

Refresh Funding, LLC, a Florida Limited Liability Company

Plaintiff,

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA

CASE NO.:

GENERAL JURISDICTION DIVISION

vs.

The Bien- Aime's Family, LLC, a Florida Limited Liability Company; Philippe Bien-Aime; Unknown Tenant in Possession #1; Unknown Tenant in Possession #2,

Defendant(s)

\_\_\_\_\_/

**COMPLAINT TO FORECLOSE MORTGAGE AND FOR OTHER FORMS OF RELIEF**

COMES NOW, the Plaintiff, Refresh Funding, LLC, a Florida limited liability company, (hereinafter known as "Plaintiff"), by and through its undersigned attorney, and who hereby files this Complaint to Foreclose a Mortgage and for other forms of relief against the following Defendants: The Bien-Aime's Family LLC, a Florida limited liability company; Philippe Bien-Aime; Unknown Tenant in Possession #1, Unknown Tenant in Possession #2, and alleges:

1. This is an action to foreclose a mortgage together with other forms of relief regarding real property (hereinafter referred to as "subject property") located and situated in MIAMI-DADE COUNTY, FLORIDA.

**PARTIES, JURISDICTION AND VENUE**

2. Count I of this Complaint is an action to foreclose the Mortgage as more particularly described below. Count II is an action for Damages that exceed \$15,000.00 based upon the Breach of corresponding Promissory Note. Count III is an action to enforce its

Assignments of Leases and Rents. Count IV is an action to enforce Guaranty.

3. Plaintiff(s), REFRESH FUNDING, LLC, a Florida limited liability Company, lent monies to THE BIEN-AIME'S FAMILY LLC, which encumbers the real property which forms the basis of this action as more fully set forth below.

4. Defendant, The Bien-Aime's Family LLC, is a Florida limited liability company and is located in MIAMI-DADE COUNTY, FLORIDA, with its principal place of business located at 70 NE 134<sup>TH</sup> Street, North Miami, FL 33161. Its Registered Agent is Philippe Bien-Aime, 531 NE 133<sup>RD</sup> Street, North Miami, FL 33161.

5. Upon information and belief, Defendant, Philippe Bien-Aime, is an individual residing in Miami-Dade County, Florida and is otherwise *sui juris*.

6. Defendants, UNKNOWN TENANTS IN POSSESSION #1 and UNKNOWN TENANTS IN POSSESSION #2, may reside at or are in possession of the real property encumbered by the Mortgage at issue.

7. This Court has jurisdiction over the subject matter herein and venue is proper in Miami-Dade County, Florida, because the real property, which is the subject matter of this action, is located in Miami-Dade, Florida and is legally described as:

LOT 9, BLOCK 30, BREEZESWEPT ESTATES 2<sup>ND</sup> ADDITION, ACCORDING TO THE MAP OR PLAT THEREOF, AS RECORDED IN PLAT BOOK 65, PAGE(S) 15, OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA.

Property Addresses: 70 NE 134<sup>TH</sup> STREET, N. MIAMI, FL 33161

#### COUNT I – MORTGAGE FORECLOSURE

The Plaintiffs incorporate paragraphs 1 through 7 above as if fully set forth herein.

8. On June 22, 2018, Defendant(s), THE BIEN-AIME'S FAMILY, LLC, a Florida Limited Liability Company, executed and delivered a Promissory Note to Refresh Funding,

LLC, a Florida limited liability Company, and a Mortgage, (hereinafter the "Mortgage") in the principal amount of \$200,000.00 securing repayment and performance of monies funded by REFRESH FUNDING, LLC. The Promissory Note is attached hereto and incorporated herein as Exhibit "A."

9. The Mortgage was recorded on June 30, 2018, in Official Records Book 31037, Page 2347 of the Public Records of Miami-Dade County, Florida. The Mortgage is attached hereto and incorporated herein as Exhibit "B."

10. The Plaintiff, REFRESH FUNDING, LLC, originated the loan that forms the basis of this action and therefore owns and holds both legal and equitable title of the Promissory Note and Mortgage and is otherwise legally entitle to enforce same.

11. Prior to filing the instant action, the Plaintiff, owned and continues to own the loan documents that form the basis of this action, which includes the Mortgage and Promissory Note sued upon, with all rights incident thereto.

12. The property is owned by the Defendant, The Bien-Aime's Family, LLC, a Florida Limited Liability Company, who is otherwise in possession by virtue of the Warranty Deed, dated February 28, 2014, and recorded on March 13, 2014, in Official Records Book 29065, Page 2003, of the Public Records of Miami-Dade County, Florida, which is attached hereto as EXHIBIT "C"

13. The Defendant, The Bien-Aime's Family, LLC, a Florida Limited Liability Company, has defaulted under the terms of the Mortgage and Promissory Note.

14. All conditions precedent to the acceleration of this Mortgage and Promissory Note and to foreclose on the Mortgage have been fulfilled or have occurred.

15. The Plaintiff declares a default under the Mortgage and Promissory Note and declares the full amount payable under the Mortgage and Note to be due.

16. The Defendant, The Bien-Aime's Family, LLC, a Florida Limited Liability Company, owes \$200,000.00 together with default interest since June 1, 2019 together with late charges, all reasonable costs and advancements including title search expenses for ascertaining necessary parties and encumbrances, and for reasonable attorneys' fees, less any interim payments.

17. Defendants, UNKNOWN TENANT IN POSSESSION #1 and UNKNOWN TENANT IN POSSESSION #2, who may be residing in the property sought to be foreclosed under an unrecorded lease, may claim an inferior interest in the property sought to be foreclosed. However, any interests of UNKNOWN TENANT IN POSSESSION #1 and UNKNOWN TENANT IN POSSESSION #2 are inferior to the interest of the Plaintiff.

18. The Plaintiff has engaged the undersigned law firm to represent it in this action and is obligated to pay a reasonable Attorney's fee for services rendered. The Plaintiff is entitled to recover its reasonable attorney's fees and costs pursuant to the Promissory Note sued upon.

**WHEREFORE**, the Plaintiff demands judgment foreclosing the Mortgage, together with all advancements, interests, costs, reasonable attorneys' fees and the like, and, if the proceeds of the sale are insufficient to pay the amounts owing to the Plaintiff, the Plaintiff reserves the right to seek a deficiency judgment together with such further relief that this Court deems just and proper.

### **COUNT II - BREACH OF PROMISSORY NOTE**

The Plaintiffs incorporate paragraphs 1 through 18 above as if fully set forth herein.

19. On June 22, 2019, Defendant(s), THE BIEN-AIME'S FAMILY, LLC, a Florida limited liability company, executed and delivered a Promissory Note to REFRESH FUNDING, LLC, a Florida limited liability Company, together with a Mortgage in the principal amount of \$200,000.00 securing repayment and performance of monies funded by REFRESH FUNDING,

LLC, a Florida limited liability company and a Mortgage. The Note is attached hereto and incorporated herein as Exhibit "A."

20. That Plaintiff is the owner and holder of the loan and promissory note that forms the basis of this action as more fully set forth above.

21. Pursuant to the Loan Documents, an event of default includes the Borrower's failure to pay when due any amounts required by the Loan Documents in addition to the failure to pay real estate taxes and to satisfying the outstanding indebtedness at maturity.

22. The Defendant, THE BIEN-AIME'S FAMILY, LLC, a Florida limited liability company, failed to make that certain payment on June 1, 2019 further failing to satisfy its indebtedness upon maturity.

23. Plaintiff has made demand for full payment on the unpaid Promissory Note. Notwithstanding the demand, the Defendant has not paid the amounts due and owing to Plaintiff under the Note.

24. That all conditions precedent to the acceleration of this Mortgage and Promissory Notes and to foreclose on the Mortgage has been fulfilled, have occurred, or have been waived.

25. The Plaintiff declares a default under the Mortgage and Promissory Note, and the full amount payable under the Note to be due.

26. As of June 1, 2019, the Plaintiff is now owed \$200,000.00 together with default interest, late charges, all reasonable costs and advancements including title search expenses for ascertaining necessary parties and encumbrances, and for reasonable attorney's fees, less any interim payments.

