defendant DUKE RODRIGUEZ is a resident of Maricopa County, Arizona.

24 3. Upon information and belief, DUKE RODRIGUEZ is not married.

25 4. Defendant SOLD BY GROUP, LLC is an Arizona limited liability company  
26 transacting business in Maricopa County, Arizona.

27 5. Defendants are residents of Maricopa County, Arizona and/or have caused  
28 events to occur in Maricopa County, Arizona which give rise to this Complaint.

6. Upon information and belief, Defendants acted in concert at all relevant  
times such that they are jointly and severally liable for the tort damages alleged herein.

1           7.       Alternatively, at all relevant times, DUKE RODRIGUEZ was acting within  
2 the scope of his authority and/or agency as the owner, employee, member, manager, agent  
3 and/or principal of SOLD BY GROUP, LLC, such that SOLD BY GROUP, LLC is  
4 jointly and severally liable for the tortious actions and misconduct of DUKE  
5 RODRIGUEZ complained of herein.

6           8.       Jurisdiction is proper in this Court.

7           9.       Venue is proper in this Court.

8                   **ALLEGATIONS COMMON TO ALL CLAIMS**

9           10.      On or about April 12, 2013, Plaintiff and Defendants entered into a contract  
10 concerning Plaintiff's interest in an Arizona limited liability company – By The Sqftage,  
11 LLC (the "Company") and certain real property (the "Real Property") owned by the  
12 Company in Florence, Arizona.

13          11.      At the time of the parties' contract, Plaintiff had a dispute (the "Dispute")  
14 with the other member(s) of the Company concerning Plaintiff's interest in the Company  
15 and/or the Real Property and/or the amounts due Plaintiff from the Company.

16          12.      Pursuant to the parties' contract, Defendants agreed to pursue Plaintiff's  
17 interests in the Dispute and to resolve the Dispute through litigation and/or settlement.

18          13.      The parties' contract is evidenced by, among other things, a Secured  
19 Revolving Promissory Note (the "Note") and an Equity Pledge Agreement (the "Pledge  
20 Agreement"), both dated April 12, 2013.

21          14.      A true and accurate copy of the Note is attached as Exhibit 1.

22          15.      A true and accurate copy of the Pledge Agreement is attached as Exhibit 2.

23          16.      To carry out and effect the parties' contract, Plaintiff executed and delivered  
24 to DUKE RODRIGUEZ a Durable Power of Attorney and Proxy (the "POA") appointing  
25 DUKE RODRIGUEZ as Plaintiff's Attorney-in-Fact.

26          17.      A true and accurate copy of the POA is attached as Exhibit 3.

1       18. Pursuant to the parties' contract, Defendants were obligated to distribute  
2 certain monies to Plaintiff and to SOLD BY GROUP, LLC (or its assign), as provided for  
3 in the Note.

4       19. On or before August 13, 2013, Defendants received not less than  
5 \$122,914.00 in proceeds (the "Proceeds") which Defendants were obligated to distribute  
6 to Plaintiff and SOLD BY GROUP, LLC as provided for in the Note.

7       20. Pursuant to the parties' contract, Defendants were obligated to distribute not  
8 less than \$66,687.99 of the Proceeds to Plaintiff.

9       21. Despite demand, Defendants made only a partial and insufficient  
10 distribution of the proceeds to or for the benefit of Plaintiff.

11       22. Despite demand by Plaintiff, Defendants have failed and refused to  
12 distribute to Plaintiff not less than \$43,278.59, plus accruing statutory interest, which  
13 remains due and owing to Plaintiff under the parties' contract.

14       23. As a result of Defendants' conduct and breaches, Plaintiff has sustained  
15 damages, including, but not limited to, not less than \$43,278.59, plus accruing statutory  
16 interest, lost profits, lost Section 1031 exchange opportunity, taxes, emotional distress,  
17 aggravation, inconvenience and other damages.

18       24. The amounts due Plaintiff, in whole or in part, constitute liquidated sums,  
19 such that Plaintiff is entitled to pre-judgment interest thereon.

20       25. Plaintiff is entitled to recover his attorneys' fees and costs incurred in this  
21 action pursuant to, among other law, A.R.S. §§ 12-341 & 12-341.01.

22                   **FIRST CLAIM FOR RELIEF – BREACH OF CONTRACT**

23       26. Plaintiff incorporates each of the allegations set forth above.

24       27. Plaintiff and Defendants had a contract.

25       28. All conditions precedent to the performance of the obligations of Defendants  
26 under the contract have been satisfied or have occurred.

27       29. Defendants materially breached the contract.  
28

1           30. As a result of Defendants' breach(es), Plaintiff has incurred actual and  
2 consequential damages.

3           WHEREFORE, on his First Claim for Relief, Plaintiff prays for judgment against  
4 Defendants, jointly and severally, as follows:

5           A. For Plaintiff's actual damage of not less than \$43,278.59, plus interest, at the  
6 highest rate allowed by law, from August 13, 2013 until paid;

7           B. For Plaintiff's consequential damages, in amounts to be proven at trial, plus  
8 interest, at the highest rate allowed by law;

9           C. For Plaintiff's costs and attorneys' fees, plus interest, at the highest rate  
10 allowed by law, from the date of judgment until paid; and

11           D. For such other and further relief as the Court deems just and appropriate.

12           **SECOND CLAIM FOR RELIEF – BREACH OF FIDUCIARY DUTY**

13           31. Plaintiff incorporates by reference each of the allegations set forth above.

14           32. As a result of the fact that, among other things, Defendants did and  
15 undertook to act as Plaintiff's agent(s) and/or attorney-in-fact in connection with the  
16 Dispute and the Proceeds, Defendants owed fiduciary duties to Plaintiff.

17           33. Defendants breached their duties to Plaintiff, and Plaintiff incurred  
18 foreseeable damages thereby in amounts to be proven at trial.

19           34. Specifically, among other things, Defendants have failed and refused to  
20 disburse to Plaintiff the amounts due Plaintiff pursuant to the parties' contract, Defendants  
21 have made improper deductions against the amounts due Plaintiff for alleged expenses  
22 without any basis to do so under the parties' contract and/or without having even actually  
23 incurred and paid the expenses and have failed to accurately and timely account to  
24 Plaintiff for the amounts due Plaintiff under the parties' contract.

25           35. Because Defendants breached their fiduciary duties to Plaintiff, thus  
26 harming Plaintiff's interests and causing Plaintiff damages, Defendants are not entitled to  
27 any compensation for their alleged services and must disgorge all fees and other amounts  
28

1 retained by Defendants from the proceeds received by Defendants from the resolution of  
2 the Dispute.

3 36. Defendants at all times acted with evil minds while consciously aware of the  
4 wrongfulness or harmfulness of their conduct, and yet continued to act in deliberate  
5 contravention of and in gross disregard to the rights and interests of Plaintiff and with the  
6 intent to injure Plaintiff. As a result, Plaintiff is entitled to recover punitive damages from  
7 Defendants.