27. The Plaintiff has engaged the undersigned law firm to represent it in this action and is obligated to pay a reasonable fee for services rendered. The Plaintiff is entitled to recover its reasonable attorney's fees and costs pursuant to the note sued upon

WHEREFORE, the Plaintiff demands judgment for damages together with all advancements, interests, costs, reasonable attorney's fees and the like, and for such further relief that this Court deems just and proper.

**COUNT III: ACTION TO ENFORCE ASSIGNMENT OF LEASES AND RENTS**

The Plaintiff incorporates paragraphs 1 – 25 and 26-27 above as if fully set forth herein.

28. Plaintiff is the owner and holder of that mortgage that forms the basis of this action and which is attached hereto and incorporated herein. See Paragraph 26 of the Mortgage attached hereto as Exhibit "B".

29. The Assignment of Rents provision as set forth in the mortgage encumbers the following legally described real property that forms the basis of this action to wit:

LOT 9, BLOCK 30, BREEZESWEPT ESTATES 2<sup>ND</sup> ADDITION, ACCORDING TO THE MAP OR PLAT THEREOF, AS RECORDED IN PLAT BOOK 65, PAGE(S) 15, OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA.

Property Addresses: 70 NE 134<sup>TH</sup> STREET, N. MIAMI, FL 33161

32. It is undisputed that that the Assignment of Leases and Rents provision created an interest in the subject real property and was given in order to induce the Plaintiff to make the loan.

33. Pursuant to the Assignment of Rents provision, the Defendant/Borrower granted a lien upon the rents and assigned and transferred to Plaintiff all of its right, title, and interest in all leases and tenancies.

34. The Assignment still remains in full force and effect because the Note remains unpaid, nor has the Assignment been voluntarily released.

35. As more fully set forth above, the Defendant has defaulted under the terms of the Mortgage and Note.

36. As a result of Defendant's default, the Defendant has consented to the enforcement of the terms of the assignment by the Plaintiff.

37. It is undisputed that the Promissory Note is in default due to the Defendant's failure to pay as agreed and as more specifically set forth above.

38. As a result of the Defendant's undisputed default, the Plaintiff is entitled to enforce the Assignment of Leases and Rents provision of the mortgage and have all rents, leases, and profits collected from the subject property paid directly to Plaintiff, or in the alternative, to have them paid into the Court Registry in accordance with Florida Statute §697.07.

39. In addition, the Assignment grants further rights to the Plaintiff as set forth in the mortgage.

40. The loan documents and the Assignment contains an attorney's fees provision, pursuant to which Defendant is obligated to pay the Plaintiff's attorney's fees and costs of this action.

WHEREFORE, the Plaintiff demands that this Court enter an order setting an expedited hearing, as provided under Florida Statute §697.07(6), and after the hearing, order the Defendant to deposit into the Court Registry all rents, issues, and profits collected from the subject of real property. Alternatively, Plaintiff reserves the right to assert and enforce all other forms of relief as set forth in the Assignment of Leases and Rents, and for such other and further relief as this Court deems just and proper.

#### **COUNT IV – ACTION TO ENFORCE GUARANTY**

The Plaintiff incorporate paragraphs 1 – 18 above as if fully set forth herein.

41. This is an action for damages in excess of \$15,000.00, exclusive of attorney's fees, interests and costs.

42. That contemporaneously with the loan documents as set forth above, the Defendant, Philippe Bien-Aime, executed that certain Guaranty given to Plaintiff, REFRESH FUNDING, LLC, a Florida limited liability Company, as additional collateral to secure repayment of the loan that forms the basis of this action. See a true and correct copy of the Guaranty attached hereto and incorporated herein as Plaintiff's Exhibit "D".

43. It is undisputed that the Plaintiff now holds the rights to enforce the Guaranty as set forth above.

44. Under the Defendant's, Philippe Bien-Aime, Guaranty dated June 22, 2018 absolutely and unconditionally guaranteed THE BIEN-AIME'S FAMILY, LLC'S payment and performance under the loan documents.

45. The Defendant, Philippe Bien-Aime, has defaulted under the Loan Documents pursuant to THE BIEN-AIME'S FAMILY, LLC'S failure to make that certain payment on June 1, 2019 and further failing to satisfy its indebtedness upon maturity.

46. Plaintiff has made demand for full payment on the unpaid Note, although not required to do so. Notwithstanding the demand, the Defendant, THE BIEN-AIME'S FAMILY, LLC'S has not paid the amounts due and owing to Plaintiff under the Note and Guaranty.

47. The Plaintiff declares a default under the Mortgage, Promissory Note and Guaranty and the full amount payable under the Note to be due.

48. As of June 1, 2019, the Plaintiff is now owed \$200,000.00 together with default interest, late charges, all reasonable costs and advancements including title search expenses for

ascertaining necessary parties and encumbrances, and for reasonable attorneys' fees, less any interim payments.

49. Philippe Bien-Aime, has defaulted under the Guaranty by failing to pay all amounts owed by THE BIEN-AIME'S FAMILY LLC under the loan documents and by failing to perform all obligations under the loan documents.

50. That the Guaranty contains an attorney's fee and provision pursuant to which Philippe Bien-Aime is obligated to pay attorney's fees and costs of this action.

51. The Plaintiff has engaged the undersigned law firm to represent it in this action and is obligated to pay a reasonable fee for services rendered. The Plaintiff is entitled to recover its reasonable attorney's fees and costs pursuant to the note sued upon

WHEREFORE, the Plaintiff demands judgment for damages together with all advancements, interests, costs, reasonable attorneys' fees and the like, and for such further relief that this Court deems just and proper.

Dated: This 9th day of December, 2019.

/s/John L. Penson

John Penson, Esquire

Bar No.: 111686

John L. Penson, P.A.

1900 Sunset Harbour Dr.

Annex-2<sup>nd</sup> Floor

Miami Beach , FL 33139

Primary Email: [pensonservice@gmail.com](mailto:pensonservice@gmail.com)

Secondary Email: [john@pensonlaw.org](mailto:john@pensonlaw.org)

Tel: (305) 532-1400

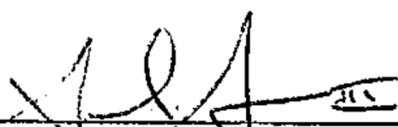
Fax: (305) 675-6390

VERIFICATION

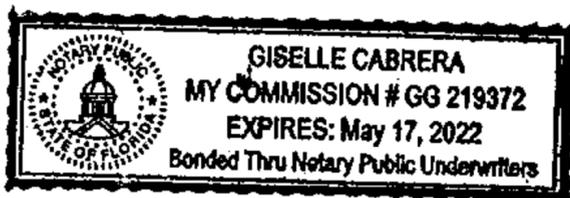
STATE OF FLORIDA                    }  
  } ss  
COUNTY OF MIAMI DADE         }

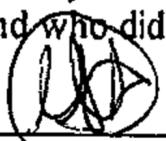
I, Sam Soriero, as Manager of the Plaintiff, REFRESH FUNDING, LLC, a Florida limited liability Company, declare that I have read the foregoing Verified Complaint and the facts alleged therein are true and correct to the best of my knowledge and belief.

FURTHER AFFIANT SAYETH NAUGHT.

By:   
Name: Sam Soriero  
Title: Manager

The foregoing instrument was sworn to and subscribed before me this 9<sup>th</sup> day of December, 2019, by Sam Soriero, as Manager of the Plaintiff, REFRESH FUNDING, LLC, a Florida limited liability Company [] who is personally known to me or [] produced as identification and who did take an oath.



  
Notary Public  
Giselle Cabrera  
Print Name

My commission expires: May 17, 2022

# Exhibit "A"

**PROMISSORY NOTE**

\$200,000.00 (U.S.)

June 22nd, 2018  
North Miami, Florida

FOR VALUE RECEIVED, on or before the maturity date (hereinafter defined), the undersigned, jointly and severally as principals and not as accommodation makers The Bien-Aime's Family LLC, a Florida Limited Liability Company ("Borrower") promise to pay to the order of REFRESH FUNDING, LLC, a Florida limited liability company, with a primary business address located at 1680 Michigan PH 4, Miami Beach Florida 33139 (hereinafter called the "Lender" or, with its successors and assigns, the "Holder"), or at such other place as the Holder hereof from time to time may designate in writing, the principal sum Two-Hundred Thousand Dollars and No Cents (\$200,000.00) (U.S.), with interest computed at the rate of (13.00%) Percent per annum from the effective date of this Note until maturity as hereinafter provided.