8 WHEREFORE, on his Second Claim for Relief, Plaintiff prays for judgment  
9 against Defendants, jointly and severally, as follows:

10 A. For Plaintiff's damages in amounts to be proved at trial;

11 B. For an order requiring Defendants to disgorge all fees and other amounts  
12 retained by Defendants from the proceeds from the Dispute;

13 C. For punitive damages in amounts to be proved at trial;

14 D. For Plaintiff's costs and attorneys' fees as allowed by law;

15 E. For interest on the foregoing sums, at the highest rate(s) allowed by law; and

16 F. For such other and further relief as the Court deems just and appropriate.

17 **THIRD CLAIM FOR RELIEF – CONVERSION**

18 37. Plaintiff incorporates by reference each of the allegations set forth above.

19 38. Defendants have received and have refused to turn over to Plaintiff not less  
20 than \$43,278.59 rightfully belonging to Plaintiff.

21 39. Upon information and belief, Defendants have wrongfully converted the  
22 \$43,278.59 for their own use and benefit and have thus deprived Plaintiff of those monies.

23 40. As a result, Plaintiff has suffered damages in amounts to be proven at trial.

24 41. Defendants at all times acted with evil minds while consciously aware of the  
25 wrongfulness or harmfulness of their conduct, and yet continued to act in deliberate  
26 contravention of and in gross disregard to the rights and interests of Plaintiff and with the  
27 intent to injure Plaintiff. As a result, Plaintiff is entitled to recover punitive damages from  
28 Defendants.

WHEREFORE, on his Third Claim for Relief, Plaintiff prays for judgment against Defendants, jointly and severally, as follows:

- A. For Plaintiff's damages in amounts to be proved at trial;
- B. For punitive damages in amounts to be proved at trial;
- C. For Plaintiff's costs and attorneys' fees as allowed by law;
- D. For interest on the foregoing sums, at the highest rate(s) allowed by law; and
- E. For such other and further relief as the Court deems just and appropriate.

**BERK & MOSKOWITZ, P.C.**

By:

Kent S. Berk  
14220 N. Northsight Blvd., Suite 135  
Scottsdale, Arizona 85260  
*Attorneys for Plaintiff*

# **EXHIBIT 1**

## SECURED REVOLVING PROMISSORY NOTE

\$15,000.00

Scottsdale, Arizona

April 12, 2013

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FOR VALUE RECEIVED, the undersigned Scott Armstrong, an unmarried man ("Maker") promises to pay to the order of Sold by Group LLC, a Arizona limited liability company (hereinafter called the "Payee"; Payee and each subsequent transferee and/or owner of this Note, whether taking by endorsement or otherwise, are herein successively called "Holder"), at 17015 N. Scottsdale Road, Ste 125, Scottsdale, Arizona 85255, or at such other place as Holder may from time to time designate in writing, up to the maximum principal sum of FIFTEEN THOUSAND AND NO/100 DOLLARS (\$15,000.00), to or for the benefit of Maker plus interest calculated on a daily basis (based on a 360-day year) from the date hereof on the principal balance from time to time outstanding as hereinafter provided, principal, interest and all other sums payable hereunder to be paid in lawful money of the United States of America as follows:

A. Maker is a member of BY THE SQFTAGE, LLC, an Arizona limited liability company (the "Company"), and currently owns a 42.5% membership interest (the "Membership Interest") in the Company. The Company owns certain real property located in Florence, Pinal County, Arizona (the "Real Property") as further described on Exhibit A attached hereto. Upon the sale of the Real Property by the Company, all distributions, cash flow, liquidation proceeds, dividends, returns, return of capital, or any other cash or assets received by Maker or to which Maker may be entitled (collectively, the "Distributions") by virtue of the Company's operating agreement or by act of law or court order shall be distributed as follows:

(i) First, 100% to Holder until the entire outstanding principal balance and all other Obligations (as defined below) shall be repaid;

(ii) Second, 100% to Payee until Payee shall have received a maximum amount of \$50,000; and

(iii) Lastly, 50/50 to Payee and Holder in equal shares until all Distributions have been made by the Company.

B. The entire unpaid principal balance, all accrued and unpaid interest and all other amounts payable hereunder shall be due and payable in full on that date that is the earlier of: (i) December 31, 2013; or (ii) as part of the closing of any sale or refinancing involving the Real Property or the Company in which the Payee receives or becomes entitled to payments as set forth above in Section A. Payee shall be repaid through closing of escrow on the sale of the Real Property. Payee shall use all diligence to cause the Company to consent to the distribution of all amounts due to Holder hereunder to be paid through escrow at closing.



The principal balance of this Note represents a revolving credit, all or any part of which may be advanced to Maker, repaid by Maker, and re-advanced to Maker from time to time, provided that the principal balance outstanding at any one time shall not exceed the face amount hereof.

Maker agrees to an effective rate of interest that is the greater of (a) the rate resulting from the distribution of the amounts provided above, or (b) ten percent (10%) per annum. The actual rate shall be such effective rate plus any additional rate of interest resulting from any other charges in the nature of interest paid or to be paid by or on behalf of Maker, or any benefit received or to be received by Holder, in connection with this Note.

If Maker fails to make any payment when due, Maker shall be in default, and the entire unpaid principal balance, all accrued and unpaid interest and all other amounts payable hereunder shall be automatically due and payable, and shall bear interest at the default rate of eighteen percent (18%) per annum (the "Default Rate").

This Note is secured by an Equity Pledge Agreement of even date herewith (the "Pledge Agreement") securing Payee's Membership Interest in the Company, and may now or hereafter be secured by one or more other security agreements, mortgages, deeds of trust, assignments or other instruments or agreements.

Time is of the essence of this Note. There is no penalty for prepayment of this Note.

Maker shall pay all costs and expenses, including reasonable attorneys' fees and court costs, incurred in the collection or enforcement of all or any part of this Note. All such costs and expenses shall be secured by the Pledge Agreement and, together with the principal, interest, late fees, payments and other amounts to be paid to Holder hereunder, shall be referred to as "Obligations" in the Pledge Agreement.

Failure of Holder to exercise any option hereunder shall not constitute a waiver of the right to exercise the same in the event of any subsequent default or in the event of continuance of any existing default after demand for strict performance hereof.

Maker and all sureties, guarantors and/or endorsers hereof (or of any obligation hereunder) and accommodation parties hereon each: (a) agree that the liability under this Note of all parties hereto is joint and several; (b) severally waive any and all formalities in connection with this Note to the maximum extent allowed by law, including (but not limited to) demand, diligence, presentment for payment, protest and demand, and notice of extension, dishonor, protest, demand and nonpayment of this Note; and (c) consent that Holder may extend the time of payment or otherwise modify the terms of payment of any part or the whole of the debt evidenced by this Note, at the request of any other person liable hereon, and such consent shall not alter nor diminish the liability of any person hereon.