During the term on this note, Borrower shall pay to Lender prorated amount for the month of June, 2018 in the amount of \$649.98 due at Closing. Monthly payments of interest only in the amount of \$2,166.67 shall be due and payable commencing on August 1, 2018 and continuing on the 1st day of each succeeding month thereafter until the Maturity Date as defined below.

The unpaid principal and all accrued interest thereon, if any, shall be due and payable in full on June 30, 2019 (the "Maturity Date") if not previously repaid as provided herein or in the Loan Documents (hereinafter defined).

The Holder may apply any and all amounts received by it for application to the loan evidenced hereby in such order and manner as the Holder in its discretion may determine. Any payment may be applied at the option of the Holder to the repayment of any sums advanced by the Holder for payment of taxes, assessments, insurance premiums, or for keeping, maintaining and/or protecting the property subject to the Loan Documents (hereinafter defined). If any of the aforesaid monthly installments are not paid on the date same are due and payable and Borrower's receipt from Lender of written notice thereof, the interest rate shall thereafter be increased to the highest rate permitted by law (the "Default Rate") so long as such installment remains unpaid and the Holder hereof, at its option, and in addition to any other remedies available to it, may charge the undersigned a "late charge" of ten percent (10%) of each unpaid monthly installment and/or sum if not received by the holder hereof within Five (5) days after the installment is due. Provided, however, that if the 5-day period ends on a weekend or holiday, such period is extended to the next business day. The "late charge" is incurred to reimburse the Holder hereof for the extra expense involved in handling delinquent payments.

The undersigned may prepay this Note, in full or in part, at any time without prepayment penalty.

Upon the sale and transfer of all of the property located at 70 NE 134th St. N. Miami, Fl. 33161 (the "Property") located in Miami-Dade County, Florida and more particularly described in Exhibit A to the Mortgage and Security Agreement executed by the Borrower in favor of Lender of even date herewith (the "Mortgage") or any of the collateral encumbered by the Mortgage, this Note shall become immediately due and payable, together with any applicable prepayment penalty as provided above, except as otherwise specifically set forth in the Loan Documents.

The terms, covenants, conditions, stipulations and agreements contained in the Loan Documents are hereby made a part of this Note to the same extent as though the Loan Documents were fully set forth herein.

The undersigned hereby expressly agree that time is of the essence hereof, and if the undersigned fail to pay any installment of principal and interest on the date same is due and payable hereunder, or fail to pay the entire indebtedness hereof when due, or if an Event of Default occurs under the Loan Documents after expiration of any applicable grace, notice or cure period or if a default occurs under any other note, guaranty, mortgage or other obligation of the undersigned to the Lender, the unpaid principal balance hereof (including any amounts advanced by the Holder in accordance with the Loan Documents and not repaid) with all accumulated interest thereon shall, at the option of the Holder hereof, become immediately due and payable without notice or demand, such notice and demand being hereby expressly waived, and shall thereafter until this Note is paid in full bear interest at the Default Rate.

The undersigned shall pay on demand any and all costs, fees and expenses (including reasonable attorney fees) incurred by the Holder in connection with the exercise or enforcement of any of its rights, powers or remedies pursuant hereto or to the Loan Documents or to otherwise obtain judicial relief in connection with the transactions which are the subject of this Note or the Loan Documents, whether or not litigation has been commenced (including in all trial, bankruptcy and appellate proceedings), and all such amounts shall bear interest at the Default Rate and be secured by the Loan Documents.

The makers, endorsers, sureties and guarantors of this Note waive demand, presentment, protest, notice of dishonor and any other type of notice of or with respect to this Note, including notice of any failure to perform or default of or by any person obligated hereon.

The loan evidenced hereby is for commercial or business purposes, and is not intended and will not be used for personal, family, household, educational, consumer or agricultural purposes.

This Note is governed by the laws of the State of Florida, and each of the undersigned hereby consents to personal jurisdiction in any state or federal court in the State of Florida and to venue in any state or federal court in Miami-Dade, Florida in connection with any claim, allegation, cause of action or legal proceeding relating in any way to this Note, the Mortgage or any other document or instrument now or hereafter evidencing or securing the loan evidenced by this Note or otherwise executed in connection therewith (the Note, Mortgage and any other document or instrument now or hereafter evidencing or securing the loan evidenced by this Note or otherwise executed in connection therewith being referred to collectively herein as the "Loan Documents") or any security or collateral related thereto.

Notwithstanding any provision in this Note or any of the Loan Documents, the total liability for payments of interest and payments in the nature of interest, including all charges, fees, exactions, or other sums which may at any time be deemed to be interest, shall not exceed the limit imposed by the usury laws of the State of Florida (the "Maximum Rate"). In the event the total liability for payments of interest and payments in the nature of interest, including, without limitation, all charges, fees, exactions or other sums which may at any time be deemed to be interest, which for any month or other interest payment period exceeds the Maximum Rate, all sums in excess of those lawfully collectible as interest for the period in question (and without further agreement or notice by, among or to the Lender or any of the undersigned) shall be applied to the reduction of the principal balance, with the same force and effect as though the undersigned had specifically designated such excess sums to be so applied to the reduction of the principal balance and the Lender had agreed to accept such sums as a premium-free prepayment of principal; provided, however, that the Lender may, at any time and from time to time, elect, by notice in writing to the undersigned, to waive, reduce or limit the collection of any sums in excess of those lawfully collectible as interest rather than accept such sums as a

prepayment of the principal balance. The undersigned do not intend or expect to pay nor does the Lender intend or expect to charge, accept or collect any interest under this Note or under the Loan Documents greater than the Maximum Rate.

If any term, clause or provision of this Note shall be determined by any court to be illegal, invalid or unenforceable, the illegality, invalidity or unenforceability of such term, clause or provision shall not affect the legality, validity or enforceability of the remainder thereof or of any other term, clause or provision hereof, and this Note shall be construed and enforced as if such illegal, invalid or unenforceable term, clause or provision had not been contained herein, and all covenants, obligations and agreements shall be enforceable to the full extent permitted by law.

The obligations of the undersigned under this Note shall be absolute and unconditional and shall remain in full force and effect until the entire principal, interest, penalties, premiums and late charges, if any, on this Note and all additional payments, if any, due pursuant to the Loan Documents shall have been paid and, until such payment has been made, shall not be discharged, affected, modified or impaired upon the happening from time to time of any event. Without limiting the foregoing, it is the intention of the parties that any modification, limitation, or discharge of the obligations of any of the undersigned arising out of or by virtue of any bankruptcy, reorganization or similar proceeding for relief of debtors under Federal or state law shall not affect, modify, limit or discharge the liability of any other co-maker in any manner whatsoever, and this Note shall remain and continue in full force and effect and shall be enforceable against such co-maker to the same extent and with the same force and effect as if any such proceedings had not been instituted; and all other co-makers shall be jointly and severally liable to the Lender under this Note for the full amount payable hereunder irrespective of any modification, limitation, or discharge of the liability of any co-maker that may result from any such proceeding. The obligations of the undersigned to the Lender pursuant hereto include and apply to any payment or payments received by Lender on account of the liabilities evidenced hereby, which payment or payments or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside and/or required to be paid to a trustee, receiver, or any other person or entity under any bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance or similar law, common law or equitable doctrine. If any action or proceeding seeking such repayment is pending or, in Lender's sole judgment, threatened, this Note and any security interest therefor shall remain in full force and effect notwithstanding that the undersigned may not then be obligated to Lender. The joint and several obligations of the undersigned to Lender and this Note, and any security therefor, shall remain in full force and effect (or be reinstated) until Lender has received payment in full of all amounts payable to it pursuant to this Note or any other Loan Document and the expiration of any applicable preference or similar period pursuant to any bankruptcy, insolvency, reorganization, moratorium or similar law, or at law or equity, without any claim having been made before the expiration of such period asserting an interest in all or any part of any payment(s) received by Lender.

No set-off, counterclaim, reduction or diminution of any obligation, or any defense of any kind or nature, which any of the undersigned has or may have against any other co-maker shall affect, modify or impair its obligations hereunder.

No extension, postponement, forbearance, delay or failure on the part of the holder of this Note in the exercise of any power, right or remedy hereunder or any other instrument executed in connection herewith or at law or in equity shall operate as a waiver thereof, nor shall a single or partial exercise of any power or right preclude other or further exercise thereof or the exercise of any other power, right or remedy. All rights, powers and remedies of the Holder shall be cumulative and may be exercised simultaneously or from time to time in such order and manner as the Holder in its sole discretion may elect.

*[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]*

[*Signature page follows*]

THE UNDERSIGNED WAIVE THE RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING BASED UPON, OR RELATED TO, ANY ASPECT OF THE TRANSACTION IN CONNECTION WITH WHICH THIS DOCUMENT IS BEING GIVEN OR ANY DOCUMENT EXECUTED OR DELIVERED IN CONNECTION WITH SUCH TRANSACTION. THIS WAIVER IS KNOWINGLY, INTENTIONALLY AND VOLUNTARILY MADE BY THE UNDERSIGNED AND THE UNDERSIGNED ACKNOWLEDGE THAT NO ONE HAS MADE ANY REPRESENTATIONS OF FACT TO INDUCE THIS WAIVER OF TRIAL BY JURY OR IN ANY WAY TO MODIFY OR NULLIFY ITS EFFECT. THE UNDERSIGNED FURTHER ACKNOWLEDGE HAVING BEEN REPRESENTED IN CONNECTION WITH THE TRANSACTION WITH RESPECT TO WHICH THIS DOCUMENT IS BEING GIVEN AND IN THE MAKING OF THIS WAIVER BY INDEPENDENT LEGAL COUNSEL, SELECTED BY THE UNDERSIGNEDS' OWN FREE WILL, AND THAT THE UNDERSIGNED HAVE HAD THE OPPORTUNITY TO DISCUSS THIS WAIVER WITH SUCH COUNSEL. THE UNDERSIGNED FURTHER ACKNOWLEDGE HAVING READ AND UNDERSTOOD THE MEANING AND RAMIFICATIONS OF THIS WAIVER PROVISION.

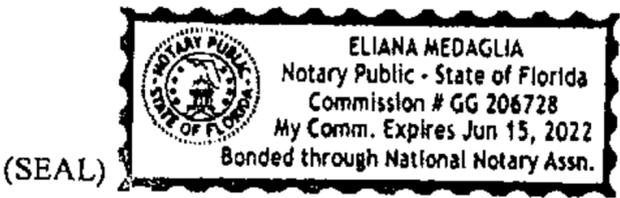
**BORROWER:**

Name: The Bien-Aime's Family LLC  
a Florida Limited Liability Company

By: [Signature]  
Philippe Bien-Aime  
Its: Managing Member

STATE OF FLORIDA  
COUNTY OF Miami-Dade

BEFORE ME, a Notary Public in and for said County and State, on this 22nd day of June, 2018, personally appeared, Philippe Bien-Aime who acknowledged that he/she did sign the foregoing instrument and that such signing was his free act and deed and the free act and deed of such companies. He/She is personally known to me or has delivered Drivers License as identification.



[Signature]  
Print Name: Eliana Medaglia  
Notary Public, State of Florida  
My Commission Expires: 6/15/22

# Exhibit "B"

Return to: (enclose self-addressed, stamped envelope

Name:

Samuel Soriero

Address:

Refresh Funding, LLC  
1680 Michigan Ave #PH-04  
Miami Beach, Florida 33139

This Instrument Prepared by:

Samuel Soriero

Address:

Refresh Funding, LLC  
1680 Michigan Ave #PH-04  
Miami Beach, Florida 33139

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### MORTGAGE AND SECURITY AGREEMENT

This Mortgage and Security Agreement is made effective June 22nd, 2018, between the mortgagor, The Bien-Aime's Family LLC, a Florida Limited Liability Company, ("Borrower(s)") and the mortgagee, Refresh Funding, LLC, a Florida Limited Liability Company ("Lender(s)").

Borrower for good and valuable considerations and also in consideration of the aggregate sum named in the Mortgage Note in the amount of \$200,000.00 (the "Note"), does hereby mortgage, grant and convey to Lender, the real property described as follows in Exhibit "A":

Together with all the improvements now or hereafter erected on the property, all fixtures, equipment and machinery now or hereafter located on the property, all landscaping now or here after growing or planted on the property, and all replacements and additions hereto; together with all easements rights-of-way, mineral, oil and gas rights, riparian and littoral rights, and all hereditaments, tenements and appurtenances now or hereafter attaching to the property; together with all rents, royalties, issues, income and profits from the property and the abstract of title to the property, which are hereby specifically assigned and pledged to Lender as additional security for the payment of the Note; all of which, together with the above-described real property, are hereinafter referred to as the "Property". Borrower covenants that Borrower is lawfully seized of the Property, that Borrower has the right to mortgage, grant and convey the Property, that Borrower shall warrant and defend the title to the Property and that the Property is free and clear of all encumbrances,

THIS IS A FIRST MORTGAGE.

The Borrower further covenants and agrees as follows

1. PAYMENT OF PRINCIPAL AND INTEREST. Borrower shall promptly pay when due the principal and interest on the indebtedness evidenced by the Note, and the principal and interest on any future advances secured by this Mortgage.

2. TAXES AND ASSESSMENTS. Borrower shall pay all taxes and assessments levied or assessed against the Property before they become delinquent, and in no event permit the Property, or any part thereof to be sold for nonpayment of taxes or assessments. Borrower shall promptly furnish to Lender, receipts evidencing such payment.

3. HAZARD INSURANCE. Borrower shall keep the improvements now existing or hereafter erected on the Property insured against loss and damage by fire, hazards included within the term "extended coverage", and flood, as well as personal liability coverage, in an amount not less than the full insurable value thereof with an insurer having an A rating or better in the A.M. Best Rating Guide. Borrower shall promptly pay all premiums for such insurance when due. All insurance policies and renewals thereof shall be in a form acceptable to Lender and shall include a standard mortgagee clause in favor of and in a form acceptable to Lender. Lender shall have the right to hold the policies and the renewals thereof and Borrower shall promptly furnish to Lender all renewal notices and all receipts of paid premiums. In the event of loss, Borrower shall give prompt notice to the insurance carrier and to Lender. Lender may make proof of loss if not made promptly by Borrower. Unless Lender and Borrower otherwise agree in writing, insurance proceeds shall be applied 30 days from the date notice is mailed by Lender to Borrower that the insurance carrier offers to settle a claim for insurance benefits. Lender is authorized to collect and apply the insurance proceeds at Lender's option either to restoration or repair of the Property or to the sums secured by this Mortgage.

4. ESCROW FOR TAXES AND INSURANCE. Lender may, at Lender's option, require Borrower to deposit with Lender, on the date of each regular payment as required by the Note, until the Note is fully paid, an amount equal to one twelfth or such proportionate share of the annual premiums for insurance and annual real and personal property taxes and assessments as estimated by the Lender to be sufficient to enable the Lender to pay such charges at least 30 days before they become due. Such deposit shall be placed by Lender in an account segregated from Lender's operating account(s) in a financial institution whose accounts are insured by the Federal Government. No interest shall be payable on such funds. Upon Lender's demand, Borrower agrees to deliver to Lenders such additional monies as are necessary to enable Lender to pay such insurance premiums, taxes and assessments when due. In the event of default in the Note or this Mortgage, Lender may apply any deposits so held as well as any return premium received from the cancellation of any insurance policy by Lender upon the foreclosure of this Mortgage to the indebtedness secured by this Mortgage.

5. MAINTENANCE AND PROTECTION OF PROPERTY. Borrower shall keep the Property in good repair and shall not commit waste or permit impairment or deterioration of the Property and shall comply with all laws and governmental regulations and rules affecting the property or its operation. If this Mortgage encumbers a unit in a condominium or in a planned unit development, Borrower shall abide by and perform all of Borrower's obligations under the documents creating or governing the condominium or the planned unit development including the payment of assessments or charges, if any. Borrower warrants and represents to Lender that: (a) the past and current use of the Property complies with all Federal, State and local environmental laws; (b) Borrower has no notice whatsoever of any violations or of the commencement or threat of any action or investigations by any governmental authority in connection with environmental matters; (c) Borrower shall comply with all present and future environmental laws and orders of any governmental authority and will take remedial action upon the discovery of any violation of environmental laws or regulations.