This Note shall be binding upon Maker and its successors and assigns and shall inure to the benefit of Payee, and any subsequent holders of this Note, and their successors and assigns.

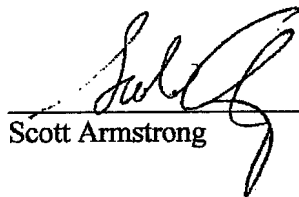
All notices required or permitted in connection with this Note shall be given at the place and in the manner provided in the Pledge Agreement for the giving of notices.

If any principal payment and/or payment of interest due hereunder is not received by the Holder hereof within ten (10) days after such payment is due, then in addition to the remedies conferred upon the Holder hereof, whether under the Pledge Agreement or otherwise, a late charge of five percent (5%) of the amount of the installment due hereunder and unpaid will be added to the delinquent amount to compensate the Holder hereof for the expense of handling the delinquency for any payment past due, regardless of any notice and cure period.

This Note shall be governed by and construed in accordance with the substantive laws (other than conflict laws) of the State of Arizona, except to the extent Holder has greater rights or remedies under Federal law, whether as a national bank or otherwise, in which case such choice of Arizona law shall not be deemed to deprive Holder of any such rights and remedies as may be available under Federal law. Each party consents to the personal jurisdiction and venue of the state courts located in Maricopa County, State of Arizona in connection with any controversy related to this Note, waives any argument that venue in any such forum is not convenient and agrees that any litigation initiated by any of them in connection with this Note shall be venued in the Superior Court of Maricopa County, Arizona. THE PARTIES WAIVE ANY RIGHT TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING BASED ON OR PERTAINING TO THIS NOTE OR ANY OF THE OTHER LOAN DOCUMENTS.

IN WITNESS WHEREOF, these presents are executed as of the date first written above.

**MAKER**

  
\_\_\_\_\_  
Scott Armstrong

# **EXHIBIT 2**

## EQUITY PLEDGE AGREEMENT

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This **EQUITY PLEDGE AGREEMENT** (this "Agreement"), dated as of April 12, 2013, from Scott Armstrong, an individual residing in the State of Arizona (the "Assignor") in favor of Sold by Group LLC, an Arizona limited liability company (the "Assignee").

**WHEREAS**, the Assignor is the legal and beneficial owner of 42.5% of the membership interest in BY THE SQFTAGE, LLC, an Arizona limited liability company (the "Company");

**WHEREAS**, the Assignee has agreed to make loans and otherwise to extend credit to Assignor; and

**WHEREAS**, it is a condition precedent to the Assignee's making any loan(s) or otherwise extending credit to Assignor that the Assignor execute and deliver to the Assignee a collateral assignment of membership interests in substantially the form hereof.

**NOW, THEREFORE**, in consideration of the premises contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

### **1. DEFINITIONS.**

All terms not specifically defined herein, which terms are defined in the Uniform Commercial Code as in effect in the State of Arizona, shall have the meanings assigned to them therein. The following terms shall have the following meanings herein:

"Assignor" is defined in the Preamble.

"Assigned Interests" is defined in Section 2.1.

"Assignee" is defined in the Preamble.

"Assignor" is defined in the Preamble.

"Bankruptcy Laws" is defined in Section 5(c).

"Business Day" means any day that is not a Saturday, Sunday or banking holiday in the State of Arizona.

"Collateral" means the Assigned Interests, and all other property now or hereafter pledged or assigned to the Assignee by the Assignor hereunder, and all income therefrom, increases therein and proceeds thereof.

"Company" is defined in the Preamble.

"Event of Default" is defined in Section 5.

"Loan Documents" shall mean this Agreement, the Note, and all other security or financing documents referred to therein.

"Note" shall mean that certain promissory Note of even date herewith evidencing the loan being made by Assignee to Assignor.

"Obligations" shall have the meaning ascribed to it in the Note.

"Operating Agreement" means the Operating Agreement for the Company.

## **2. ASSIGNMENT.**

**2.1. Grant of Security Interest.** The Assignor hereby pledges, grants a security interest in, mortgages, and collaterally assigns and transfers to the Assignee, as security for the payment and performance in full when due of all of the Obligations, all the right, title and interest of the Assignor in and to the Assignor's membership interests in the Company, wherever located and whether now owned or hereafter acquired or arising, including, without limitation, (a) all dividends, payments or distributions (whether in cash or otherwise), instruments, proceeds, property or otherwise, at any time owing or payable to the Assignor on account of its interest as a member of the Company or in the nature of a management, investment banking or other fee paid or payable by the Company to the Assignor, (b) all of the Assignor's rights and interests under the Operating Agreement, including all voting and management rights and all rights to grant or withhold consents or approvals, (c) all rights of access and inspection to and use of all books and records, including computer software and computer software programs, of the Company, (d) all other rights, interests, property or claims to which the Assignor may be entitled in its capacity as a member of the Company, and (e) all proceeds and products of any of the foregoing (all of the foregoing rights, title and interest described in the foregoing clauses (a) through (e) being herein referred to collectively as the "Assigned Interests").

**2.2. Waiver of Certain Operating Agreement Provisions.** The Assignor irrevocably waives any and all provisions of the Operating Agreement that (a) prohibit, restrict, condition or otherwise affect the grant hereunder of any lien, security interest or encumbrance on any of the Collateral or any enforcement action which may be taken in respect of any such lien, security interest or encumbrance, or (b) otherwise conflict with the terms of this Agreement.

**2.3. Authorization to File Financing Statement.** The Assignor hereby authorizes the Assignee to file in any Uniform Commercial Code filing office a financing statement naming the Assignor as the debtor or an affiliate of the debtor and indicating the Collateral as the collateral. The financing statement may indicate some or all of the collateral on the financing statement, whether specifically or generally.

## **3. REPRESENTATIONS, WARRANTIES AND COVENANTS OF ASSIGNOR.**

**3.1. Representations and Warranties.** The Assignor hereby represents and warrants to Assignee as follows:

(a) The Company is duly organized, validly existing, and in good standing under the laws of the State of Arizona and all other jurisdictions where the Company does business; the Operating Agreement is in full force and effect; the Assignor is a duly constituted member of the Company pursuant to the Operating Agreement; and the Assigned Interests are validly issued, non-assessable and fully paid membership interests in the Company.

(b) The Assignor has full right, power and authority to make this Agreement (including the provisions enabling the Assignee or its nominee, upon the occurrence of an Event of Default, to exercise the voting or other rights provided for herein), under the Operating Agreement

and under applicable law, without the consent, approval or authorization of, or notice to, any other person, including any regulatory authority or any person having any interest in the Company.

(c) The execution, delivery, and performance of this Agreement and the transactions contemplated hereby (i) do not conflict with or result in any breach or contravention of any applicable law, regulation, judicial order or decree to which such Assignor is subject, and (ii) do not violate, conflict with, constitute a default or event of default under, or result in any rights to accelerate or modify any obligations under any agreement, instrument, lease, mortgage or indenture to which such Assignor is party or subject, or to which any of its assets are subject.

(d) This Agreement has been duly executed and delivered by the Assignor and is the legal, valid, and binding obligation of the Assignor enforceable against it in accordance with the terms hereof except as enforceability is limited by bankruptcy, insolvency, reorganization, moratorium, or other laws relating to or affecting generally the enforcement of creditors' rights and except to the extent that availability of the remedy of specific performance or injunctive relief is subject to the discretion of the court before which any case or proceeding therefor may be brought.

(e) The Assignor is the sole, direct, legal and beneficial owner of all the Assigned Interests, which Assigned Interests constitute a 42.5% membership interest in the Company, and has good and marketable title thereto, free and clear of any lien, security interest, mortgage or other encumbrance, other than the liens and security interest granted to the Assignee hereunder; and the liens and security interests hereunder constitute valid and perfected first priority liens and security interests.

(f) The Assignor has no obligation to make any contribution, capital call or other payment to the Company with respect to the Assigned Interests.

(g) The copy of the Operating Agreement attached hereto as Exhibit A is a true, correct, and complete copy thereof, and the Operating Agreement has not been amended or modified in any respect, except for such amendments or modifications as are attached to the copy thereof delivered to the Assignee.

(h) The membership interest of the Assignor in the Company is not evidenced by any certificate issued by the Company.

(i) The membership interest of the Assignor in the Company is not a security governed by Article 8 of the Uniform Commercial Code of the jurisdiction in which the Company is organized.

**3.2. Covenants.** The Assignor covenants to the Assignee as follows:

(a) The Assignor will give prompt written notice to Assignee of any event or notice affecting or relating to the Assigned Interests and/or the Collateral.

(b) The Assignor will not permit or agree to any amendment or modification of the Operating Agreement as in effect on the date hereof (or other governing document with respect to the Assigned Interests), or waive any rights or benefits under the Operating Agreement (or such other governing document), without the prior written consent of the Assignee.

(c) Without the prior written consent of the Assignee, the Assignor will not sell, dispose of or assign, beneficially or of record, or grant, create, permit or suffer any lien or encumbrance on, any of the Assigned Interests, or withdraw as a member of the Company.

(d) Without the prior written consent of the Assignee, the Assignor shall not cast any vote or give or grant any consent, waiver or ratification or take any other action which could reasonably be expected to (i) directly or indirectly authorize or permit the dissolution, liquidation or sale of the Company or the sale, lease, assignment, transfer or other disposition of any of the assets of the Company, except for immaterial personal property which is disposed of in the ordinary course of business and so long as no Event of Default has occurred and is continuing, whether by operation of law or otherwise, (ii) have the result of materially and adversely affecting any of the Assignee's rights under this Agreement or under any of the other Loan Documents, (iii) violate the terms of this Agreement or any of the other Loan Documents, (iv) have the effect of impairing the validity, perfection or priority of the security interest of the Assignee in any manner whatsoever, (v) cause an Event of Default, (vi) directly or indirectly authorize or permit the issuance of additional membership interest in the Company to any person, (vii) directly or indirectly authorize or permit or cause the Company to incur indebtedness in excess of \$25,000, (viii) permit or authorize or cause the Company to enter into voluntary liquidation or receivership, (ix) permit or authorize or cause the Company to pay any distribution or dividend; or (x) permit or authorize or cause the Company to redeem its membership interest.

(e) The Assignor will comply with all laws, regulations, judicial orders or decrees applicable to the Collateral or any portion thereof, and perform and observe its duties under the Operating Agreement or other governing documents with respect to the Assigned Interests.

(f) The Assignor will (i) keep and maintain at its own cost and expense at its principal place of business satisfactory and complete records of the Collateral including a record of all payments received and all other dealings of a material nature with the Collateral, and (ii) mark its books and records pertaining to the Collateral and its books and records kept in its jurisdiction of organization to evidence this Agreement and the liens and security interests granted hereby.

(g) The Assignor will pay promptly when due any taxes, assessments, and governmental charges or levies imposed upon the Collateral or in respect of its income or profits therefrom, as well as all claims of any kind.

(h) The Assignor will advise the Assignee promptly, in reasonable detail, of (i) any lien, charge, claim or other encumbrance made or asserted against any of the Collateral; (ii) any material change in the composition of the Collateral; (iii) the occurrence of any other event or condition which to its knowledge would have a material effect on the validity, perfection or priority of the liens and security interests granted hereunder; and (iv) any bankruptcy or litigation case or proceeding relating to any of the Collateral.

(i) The Assignor shall do or cause to be done all things necessary to preserve, renew and keep in full force and effect the legal existence of the Company, the power and authority of the Company to own its property and carry on its business, the qualification of the Company to do business in its jurisdiction of organization, and the qualification of the Company to do business in each other jurisdiction where such qualification is necessary except where the failure so to qualify would not have a material adverse effect on the rights and interests of the Assignee hereunder.

(j) Within one hundred twenty (120) days after the end of each tax year, the Assignor shall furnish to the Assignee complete copies of the federal income tax returns of the Assignor and of the Company.

(k) Without the prior written consent of the Assignee, the Assignor will not cause or permit the membership interest of the Assignor in the Company to be evidenced by a certificate issued by the Company. If the membership interest at any time constitutes a security governed by Article 8 of the Uniform Commercial Code of the jurisdiction in which the Company is organized, the Assignor will, if it has not already done so, forthwith obtain an agreement from the Company, in form and substance satisfactory to the Assignee, that the Company will comply with instructions of the Assignee as to the Assigned Interests without further consent of the Assignor.

(m) The Assignor will, forthwith upon the execution of this Agreement, give notice by registered post of the Agreement herein contained to the Company in a form satisfactory to the Assignee in its sole and absolute discretion, and to immediately thereafter notify the Assignee in writing of the service of the notice to the Company producing confirmation of the said service by registered post.

#### **4. RIGHTS OF ASSIGNEE.**

**4.1. Assignee Appointed Attorney-in-Fact.** The Assignor hereby irrevocably constitutes and appoints the Assignee, its successors and assigns, its true and lawful attorney-in-fact, with full power and authority and with full power of substitution, at the expense of the Assignor, either in the Assignee's own name or in the name of the Assignor, at any time and from time to time, in each case as the Assignee in its sole and absolute discretion may determine (a) to take any and all appropriate action and to execute any and all documents and instruments that may be necessary or desirable to accomplish the purposes of this Agreement and (b) upon the occurrence and during the continuance of an Event of Default to take any and all action and execute any and all documents and instruments that such attorney-in-fact may deem necessary or advisable to accomplish the purposes hereof:

(i) to ask, demand, collect, receive, sue for, compound, and give acquittance for any and all sums or properties that may be or become due, payable, or distributable in respect of the Collateral or that constitute a part thereof, with full power to settle, adjust, or compromise any claim thereunder or therefor as fully as the Assignor could do;

(ii) to endorse or sign the name of the Assignor on all instruments given in payment or in part payment thereof and all documents of satisfaction, discharge, or receipt required or requested in connection therewith; and

(iii) to file or take any action or institute any case or proceeding that the Assignee may deem necessary or appropriate to collect or otherwise realize upon any or all of the Collateral, or effect a transfer thereof, or that may be necessary or appropriate to protect and preserve the right, title, and interest of the Assignee in and to the Collateral and the security intended to be afforded hereby.