6. ADVANCES BY LENDER. Lender may, at Lender's option, advance money that should have been paid by Borrower in order to protect the lien or security of this Mortgage. Borrower shall repay such monies immediately upon notice by Lender to Borrower requesting payment thereof and such funds advanced by Lender

shall bear interest at the maximum rate allowed by law and shall be considered additional indebtedness of Borrower secured by this Mortgage. In no event shall such advances by Lender be deemed a waiver of Lender's right to declare this Mortgage in default

7. RIGHT OF ENTRY AND INSPECTION. Lender may make or cause to be made reasonable entries upon and inspections of the Property, provided that Lender shall give Borrower notice prior to any such inspections specifying reasonable cause for the inspection as relates to Lender's interest in the Property.

8. EXTENSIONS. Extension of time for payment or modification of amortization of the sums secured by this Mortgage or taking other additional security for payment thereof shall not affect this mortgage or the rights of Lender hereunder or operate to release, in any manner, the liability of the original Borrower and Borrower's successors in interest.

9. ATTORNEY'S FEES AND COSTS. In the event this Mortgage or the Note or any renewal or extension thereof shall be placed in the hands of any attorney for collection by reason of a default, Borrower shall pay all costs and expenses of such collection, including reasonable attorney's fees whether incurred in or out of court, in foreclosure or otherwise, including reasonable attorney's fees incurred in any appeal or appeals or incurred in any proceeding under bankruptcy or insolvency laws. If any action or proceeding shall be commenced by any person other than the holder of this Mortgage, (except an action to foreclose this mortgage or to collect the debts secured hereby), to which action or proceeding the holder of this Mortgage is made a party, or in which it shall be necessary for Lender to defend or uphold the lien of this Mortgage, all sums paid by the holder of this Mortgage for the expense of any such litigation, including reasonable attorney's fees shall be paid by the Borrower, together with interest thereon at the maximum rate allowed by law and such sums shall become additional indebtedness of Borrower secured by this Mortgage.

10. CONDEMNATION. The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of the Property, or any portion of the Property, or for conveyance in lieu of condemnation, are hereby assigned and shall be paid to Lender. Such proceeds shall be applied to the sums secured by this Mortgage, with the excess, if any, paid to Borrower.

11. DEFAULT. If Borrower shall fail to comply with any of the terms, provisions and conditions of the Prior Mortgage so as to result in default of the Prior Mortgage, such default shall constitute a default under this Mortgage. If Borrower shall: (1) consent to the appointment of a receiver trustee or liquidator of all or a substantial part of the Property, or (2) be adjudicated a bankrupt or insolvent or file a voluntary petition in bankruptcy, or admit in writing Borrower's inability to pay any of Borrower's debts as they become due; or (3) make a general assignment for the benefit of creditors; or (4) file a petition or answer seeking reorganization or arrangement with creditors, or to take advantage of any insolvency law; or (5) file an answer admitting the material allegations of a petition filed against the Borrower in any bankruptcy, reorganization or insolvency proceeding or (6) for the purpose of effecting any of the foregoing; or (7) allow the entry of any order, judgment or decree upon an application of a creditor or Borrower by a court of competent jurisdiction approving a petition seeking appointment of a receiver or trustee of all or a substantial part of the Borrower's assets and such order, judgment or decree shall continue unstayed and in effect for a period of thirty (30) consecutive days, such action shall constitute a default under this Mortgage. If any sum of money required to be paid by this Mortgage or the Note shall not be paid within five (5) days after such sum becomes due or upon Borrower's breach of any other covenant or agreement of Borrower in this Mortgage or the Note, then Borrower shall be assessed a penalty in the amount of ten (10%) percent of the amount of the principal and interest payment.

If any sum of money required to be paid by this Mortgage or the Note shall not be paid within five (5) days after such sum becomes due or upon Borrower's breach of any other covenant or agreement of Borrower in this Mortgage or the Note, such action shall constitute a default under this Mortgage. In the event of such a default, Lender may, at Lender's option, declare all of the sums secured by this Mortgage to be immediately due and payable without further demand. In such event Lender may proceed to collect such sum by foreclosure or other proceedings upon this Mortgage or by any other proper legal action. Notwithstanding any other provision of this Mortgage or the Note, all sums secured by this Mortgage shall bear interest at the maximum rate allowed by law while this Mortgage is in default.

12. WAIVER BY LENDER. The failure to insist upon strict performance of any of the provisions of this Mortgage shall not be construed as a waiver of any subsequent default of the same or similar nature. The procurement of insurance or the payment of taxes or other assessments, liens or charges by Lender shall not be a waiver of Lender's right to declare all the sums secured by this Mortgage to be immediately due and payable without further demand.

13. RECEIVER. In the event of default Lender shall be entitled to have a receiver appointed by a court to enter upon, take possession and manage the Property and to collect the rents of the property including those past due. All rents collected by the receiver shall be applied first to payment of the costs of management of the Property and collection of rents, including but not limited to receiver's fees, premiums on receiver's bonds and reasonable attorney's fees, then to the sum secured by this Mortgage. The receiver shall be liable to account only for those rents actually received.

14. CUMULATIVE REMEDIES. All remedies provided in this Mortgage are distinct and cumulative and may be exercised concurrently, independently or successively.

15. SECURITY AGREEMENT. If any portion of the Property is of a nature so that a security interest therein can be perfected under the Uniform Commercial Code ("Personalty"), this Mortgage shall also constitute a Security Agreement and Borrower agrees to join with Lender in the execution of any financing statements that may be required for the perfection or renewal of such security interest under the Uniform Commercial Code. The Personalty shall be kept in its present locations and will not be removed from the Property without the written consent of Lender, and in addition to the other remedies in the event of default provided for herein, Lender shall have, and may exercise from time to time, any and all rights and remedies of a secured party under the Uniform Commercial Code and any and all rights and remedies available to Lender under any other applicable law and, upon request or demand of Lender, Borrower shall, at Borrower's expense, assemble the Personalty and make it available to Lender at a convenient place acceptable to Lender. Lender will give Borrower reasonable notice of the time and place of any public sale of the Personalty or of the time on which any private sale and any other intended disposition is to be made. The requirements of reasonable notice shall be met if notice is mailed, postage prepaid, to the Borrower at the address of the Property, at least five (5) days before the time of the sale or disposition. Expenses of retaking, holding, preparing for sale, selling or the like, shall include, whether in judicial proceedings, including Bankruptcy court and appellate proceedings, or whether out of court, a reasonable attorney's fees and all other legal expenses incurred by Lender. Personalty shall exclude clothing, furniture, appliances, linens, china, crockery, kitchenware and personal effects of Borrower and borrower's dependents ("Household Goods") unless the Household Goods are purchased with the proceeds of the loan evidenced by this Note.

16. FUTURE ADVANCES. Borrower agrees to accept no future advances under the Prior Mortgage or any other modification or extension under the Prior Mortgage and any such future advance, extension or modification of the Prior Mortgage shall constitute a default under this Mortgage. This Mortgage shall secure any additional sum or sums advanced by Lender to or for the benefit of Borrower whether such advances are obligatory or are made at the option of the Lender or otherwise at any time within twenty years from the date of this Mortgage with interest thereon at the rate agreed upon at the time of the additional loan or advance. Such future advances and any and all renewal indebtedness shall be equally secured with and have the same priority as the original indebtedness and shall be subject to all the terms and provisions of this mortgage, whether or not such renewal or additional loan or advance is evidenced by a promissory note of the Borrower and whether or not identified by a recital that it is secured by this Mortgage. At no time shall the principal amount of the indebtedness secured by this Mortgage, not including sums advanced in accordance with this Mortgage to protect the security of the Mortgage, exceed the original amount of the Note. This provision shall not be construed to obligate Lender to make any such additional loans or advances.