**4.2. Distributions, Conversion, Voting, etc.** So long as no Event of Default shall have occurred and be continuing and to the extent permitted under the Note, the Assignor shall be entitled to:

(a) receive all cash and other distributions paid in respect of the Assigned Interests provided that such distributions are not authorized or made in violation of the Note or Section 3.2(d)(ix) herein;



(b) exercise any management or voting rights relating to the Assigned Interests, provided that the exercise of any management and voting rights shall be prohibited if such exercise would result in a default or an event of default under this Agreement and any of the Loan Documents; and

(c) give consents, waivers, approvals, and ratifications in respect of the Assigned Interests, provided that the exercise of any management and voting rights shall be prohibited if such exercise would result in a default or an event of default under this Agreement and any of the Loan Documents.

All such rights of the Assignor to receive cash and other distributions shall cease immediately if an Event of Default shall have occurred and be continuing, and in each such case the Assignor shall (i) at the request of the Assignee, issue appropriate instructions or otherwise cause any such distributions be paid directly to the Assignee or to such account as the Assignee may designate immediately, and (ii) hold in trust for the Assignee and immediately pay over to the Assignee any such distributions received by the Assignor. All such rights of the Assignor referred to in clauses (b) and (c) shall, at the Assignee's sole option, as evidenced by the Assignee's notifying the Assignor in writing of its exercise of such option, cease in case an Event of Default shall have occurred and be continuing.

**4.3. No Assignment of Duties.** This Agreement constitutes an assignment of the Assigned Interests and the other Collateral only and not an assignment of any duties or obligations of the Assignor with respect thereto, and by its acceptance hereof and whether or not the Assignee shall have exercised any of its rights or remedies hereunder, the Assignee does not undertake to perform or discharge, and shall not be responsible or liable for the performance or discharge of, any such duties or responsibilities, including, without limitation, for capital calls. The Assignor agrees that, notwithstanding the exercise by the Assignee of any of its rights hereunder, the Assignor shall remain liable for the full and prompt performance of all of the Assignor's obligations and liabilities under the Operating Agreement. Under no circumstances shall the Assignee or any holder of any of the Obligations as such be deemed to be a member of the Company by virtue of the provisions of this Agreement unless expressly agreed to in writing by the Assignee. Without limiting the generality of the foregoing, the Assignee shall have no membership fiduciary duty to the Company, whether by virtue of the security interests and liens hereunder, or any enforcement action in respect of such security interests and liens, unless and until the Assignee is admitted to the Company as a substitute member after exercising enforcement rights under §9-610 or §9-620 of the Uniform Commercial Code in effect in the State of Arizona, or otherwise.

## **5. EVENTS OF DEFAULT.**

Any one or more of the following events shall constitute an "Event of Default" hereunder:

(a) The Assignor fails to comply with, observe or perform any obligation, covenant or term of this Agreement;

(b) Any representation or warranty made or furnished to the Assignee by or on behalf of the Assignor in connection with this Agreement or any document or instrument furnished, or to be furnished, in connection herewith or therewith, proves to have been untrue in any material respect when so made or furnished;

(c) The Assignor or the Company: (i) commences a voluntary case under the federal bankruptcy laws (as now or hereafter in effect); (ii) files a petition seeking to take advantage of any other laws relating to bankruptcy, insolvency, reorganization, winding up or composition for adjustment of debts or the marshaling of assets ("Bankruptcy Laws"); (iii) consents to or fails to

contest in a timely and appropriate manner, any petition filed against the Assignor or the Company (as the case may be) in any involuntary case under any Bankruptcy Laws or other laws; (iv) applies for, consents to, indicates its approval of, acquiesces to or fails to contest in a timely and appropriate manner, the appointment of, or the taking of possession by, a receiver, custodian, trustee, or liquidator for the Assignor or the Company (as the case may be) or of a substantial part of the Assignor's or the Company's property (as the case may be); (v) admits in writing its inability to pay debts as they become due; (vi) makes a general assignment for the benefit of creditors; (vii) makes a conveyance fraudulent as to creditors under any state or federal law; or (viii) take any action for the purpose of effecting any of the foregoing;

(d) Commencement of a case or other proceeding against the Assignor or the Company in any court of competent jurisdiction seeking relief under any Bankruptcy Laws, or the appointment of a trustee, receiver, custodian, liquidator or the like for the Assignor or the Company, or of all or any substantial part of the Assignor's or the Company's assets;

(e) The Assignor fails to perform any of its obligations under the Operating Agreement within the applicable grace period or thirty (30) days after due;

(f) The occurrence of any "Default" or "Event of Default" or other like occurrence under the Loan Documents or any other agreement between the Assignor and the Assignee or under any other instrument executed by the Assignor in favor of the Assignee.

## **6. REMEDIES.**

**6.1. Remedies.** During the continuance of an Event of Default, the Assignee shall have, in addition to the rights, powers and authorizations to collect the sums assigned hereunder, all rights and remedies of a secured party under the Uniform Commercial Code and under other applicable law with respect to the Assigned Interests and any other Collateral hereunder including, without limitation, the following rights and remedies in its sole and absolute discretion:

(a) if the Assignee so elects and gives written notice of such election to the Assignor, the Assignee may (i) exercise any management or voting rights relating to the Assigned Interests (whether or not the same shall have been transferred into its name or the name of its nominee or nominees) for any lawful purpose, including for the amendment or modification of the Operating Agreement or other governing documents or the liquidation of the assets of the Company, (ii) give all consents, waivers, approvals, and ratifications in respect of such Assigned Interests, and (iii) otherwise act with respect thereto as though it were the outright owner thereof (the Assignor hereby irrevocably constituting and appointing the Assignee the proxy and attorney-in-fact of the Assignor, with full power and authority of substitution, to do so);

(b) the Assignee may sue for, collect, compromise, or settle any rights or claims in respect of any Collateral, as attorney-in-fact pursuant to Section 4.1 or otherwise;

(c) the Assignee may sell, resell, assign, deliver, or otherwise dispose of any or all of the Collateral, for cash or credit or both and upon such terms, in such manner, at such place or places, at such time or times, and to such persons or entities as the Assignee thinks expedient, all without demand for performance by the Assignor or any notice or advertisement whatsoever except as expressly provided herein or as may otherwise be required by applicable law; and at the time of any such sale or other disposition, the Assignee or its nominee or any purchaser of the Collateral at a foreclosure sale may, in its sole and absolute discretion, cause the Company to make an election

under §754 of the Internal Revenue Code as to the basis of any Assigned Interest being sold or otherwise disposed of; and

(d) the Assignee may cause all or any part of the Assigned Interests held by it to be transferred into its name or the name of its nominee or nominees.