17. PRIOR LIENS AND ENCUMBRANCES. With regard to any mortgage to which this Mortgage is or shall be made subordinate, Borrower shall: (a) promptly pay when due and payable, the interest, installments of principal, and all other sums and charges mentioned in and made payable by any mortgage to which this Mortgage is or shall be made subordinate (a "Prior Mortgage"); (b) promptly perform and observe all of the terms, covenants and conditions required to be performed and observed by Borrower under any Prior Mortgage, within the periods (exclusive of grace periods) provided in a Prior Mortgage, or such lesser periods (exclusive of grace periods) as are provided in this Mortgage, and do all things necessary to preserve and keep a Prior Mortgage free from default; (c) promptly notify Lender in writing of any default by Borrower in the performance or observance of any of the terms, covenants or conditions on the part of Borrower to be performed under a Note and Mortgage; (d) promptly notify Lender in writing of the receipt by Borrower of any notice (other than notices customarily sent out on a regular or periodic basis) from the mortgagee under a prior Mortgage and of any notice noting or claiming any default by Borrower in the performance or observance of any of the terms, covenants or conditions on the part of Borrower to be performed or observed under a Prior Mortgage and to promptly cause a copy of each such notice received by Borrower from the mortgagee under a Prior Mortgage to be delivered to Lender; (e) not accept or enter into any agreement whereby the holder of a prior Mortgage waives, postpones, extends, reduces or modifies the payment of any installment of principal and interest or any other item or amount required to be paid under the terms of the Prior Mortgage, or that modifies any provision of a Prior Mortgage; (f) within ten (10) days after written demand from Lender, use Borrower's best efforts to obtain from the mortgagee of a Prior Mortgage and deliver to Lender a certificate stating that a Prior Mortgage is in full force and effect, is unmodified, and that no notice of default of Lender has been served on Borrower; (g) promptly furnish to Lender upon demand, proof of payment of all items which are required to be paid by Borrower pursuant to a Prior Mortgage, and proof of payment of which is required to be given to Lender under a Prior Mortgage; (h) execute and deliver, upon demand, such instruments as Lender may deem useful or required to permit Lender to cure any default under a Prior Mortgage or to permit Lender to take such other actions as Lender considers desirable to cure or remedy the matter in default and preserve the interest of Lender in the Property. The generality of the provisions of this action relating to mortgages to which this Mortgage is or shall be made subordinate shall not be limited by other provisions of this Mortgage setting forth particular obligations of Borrower which are required of Borrower under the Prior Mortgage. Should any agreement be hereafter entered into modifying or changing the terms of this Mortgage or the Note secured hereby in any particular, the rights of the parties to such agreement shall be superior to the rights of the holder of any intervening lien, except liens to which this Mortgage is subordinated.

18. SITUS. This Mortgage shall be construed in accordance with and governed by the laws of the State of Florida and the exclusive venue for any action arising out of this agreement shall be the courts of Miami-Dade County, Florida.

19. PARTIAL INVALIDITY. If any provision of this Mortgage is held to be invalid or unenforceable, all of the other provisions shall nevertheless continue in full force and effect.

20. NOTICES. Service of all notices under this Mortgage on Borrower shall be sufficient if given personally or mailed to Borrower, postage prepaid, at the address of the Property or at such other address as Borrower may furnish to Lender in writing.

21. CAPTIONS. Captions contained in this Mortgage are inserted only as a matter of convenience or for reference and in no way define, limit, extend, or describe the scope of this Mortgage or the intent of any provision hereof.

22. DUE ON SALE. This Mortgage and the Note secured hereby shall be immediately due and payable upon the conveyance or sale of any interest in the Property.

23. WAIVER OF JURY TRIAL. Borrower waives all rights to trial by jury in any action, proceeding or counterclaim brought by anyone arising out of or connected with this Mortgage or the Note.

24. SALE OF NOTE. The Note together with the Mortgage may be sold one or more times without prior notice to Borrower. A sale may result in a change of Lender one or more times without prior notice to Borrower. A sale may result in a change in the entity (known as "Loan Servicer") that collects the monthly payments due under the Note and Mortgage. If there is a change of the Loan Servicer, Borrower will be given written notice of the change in accordance with applicable law. The notice will state the name and address of the new Loan Servicer and the address to which payments should be made. The notice will also contain any other information required by applicable law.

25. HAZARDOUS SUBSTANCES. Borrower shall not cause or permit the presence, use disposal, storage, or release of any Hazardous Substances on or in the Property. Borrower shall not do, nor allow anyone else to do, anything affecting the Property that is in violation of any Environmental Law. The preceding two sentences shall not apply to the presence, use or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal uses and to maintenance of the Property. Borrower shall promptly give Lender written notice of any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which Borrower has actual knowledge. If Borrower learns, or is notified by any governmental or regulatory authority, that any removal or other remediation of any Hazardous Substance affecting the Property is necessary, Borrower shall promptly take all necessary remedial actions in accordance with Environmental Law at Borrower's sole cost and expense. As used in this paragraph, "Hazardous Substances" are those substances defined as toxic or hazardous substances by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials. As used in this paragraph, "Environmental Law" means; Federal and Florida laws that relate to health, safety or environmental protection. Borrower indemnifies Lender against any and all liabilities, losses, damages, injuries and expenses of any kind, including, by example but without limitations, engineer's and professional fees, soil tests and chemical analysis, and attorney fees and costs, incurred by Lender in any way relating to the use, handling, storage, transportation or disposal of Hazardous Substances on the Property.

26. ASSIGNMENT OF RENTS. Borrower hereby assigns all of the rents, profits, and income from the subject property as additional security for this indebtedness which shall constitute a lien on said rents or income upon default by Borrower under the terms of the agreement. In the event of a default of this agreement, Borrower agrees to pay all of the rents and income from the subject property to Lender or place same into the Registry of the Clerk of the Circuit Court in the county where the property is located.

*[Remainder of Page Left Blank Intentionally.]*

IN WITNESS WHEREOF, Borrower has executed this Mortgage the day and year first written above.

WITNESSES: as to all

Signature: [Handwritten Signature]  
Print Name Eliana Medaglia

Signature: [Handwritten Signature]  
Print Name Nicole D'Arizzo

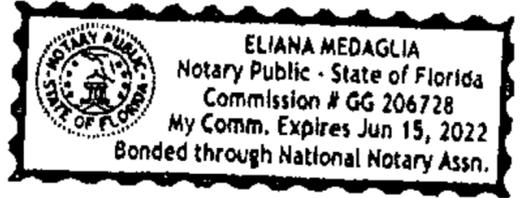
BORROWER:  
  
**The Bien-Aime's Family LLC**  
a Florida Limited Liability Company

By: [Handwritten Signature]  
Philippe Bien-Aime  
Its: Managing Member

STATE OF FLORIDA )  
COUNTY OF Miami-Dade )

The foregoing instrument was acknowledged before me this 22nd day of June, 2018 by Philippe Bien-Aime, who is personally known to me or who has produced Drivers License as identification.

(SEAL)



(SEAL)

[Handwritten Signature]  
Print Name: Eliana Medaglia  
Notary Public, State of Florida

My Commission Expires: 6/15/22

**Exhibit "A"**

**(LEGAL DESCRIPTION)**

That certain property is situated in the County of Miami-Dade, State of Florida and is described as follows:

Lot 9, Block 30, Breezeswept Estates 2nd Addition, according to the map or plat thereof, as recorded in Plat Book 65, Page(s) 15, of the Public Records of Miami-Dade County, Florida.

APN: 06-21-25-027-1100

Property Commonly Known As: 70 NE 134th St. N. Miami, Fl. 33161

# **Exhibit "C"**

THIS INSTRUMENT PREPARED BY AND RETURN TO:  
Sarnia Michel  
Title Experts of South Florida, Inc.  
470 N.E. 13th Street  
Fort Lauderdale, Florida 33304  
Our File No.: 13-138  
Property Appraisers Parcel Identification (Folio) Number: 06-2125-027-1100  
State of Florida Deed Documentary Stamps paid on this transaction: \$840.00

.....SPACE ABOVE THIS LINE FOR RECORDING DATA.....