**6.2. Remedies Not Exclusive.** No single or partial exercise by the Assignee of any right, power or remedy hereunder shall preclude any other or further exercise thereof or the exercise of any other right, power or remedy. Each right, power and remedy herein specifically granted to the Assignee or otherwise available to it shall be cumulative, and shall be in addition to every other right, power, and remedy herein specifically given or now or hereafter existing at law, in equity, or otherwise. Each such right, power and remedy, whether specifically granted herein or otherwise existing, may be exercised at any time and from time to time and as often and in such order as may be deemed expedient by the Assignee in its sole and absolute discretion.

**6.3. Public Sale.** In the event of any sale or other disposition of the Collateral as provided in Section 6.1(c), the Assignee shall give to the Assignors at least five (5) Business Days' prior written notice of the time and place of any public sale or other disposition of the Collateral or of the time after which any private sale or any other disposition is to be made. The Assignor hereby acknowledges and agrees that five (5) Business Days' prior authenticated notice of such sale or other disposition or sales or other dispositions shall be reasonable notice. The Assignee may enforce its rights hereunder without any other notice and without compliance with any other condition precedent now or hereafter imposed by law, regulation, judicial order or decree or otherwise (all of which are hereby expressly waived by the Assignor, to the fullest extent permitted by law). The Assignee may buy any part or all of the Collateral at any public sale or other disposition and if any part or all of the Collateral is of a type customarily sold or otherwise disposed of in a recognized market or is of a type which is the subject of widely-distributed standard price quotations, the Assignee may buy at private sale or other disposition and may make payments thereof by any means. The Assignee may apply the cash proceeds actually received from any sale or other disposition to the reasonable expenses of retaking, holding, preparing for sale, selling, and the like, to reasonable attorneys' fees, travel, and all other expenses which may be incurred by the Assignee in attempting to collect the Obligations or to enforce this Agreement or in the prosecution or defense of any case or proceeding related to this Agreement, and then to the Obligations in accordance with the requirements of the Note.

**6.4. Private Sale.** The Assignor recognizes that the Assignee may be unable to effect a public sale or other disposition of the Collateral by reason of the lack of a ready market for the Collateral, of the limited number of potential buyers of the Collateral or of certain prohibitions contained in the Securities Act of 1933, state securities laws, federal banking laws, and other applicable laws, and that the Assignee may be compelled to resort to one or more private sales or other dispositions thereof to a restricted group of purchasers. The Assignor agrees that any such private sales or other dispositions may be at prices and other terms less favorable to the seller than if sold at public sales or other dispositions and that such private sales or other dispositions shall not solely by reason thereof be deemed not to have been made in a commercially reasonable manner. The Assignee shall be under no obligation hereunder or otherwise (except as provided by applicable law) to delay a sale or other disposition of any of the Collateral for the period of time necessary to permit the registration of such securities for public sale or other public disposition under the Securities Act of 1933 and applicable state securities laws. Any such sale or other disposition of all or a portion of the Collateral may be for cash or on credit or for future delivery and may be conducted at a private sale or other disposition where the Assignee or any other person or entity may be the purchaser of all or part of the Assigned Interests so sold or otherwise disposed of. The Assignor agrees that to the extent notice of sale or other disposition shall be required by law, at least five (5) Business Days' prior notice to the Assignor of the time and place after which any private sale is to be made shall constitute reasonable notification. Subject to the foregoing, the Assignee agrees that any sale or other disposition of the Assigned

Interests shall be made in a commercially reasonable manner. The Assignee shall incur no liability as a result of the sale or other disposition of any of the Collateral, or any part thereof, at any private sale which complies with the requirements of this Section 6.4. The Assignor hereby waives, to the extent permitted by applicable law, any claims against the Assignee arising by reason of the fact that the price at which any of the Collateral, or any part thereof, may have been sold or otherwise disposed of at such private sale was less than the price that might have been obtained at a public sale or other public disposition, even if the Assignee accepts the first offer deemed by the Assignee in good faith to be commercially reasonable under the circumstances and does not offer any of the Collateral to more than one offeree.

**6.5. Title.** Nothing contained in this Agreement shall be construed to require the Assignee to take any action with respect to the Assigned Interests, whether by way of foreclosure or otherwise and except as required by the Operating Agreement, in order to permit the Assignee to become a substitute member of the Company under the Operating Agreement.

## **7. ASSIGNMENT NOT AFFECTED BY OTHER ACTS.**

The Assignor acknowledges and agrees that the security interests and collateral assignments herein provided for shall remain in full force and effect and shall not be impaired by any acceptance by the Assignee of any other collateral security for or guaranty of any of the Obligations, or by any failure or neglect or omission on the part of the Assignee to realize upon, collect or protect any Obligations or any Collateral. The security interests and collateral assignments herein provided for shall not in any manner be affected or impaired by any renewal, extension, modification, amendment, waiver, or restatement of any of the Obligations or of any collateral security therefor, or of any guaranty thereof, the Assignor hereby waiving any and all suretyship defenses to the extent otherwise applicable. In order to sell or otherwise dispose of or otherwise realize upon the security interests and assignments herein granted and provided for, and exercise the rights granted the Assignee hereunder and under applicable law, there shall be no obligation on the part of the Assignee at any time to first resort for payment to any guarantors of the Obligations or any part thereof or to resort to any other collateral security, property, liens or other rights or remedies whatsoever, and the Assignee shall have the right to enforce the security interests and collateral assignments herein provided for irrespective of whether or not other proceedings are pending for realization upon or from any of the foregoing.

## **8. MISCELLANEOUS.**

**8.1. Additional Instruments and Assurances.** The Assignor hereby agrees, at its own expense, to execute and deliver, from time to time, any and all further, or other, instruments, and to perform such acts, as the Assignee may reasonably request to effect the purposes of this Agreement and to secure to the Assignee the benefits of all rights and remedies conferred upon the Assignee by the terms of this Agreement.

**8.2. Release.** If and only if all of the Obligations shall have been indefeasibly paid, performed, and discharged in full in cash, and any commitments to advance Loan proceeds under the Note shall have been canceled, the Assignee shall, upon demand and at the sole expense of the Assignor, release this Assignment and the lien hereof by proper instrument or instruments.

**8.3. Assignee's Exoneration.** Under no circumstances shall the Assignee be deemed to assume any responsibility for or obligation or duty with respect to any part or all of the Collateral of any nature or kind or any matter or proceeding arising out of or relating thereto, other than (a) to exercise reasonable care in the physical custody of the Collateral and (b) if an Event of Default shall have occurred and be continuing, to act in a commercially reasonable manner in exercising its rights and remedies with

respect to the Collateral. Subject to the foregoing, the Assignee shall not be required to take any action of any kind to collect, preserve or protect its or the Assignor's rights in the Collateral.

**8.4. No Waiver, etc.** Any term of this Agreement may be amended or modified only with the written consent of the Assignor and the Assignee. Any term of this Agreement may be waived by a writing executed by the party to be charged with such waiver. No act, failure, or delay by the Assignee shall constitute a waiver of its rights and remedies hereunder or otherwise. No single or partial waiver by the Assignee of any default, right, or remedy that it may have shall operate as a waiver of any other default, right, or remedy or of the same default, right, or remedy on a future occasion.

**8.5. Waiver By Assignor.** The Assignor hereby waives presentment, notice of dishonor, and protest of all instruments included in or evidencing any of the Obligations or the Collateral, and any and all other notices and demands whatsoever (except as expressly provided herein or in the Note or for notices required in connection with judicial proceedings).

**8.6. Notice, etc.** All notices, requests or other communications hereunder shall be in writing and shall be deemed sufficiently given or furnished if delivered by personal delivery, by nationally recognized overnight courier service or by certified United States mail, postage prepaid, addressed to the party to whom directed at the applicable address set forth below (unless changed by similar notice in writing given by the particular party whose address is to be changed) or by facsimile. Any notice shall be deemed to have been given either at the time of personal delivery or, in the case of courier or mail, as of the date of first attempted delivery at the address and in the manner provided herein, or, in the case of facsimile, upon receipt; provided that service of a notice required by any applicable statute shall be considered complete when the requirements of that statute are met. Notwithstanding the foregoing, no notice of change of address shall be effective except upon actual receipt. This section shall not be construed in any way to affect or impair any waiver of notice or demand provided in this Agreement or in any other Loan Document or to require giving of notice or demand to or upon any person in any situation or for any reason.

The address and fax number of Assignor are:

17015 N. Scottsdale Road Ste 125  
Scottsdale, Arizona 85255  
Fax Number: \_\_\_\_\_

The address and fax number of Assignee are:

Sold by Group LLC  
Attn: Duke Rodriguez  
17015 N. Scottsdale Road Ste 125  
Scottsdale, Arizona 85255  
Fax Number: \_\_\_\_\_

**8.7. Overdue Amounts.** Until paid, all amounts due and payable by the Assignor hereunder shall be a debt secured by the Collateral and shall bear, whether before or after judgment, interest at the Default Rate as set forth in the Note.

**8.8. Governing Law; Consent to Jurisdiction.** This Agreement is intended to take effect as a sealed instrument and shall be governed by, and construed in accordance with, the laws of the State of Arizona. THE ASSIGNOR AGREES THAT ANY PROCEEDING FOR THE ENFORCEMENT OF THIS ASSIGNMENT MAY BE BROUGHT IN THE COURTS OF THE STATE OF ARIZONA OR ANY FEDERAL COURT SITTING THEREIN AND CONSENTS TO THE NON-EXCLUSIVE

JURISDICTION OF SUCH COURT AND TO SERVICE OF PROCESS IN ANY SUCH PROCEEDING BEING MADE UPON THE ASSIGNOR BY MAIL AT THE ADDRESS SPECIFIED IN §8.6. THE ASSIGNOR HEREBY WAIVES ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE VENUE OF ANY SUCH PROCEEDING OR ANY SUCH COURT OR THAT SUCH PROCEEDING IS BROUGHT IN AN INCONVENIENT COURT.

**8.9. Waiver of Jury Trial.** EACH OF THE ASSIGNOR AND THE ASSIGNEE HEREBY WAIVES ITS RIGHT TO A JURY TRIAL WITH RESPECT TO ANY PROCEEDING ARISING OUT OF ANY DISPUTE IN CONNECTION WITH THIS ASSIGNMENT, ANY RIGHTS OR OBLIGATIONS HEREUNDER, OR THE PERFORMANCE OF ANY SUCH RIGHTS OR OBLIGATIONS.

**8.10. Limitation of Liability.** Except as prohibited by applicable law, each of the Assignor and Assignee waives any right which it may have to claim or recover in any proceeding referred to in the preceding sentence any special, exemplary, or punitive damages or any damages other than, or in addition to, actual or consequential damages. The Assignor (a) certifies that neither the Assignee nor any representative, agent, or attorney of the Assignee has represented, expressly or otherwise, that the Assignee would not, in the event of any proceeding, seek to enforce the foregoing waivers and (b) acknowledges that, in entering into the Loan Documents to which the Assignee is a party, the Assignee is relying upon, among other things, the waivers and certifications contained in this Section 8.10.

**8.11. Severability and Enforceability.** All provisions hereof are severable and the invalidity or unenforceability of any of such provisions shall in no manner affect or impair the validity and enforceability of the remaining provisions hereof.

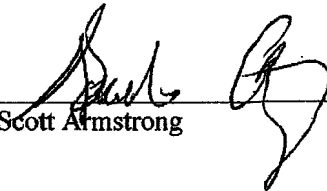
**8.12. Successors and Assigns.** This Agreement shall be binding upon the Assignor and upon the legal representatives, successors and assigns of the Assignor and shall inure to the benefit of the Assignee and its successors and assigns.

**8.13. Counterparts.** This Agreement may be executed in any number of counterparts, each constituting an original, but all together one and the same instrument.

**8.14. Entire Agreement.** This Agreement and the Loan Documents and any other document executed in connection herewith or therewith express the entire understanding of the parties with respect to the transactions contemplated hereby. Neither this Agreement nor any terms hereof may be changed, waived or terminated except by a writing signed by each party hereto.

**IN WITNESS WHEREOF**, the Assignor and the Assignee have executed this Agreement as of the date first above written, as an instrument under seal.

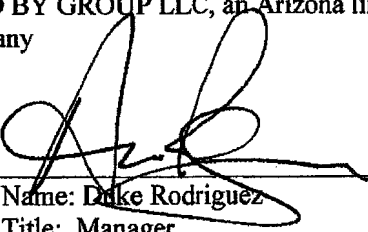
ASSIGNOR:

  
\_\_\_\_\_  
Scott Armstrong

ASSIGNEE:

SOLD BY GROUP LLC, an Arizona limited liability company

By:

  
\_\_\_\_\_  
Name: Duke Rodriguez  
Title: Manager

**EXHIBIT A**

**Operating Agreement**

[See attached]



# **EXHIBIT 3**

## ***DURABLE POWER OF ATTORNEY AND PROXY***

I, Scott Armstrong, hereby appoint Duke Rodriguez of 17015 N Scottsdale Rd, Suite 125, Scottsdale, Arizona 85260, as my attorney-in-fact ("Agent") to exercise the powers and discretions described below.

This Power of Attorney shall not be affected by my subsequent incapacity.

My Agent shall have full power and authority to act on my behalf but only to the extent permitted by this Special Power of Attorney. My Agent's powers shall include the power to:

1. Institute, supervise, prosecute, defend, intervene in, abandon, compromise, arbitrate, settle, dismiss, and appeal from any and all legal, equitable, judicial or administrative hearings, actions, suits, proceedings, attachments, arrests or distresses, involving me in any way.