## WARRANTY DEED

THIS WARRANTY DEED, made the 28<sup>th</sup> day of February, 2014 by Felipe Pulido, a widower, whose post office address is 70 NE 134 St., North Miami, FL 33161 herein called the Grantor, to The Bien-Aime's Family LLC, a Florida Limited Liability Company whose post office address is 531 NE 133 Street, North Miami, FL 33161, hereinafter called the Grantee:

*(Wherever used herein the terms "Grantor" and "Grantee" include all the parties to this instrument and the heirs, legal representatives and assigns of individuals, and the successors and assigns of corporations)*

**WITNESSETH:** That the Grantor, for and in consideration of the sum of TEN AND 00/100'S (\$10.00) Dollars and other valuable considerations, receipt whereof is hereby acknowledged, hereby grants, bargains, sells, aliens, remises, releases, conveys and confirms unto the Grantee all that certain land situate in MIAMI-DADE County, State of Florida, viz.:

Lot 9, Block 30, of BREEZESWEPT ESTATES SECOND ADDITION, according to the Plat thereof, as recorded in Plat Book 65, Page 15, of the Public Records of Miami-Dade County, Florida.

Subject to easements, restrictions and reservations of record and taxes for the year 2014 and thereafter.

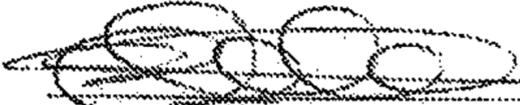
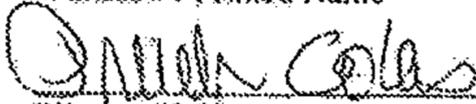
TOGETHER, with all the tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining.

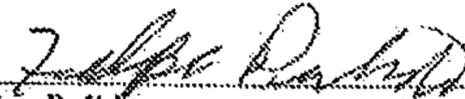
TO HAVE AND TO HOLD, the same in fee simple forever.

AND, the Grantor hereby covenants with said Grantee that the Grantor is lawfully seized of said land in fee simple; that the Grantor has good right and lawful authority to sell and convey said land, and hereby warrants the title to said land and will defend the same against the lawful claims of all persons whomsoever; and that said land is free of all encumbrances, except taxes accruing subsequent to December 31, 2013.

IN WITNESS WHEREOF, the said Grantor has signed and sealed these presents the day and year first above written.

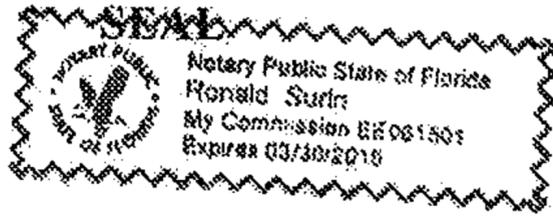
Signed, sealed and delivered in the presence of:

  
Witness #1 Signature  
Sheryl Leskie-Sutt  
Witness #1 Printed Name  
  
Witness #2 Signature  
Priscila Colas  
Witness #2 Printed Name

  
Felipe Pulido

**STATE OF FLORIDA  
COUNTY OF BROWARD**

The foregoing instrument was acknowledged before me this 28<sup>th</sup> day of February, 2014, by Felipe Pulido who is personally known to me or has produced FDL as identification and  did  did not take an oath.



*[Handwritten Signature]*  
Notary Public  
*[Handwritten Signature]*  
Printed Notary Name

My commission expires:

# **Exhibit "D"**

**UNCONDITIONAL AND IRREVOCABLE  
GUARANTY OF PAYMENT**

**DATE:** June 22nd 2018

**BORROWER:** The Bien-Aime's Family LLC

**LENDER:** Refresh Funding, LLC

**PROPERTY:** 70 NE 134th St. N. Miami, Fl. 33161 (the "Property")

**NOTE:** That certain Promissory Note dated June 22nd 2018 executed by Borrower in favor of Lender in the principal amount of Two-Hundred Thousand Dollars and No Cents (\$200,000.00) ("Note")

**MORTGAGE:** That certain Mortgage and Security Agreement dated executed by Borrower in favor of Lender, encumbering the Property

In consideration of the sum of TEN (\$10.00) DOLLARS cash in hand paid and other valuable considerations, and to induce Lender to extend credit to Borrower, the undersigned, jointly and severally if more than one (herein called the "undersigned"), which term shall include the singular and the plural, as the context requires or admits, does hereby irrevocably guarantee to Lender and to Lender's endorsees, transferees, successors or assigns of either this Guaranty or any of the obligations secured hereunder, or both, the prompt payment of all amounts due under the Note given by Borrower and payable to Lender, including any renewals, modifications, or extensions thereof; the prompt payment and performance of all sums and other obligations which may hereafter become due from Borrower to Lender under the terms of the Note and Mortgage, including any modifications or amendments thereof; and the prompt payment and performance of all sums and other obligations which may hereafter become due from Borrower to Lender under the terms of any other instrument or document made on the date hereof between Lender and Borrower with respect to the Note, the Mortgage or the loan evidenced by the Note, including any modifications or amendments thereof (herein collectively called the "Security Documents"). The undersigned does further agree that if the Note is not paid by Borrower in accordance with its terms, or if all sums and other obligations which may hereafter become due from Borrower to Lender under the Mortgage or the Security Documents are not paid and performed by Borrower in accordance with the respective terms of each, the undersigned immediately will make the payments required and perform the obligations of the Borrower thereunder.

The obligations covered by this Guaranty include all obligations of Borrower under the Security Documents, either now existing or hereafter coming into existence and all renewals, modifications, amendments or extensions thereof, in whole or in part, together with all damages, losses, costs, interest, charges, expenses, including attorneys' fees, and liabilities of every kind, nature and description, suffered or incurred by Lender arising in any manner out of, or in any way connected with the Security Documents. This Guaranty shall cover all obligations to Lender purporting to be made on behalf of Borrower, by any officer or agent of Borrower, without regard to the actual authority of such officer or agent.

The undersigned does further represent, warrant and covenant as follows:

(A) The Security Documents have been duly authorized and executed by Borrower, and/or the appropriate signatories, and are legal, valid and binding instruments enforceable against Borrower and/or such signatories in accordance with their respective terms; and

(B) The financial statements heretofore delivered by the undersigned to Lender are true and correct in all respects; fairly present the respective financial conditions as of the respective dates thereof, and no material adverse change has occurred in the financial conditions reflected therein since the respective dates thereof.

The undersigned hereby consents and agrees that Lender may at any time, either with or without consideration, surrender any property or other security of any kind or nature whatsoever held by Lender or by any person, firm or corporation on Lender's behalf or for Lender's account, securing any indebtedness or liability covered by this Guaranty, or substitute for any collateral so held, other collateral of like kind or of any kind, or modify the terms of the Security Documents, without notice to or further consent from the undersigned, and such surrender, substitution or modification shall not in any way affect the liability of the undersigned hereunder.

The undersigned hereby consents and agrees that Lender may at any time either with or without consideration, release Borrower or any endorser of the Note, or any guarantor of any of the Security Documents, without notice to or further consent from the undersigned, and such release shall not in any way affect the liability of the undersigned hereunder. The undersigned agrees that no act or omission on the part of Lender shall in any way affect or impair this Guaranty. The undersigned further waives notice of the acceptance of this Guaranty, or of any default by Borrower.

At the option of the Lender, this agreement may be treated as a guaranty or as a suretyship. In any event, Lender, in its sole discretion, shall have the right to proceed against the Borrower or any property given as security for the payment of the Note or any of the Security Documents, or any other guarantor or endorser of the Note. Notwithstanding the foregoing, Lender hereby agrees not to report this Loan to any credit bureau unless both Borrower and Guarantors are in default under the Security Documents.

The undersigned agrees that this Guaranty may be enforced by Lender without the necessity at any time of resorting to or exhausting any other security or collateral and without the necessity at any time of having recourse to the Note or the Property through foreclosure proceedings under the Mortgage or otherwise, and the undersigned hereby waives the right to require Lender to proceed against Borrower or to require Lender to pursue any other remedy or enforce any other right. The undersigned further agrees that nothing herein contained shall prevent Lender from suing on the Note or foreclosing on any mortgage or other collateral (by exercise of the power of sale or otherwise) or from exercising any of the rights available to it under the Note, the Mortgage or any other instrument of security, and the exercise of any of the aforesaid rights and the completion of any foreclosure proceedings shall not constitute a discharge of any of the undersigned's obligations hereunder, it being the purpose and intent of the undersigned that the undersigned's obligations hereunder shall be absolute, independent and unconditional under any and all circumstances. Neither the undersigned's obligations under this Guaranty or any remedy for the enforcement hereof shall be impaired, modified, changed, or released in any manner whatsoever by any impairment, modification, change, release or limitation of liability of Borrower by reason of Borrower's bankruptcy.