2. Sell or convey any and all interests, rights, and ownership in By The Sqftage, LLC.

This power shall include the power to (i) sign contracts of sale and documents to transfer title (including bills of sale), and (ii) accept a security interest for any unpaid portion of the purchase price.

3. Manage, control, and operate the business known as: By The Sqftage, LLC

This power shall include the power to: (i) make and carry out decisions regarding sales, purchases, employees, loans, and equipment, and (ii) take any action needed (at the discretion of my Agent) to operate the business. In addition, this power shall include the power to sell the business, dissolve it, or take any other action to conclude and close the business.

4. Prepare, sign, and file documents with any governmental body or agency, including, but not limited to, authorization to:

- a. Prepare, sign, and file income, gift and other tax returns of all kinds with federal, state, local, and other governmental bodies, and any Power of Attorney form appointing an Agent required by the Internal Revenue Service and/or any state or local taxing authority.

- b. Obtain information or documents from any government or its agencies, and represent me in all tax matters, including the authority to negotiate, compromise, or settle any matter with such government or agency.

- c. Prepare applications, provide information, and perform any other act reasonably requested by any government or its agencies in connection with governmental benefits

(including medical, military and social security benefits), and to appoint anyone, including my Agent, to act as my "Representative Payee" for the purpose of receiving Social Security benefits.

5. Act on my behalf with respect to the following matters:

- Exercise all stock rights on my behalf as my proxy, including all rights with respect to stocks, bonds, debentures, commodities, options or other investments.
- Enter into binding contracts on my behalf.
- Employ professional and business advisors as may be appropriate, including attorneys, accountants, and real estate Agents.
- Add, delete or change beneficiaries to any financial accounts I own including insurance policies, annuities, retirement accounts, payable on death savings or checking account or other investments.
- All and any affairs related to By The Sqftage, LLC

6. Provide for the support and protection of myself, including, without limitation, provision for food, lodging, housing, medical services, recreation and travel;

7. Transfer any of my assets to the trustee of any revocable trust created by me, if such trust is in existence at the time of such transfer.

8. Subject to other provisions of this document, my Agent may disclaim any interest which might otherwise be transferred or distributed to me from any other person, estate, trust, or other entity, as may be appropriate. However, my Agent may not disclaim assets to which I would be entitled, if the result is that the disclaimed assets pass directly or indirectly to my Agent or my Agent's estate. Provided that they are not the same person, my Agent may disclaim assets which pass to my Gift Agent, and my Gift Agent may disclaim assets which pass to my Agent.

9. To exercise fiduciary responsibilities which I have a right to delegate.

I hereby grant to my Agent the full right, power, and authority to do every act, deed, and thing necessary or advisable to be done regarding the above powers, as fully as I could do if personally present and acting.

Any power or authority granted to my Agent under this document shall be limited, to the extent necessary, to prevent this Power of Attorney from causing, (i) my income to be taxable to my Agent, or (ii) my Agent to have any incidents of ownership with respect to any life insurance policies that I may own on the life of my Agent.

My Agent shall not be liable for any loss that results from a judgment error that was made in good faith. A Successor Agent shall not be liable for acts of a prior Agent.

No person who relies in good faith on the authority of my Agent under this instrument shall incur any liability to me, my estate or my personal representative. I authorize my Agent to indemnify and hold harmless any third party who accepts and acts under this document.

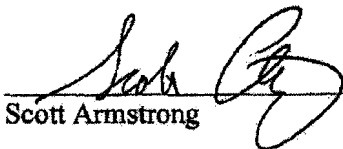
If any part of any provision of this instrument shall be invalid or unenforceable under applicable law, such part shall be ineffective to the extent of such invalidity only, without in any way affecting the remaining parts of such provision or the remaining provisions of this instrument.

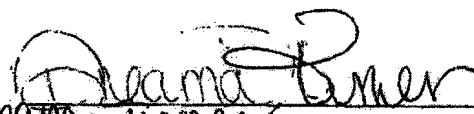
My Agent shall be entitled to reasonable compensation for any services provided as my Agent. My Agent shall be entitled to reimbursement of all reasonable expenses incurred as a result of carrying out any provision of this Power of Attorney.


My Agent shall provide an accounting for all funds handled and all acts performed as my Agent as required under state law or upon my request or the request of any authorized personal representative, fiduciary or court of record acting on my behalf.

This Power of Attorney shall become effective immediately, and shall not be affected by my disability or lack of mental competence, except as may be provided otherwise by an applicable state statute. This is a Durable Power of Attorney. This Power of Attorney shall continue effective until my death.

Dated: April 8<sup>th</sup>, 2013.

  
\_\_\_\_\_  
Scott Armstrong

Witness Signature:   
Name: Deanna Turner  
City: Scottsdale  
State: AZ

Witness Signature:   
Name: JOSEPH JAMES  
City: SCOTTSDALE  
State: AZ

STATE OF Arizona,  
COUNTY OF Maricopa, ss:

The foregoing instrument was acknowledged before me this 8 day of  
April, 2013 by Scott Armstrong, who is personally known to me or who  
has produced drivers license as identification.



Ruth A Morgan  
Signature of person taking acknowledgment

Ruth A Morgan  
Name typed, printed, or stamped

1 **BERK & MOSKOWITZ, P.C.**  
2 **14220 N. Northsight Blvd.**  
3 **Suite 135**  
4 **Scottsdale, Arizona 85260**  
5 **Telephone (480) 607-7900**  
6 **Facsimile (480) 607-7300**  
7 **Kent@BerkMoskowitz.com**

8 Kent S. Berk, #014336  
9 Attorneys for Plaintiff

**COPY**

**DEC 19 2013**



**NOTARIAL PUBLIC**  
**DEAN W. CLARK**

10 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**  
11 **IN AND FOR THE COUNTY OF MARICOPA**

12 **SCOTT ARMSTRONG,**

13 Plaintiff,

14 vs.

15 **DUKE RODRIGUEZ; SOLD BY**  
16 **GROUP, LLC, an Arizona limited**  
17 **liability company,**

18 Defendants.

**NO. CV2013-055265**

**PLAINTIFF'S CERTIFICATE RE:**  
**COMPULSORY ARBITRATION**

**(Not Subject To)**

19 The undersigned certifies that he knows the dollar limits and any other limitations  
20 set forth by the local rules of practice for the applicable superior court, and further  
21 certifies that this case is not subject to compulsory arbitration, as provided by Rules 72  
22 through 76 of the Arizona Rules of Civil Procedure.

23 **BERK & MOSKOWITZ, P.C.**

24 By:

25 **Kent S. Berk**  
26 **14220 N. Northsight Blvd., Suite 135**  
27 **Scottsdale, Arizona 85260**  
28 *Attorneys for Plaintiff*