The undersigned acknowledges receipt of good, valuable and sufficient consideration for his, her or its making of this Guaranty and subjects his, her or its separate property to this Guaranty and hereby expressly agrees that recourse may be had against such separate property for all his, her or its obligations hereunder, and the undersigned does further agree that any and all of such separate property shall be subject to execution for any judgment or decree on or enforcing this Guaranty by a court of competent jurisdiction against any one or more of the undersigned, either jointly or severally. The undersigned agrees that any property held by any two or more of the undersigned as tenants in common, joint tenants with right of survivorship, tenants by the entirety or otherwise as married persons, or as homestead property, shall also be subject to enforcement of this Guaranty and the undersigned jointly and severally waives any rights of dower or curtesy and any exemptions under the constitution and laws of each jurisdiction where any such separate or other property is located.

The undersigned waives notice of acceptance of this Guaranty by Lender and any and all notices and demands of every kind which may be required to be given by statute, rule or law and agrees that the undersigned's liability hereunder shall be in no way affected, diminished or released by any extension of time or forbearance which may be granted to Borrower (or any successor or assign of Borrower which shall have assumed Borrower's obligations under the Note and the Mortgage or under any other instrument of security), or any waiver under the Mortgage or the Note by Lender or by reason of any change, amendment, extension, or modification in any of the Security Documents or by the acceptance by Lender of additional security or any increase, substitution or changes therein, or by the release by Lender of any security or any withdrawal thereof or decrease therein.

The undersigned hereby waives and agrees not to assert or take advantage of (a) any right to require Lender to proceed against Borrower or any other person or to exhaust any security held by Lender or to pursue any other remedy in Lender's power before proceeding against the undersigned; (b) the defense of the statute of limitations in any action hereunder or for the collection of any indebtedness or the performance of any obligation hereby guaranteed; (c) any defense arising by virtue of: (i) the lack of authority, death or disability of any party, or revocation hereof by any party or, (ii) the failure of the Lender to file or enforce a claim of any kind; (d) notice of the existence, creation or incurring of any new or additional indebtedness, or obligation or of any action or non-action on the part of Borrower, Lender, any endorser, any guarantor under this or any other instrument, any creditor of Borrower, or any other person whomsoever, in connection with any obligation or evidence of indebtedness held by Lender as collateral or in connection with any indebtedness or any obligation hereby guaranteed; (e) any defense based upon an election of remedies by Lender, including without limitation an election to proceed by non-judicial rather than judicial foreclosure, which destroys or otherwise impairs the subrogation rights of the undersigned or the right of the undersigned to proceed against Borrower for reimbursement, or both; and (f) any duty on the part of Lender to disclose to the undersigned any facts which Lender may now or hereafter know about Borrower, regardless of whether Lender has reason to believe that any such facts materially increase the risk beyond that which the undersigned intends to assume or has reason to believe that such facts are unknown to the undersigned or has a reasonable opportunity to communicate such facts to the undersigned, it being understood and agreed that the undersigned is fully responsible for being and keeping informed of the financial condition of Borrower and of all circumstances bearing on the risk of nonpayment of all obligations hereby guaranteed.

The undersigned will not assert any right to which it may be or become entitled, whether by subrogation, contribution, or otherwise, against the Borrower or any of the other guarantors, or against any of their respective properties, by reason of the performance by the undersigned of its obligations under this agreement, except after payment in full of all amounts (including costs and expenses) which may be or become payable in respect of or under any of the Security Documents.

The undersigned hereby subordinates any and all indebtedness of Borrower now or hereafter owed to the undersigned, to all indebtedness of Borrower to Lender and agrees with Lender that the undersigned shall not demand or accept any payment of principal or interest from Borrower except with Lender's prior written approval; shall not claim any off-set or other reduction of the undersigned's obligation hereunder because of such indebtedness and shall not take any action to obtain any of the collateral given by Borrower to Lender as security for the loan.

The undersigned agrees to retain its interest in Borrower presently owned by him, her or it, and not to transfer, hypothecate, encumber, pledge or sell all or any part of its interest to any other person or entity without the prior express written consent of Lender.

In the event Lender seeks to enforce this Guaranty by legal action, the liability of the undersigned hereunder shall terminate and cease only at the time Lender receives payment in full of all sums payable to it by Borrower under the Note and the Security Documents whether such payment be made by the Borrower or the undersigned.

The undersigned agrees that this Guaranty shall inure to the benefit of and may be enforced by Lender or Lender's endorsees, transferees, successors and assigns, and shall be binding upon and enforceable against the undersigned and their legal representatives, heirs, successors and/or assigns.

In the event of default by Borrower under the terms and conditions of the Security Documents and it becomes necessary for Lender to employ counsel to enforce the obligations of the undersigned hereunder, whether or not suit be brought, the undersigned agrees to pay all reasonable attorneys' fees and expenses in connection therewith. This Guaranty shall be governed by and construed under the laws of the State of Florida, and the undersigned consents to the jurisdiction of the courts of such State and to being sued therein.

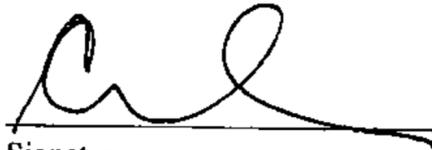
This Guaranty shall be an unlimited, unconditional, irrevocable and continuing Guaranty.

Notwithstanding anything to the contrary contained in this Guaranty or in the Note or the Mortgage, it is the intent of the parties that any interest for which the undersigned is obligated hereunder shall not exceed the maximum amount of interest permitted to be enforced against the undersigned under the governing law specified above.

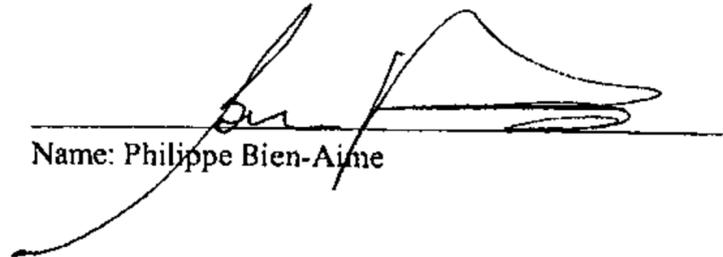
If any provision or portion of this Guaranty is declared or found by a court of competent jurisdiction to be unenforceable or null and void, such provision or portion thereof shall be deemed stricken and severed from this Guaranty, and the remaining provisions and portions thereof shall continue in full force and effect.

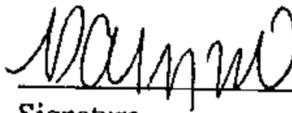
IN WITNESS WHEREOF, the undersigned has executed and delivered this instrument under seal as of the date first above written.

WITNESSES:

  
\_\_\_\_\_  
Signature

Eliana Medaglia  
\_\_\_\_\_  
Print Name

  
\_\_\_\_\_  
Name: Philippe Bien-Aime

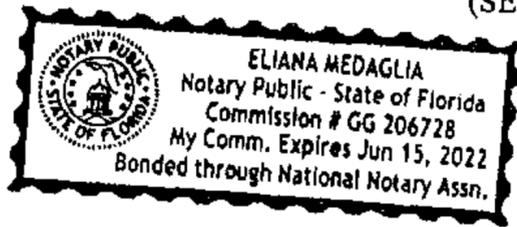
  
\_\_\_\_\_  
Signature

Nicole Davanzo  
\_\_\_\_\_  
Print Name

STATE OF FLORIDA )  
COUNTY OF Miami-Dade )

The foregoing instrument was acknowledged before me this 22nd day of June, 2018 by Philippe Bie-Aime, who is personally known to me or who has produced drivers license as identification.

(SEAL)



(SEAL)



Print Name: Eliana Medaglia

Notary Public, State of Florida

My Commission Expires: 6/15/22