

This Instrument Prepared by:

*Nicolle M. Shalley*

City Attorney

City of Gainesville – Public Works #58

Post Office Box 490

Gainesville, Florida 32627



**FIRST MORTGAGE  
CITY OF GAINESVILLE – PHALANX DEFENSE SYSTEMS, LLC**

THIS FIRST MORTGAGE ("Security Instrument") is given from the mortgagor Phalanx Defense Systems, LLC, a Florida limited liability company, whose address is 4352 NE 40<sup>th</sup> Terrace, Gainesville, Florida 32609 ("Borrower") to the City of Gainesville, a Florida municipal corporation, whose mailing address is Post Office Box 490, Station 58, Gainesville, Florida 32627 ("Lender") to secure to Lender: (a) the repayment of a loan in the total principal sum of \$635,000.00 as debt is evidenced by Borrower's Note dated the same date as this Security Instrument ("Note"), with interest as provided in the Note, and all renewals, extensions and modifications of the Note, and which Note provides for forgiveness of loan principal if Borrower complies with the terms of the Note and this Security Instrument; (b) the payment of all other sums with interest as provided in the Note, advanced under Section 7 of this Security Instrument to protect the security of this Security Instrument; and (c) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. The Note provides that the full debt, if not paid earlier or forgiven, shall be due and payable on September 7, 2026 which is 10 years from the date of Closing, the "Maturity Date" of the Note. The loan evidenced by the Note and secured by this Security Instrument ("Loan") is being made pursuant the Borrower's purchase and the Lender's sale of certain real property as described below and is the first mortgage and senior lien on the property.

For the purposes stated above, Borrower irrevocably mortgages, grants and conveys to Lender and Lender's successors and assigns, with power of sale, the property located in Alachua County, Florida, which is described as follows:

COMMENCE AT A RAILROAD SPIKE FOUND AND ACCEPTED AS MARKING THE NORTHEAST CORNER OF SECTION 4, TOWNSHIP 10 SOUTH, RANGE 20 EAST; THENCE S 89°15'13" W ALONG THE NORTH LINE OF SAID SECTION 4 A DISTANCE OF 1409.39 FEET TO A 5/8" IRON ROD AND CAP STAMPED "ACLS INC.", BEING ON THE SOUTH RIGHT-OF-WAY LINE OF NE 8<sup>TH</sup> AVENUE AND THE POINT OF BEGINNING; THENCE LEAVING SAID SECTION LINE AND SOUTH RIGHT-OF-WAY LINE S 00°36'53" E A DISTANCE OF 310.33 FEET; THENCE S 89°15'13" W PARALLEL TO THE NORTH LINE OF SAID SECTION 4 AND SOUTH RIGHT-OF-WAY LINE OF NE 8<sup>TH</sup> AVENUE A DISTANCE OF 449.81 FEET TO A POINT ON THE EAST RIGHT-OF-WAY LINE OF NE 11<sup>TH</sup> STREET; THENCE N 00°36'53" W ALONG SAID EAST RIGHT-OF-WAY LINE A DISTANCE OF 310.33 FEET TO A NAIL AND DISC STAMPED ""PSM 5368" ON THE SOUTH RIGHT-OF-WAY LINE OF NE 8<sup>TH</sup> AVENUE AND THE NORTH LINE OF SAID SECTION 8; THENCE N 89°15'13" E ALONG SAID RIGHT-OF-WAY AND SECTION LINE A DISTANCE OF 449.81 FEET TO THE POINT OF BEGINNING;

ALL LYING AND BEING IN THE NORTHEAST ONE QUARTER (1/4) OF SECTION 4, TOWNSHIP 10 SOUTH RANGE 20 EAST, ALACHUA COUNTY, FLORIDA AND CONTAINING 139,591 SQUARE FEET (3.20 ACRES), MORE OR LESS.

TO HAVE AND TO HOLD this property unto Lender and Lender's successors and assigns, forever, together with all the improvements now or hereafter erected on the property, and all easements, appurtenances, and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property."

**BORROWER COVENANTS** that Borrower is lawfully seized of the estate hereby conveyed and has the right to mortgage, grant and convey the Property and the Property is unencumbered. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to such encumbrances of record.

THIS SECURITY INSTRUMENT combines uniform covenants for national use and non-uniform covenants with limited variations by jurisdiction to constitute a uniform security instrument covering real property.

**UNIFORM COVENANTS.** Borrower and Lender covenant and agree as follows:

**1. Payment of Principal and Interest; Prepayment and Late Charges.** Borrower shall promptly pay when due the principal of and interest on the debt evidenced by the Note and any late charges due under the Note.

**2. Application of Payments.** Unless applicable law provides otherwise, all payments received by Lender shall be applied: first, to any prepayment charges due under the Note; second, to interest due; third, to principal due; and last, to any late charges due under the Note.

**3. Forgiveness of Loan.** Up to \$535,000 of this loan may be forgiven at the Maturity Date. The terms and conditions of possible forgiveness are fully set forth in the Note. Any amount not forgiven by the Lender shall be due and payable in full to the Lender on the Maturity Date.

**4. Charges; Liens.** Borrower shall pay all taxes, assessments, charges, fines and impositions attributable to the Property that may attain priority over this Security Instrument, and leasehold payments or ground rents, if any.

Borrower shall promptly discharge any other lien that shall have attained priority over this Security Instrument unless Borrower: (a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Lender; (b) contests in good faith the lien by, or defends against enforcement of the lien in, legal proceedings which in the Lender's opinion operate to prevent the enforcement of the lien; or (c) secures from the holder of the lien an agreement satisfactory to Lender subordinating the lien to this Security Instrument. If Lender determines that any part of the Property is subject to a lien that may attain priority over this Security Instrument, Lender may give Borrower a notice identifying the lien. Borrower shall satisfy such lien or take one or more of the actions set forth above within 10 days of the giving of notice.

**5. Hazard or Property Insurance.** Borrower shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, hazards including within the term "extended coverage" and any other hazards, including floods or flooding, for which Lender requires insurance. If Borrower fails to maintain coverage described above, Lender may, at Lender's option, obtain coverage to protect Lender's rights in the Property.

All insurance policies and renewals shall include a standard mortgagee clause. If Lender requires, Borrower shall promptly give to Lender copies of all receipts of paid premiums and renewal notices.

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

Unless Lender and Borrower otherwise agree in writing, insurance proceeds shall be applied to restoration or repair of the Property damaged, if the restoration or repair is economically feasible and Lender's security is not lessened. If the restoration or repair is not economically feasible or Lender's security would be lessened, the insurance proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with any excess paid to Borrower. If Borrower abandons the Property, or does not answer within 30 days a notice from Lender that the insurance carrier has offered to settle a claim, then Lender may collect the insurance proceeds. Lender may use the proceeds to repair or restore the Property or to pay sums secured by this Security Instrument, whether or not then due. The 30-day period will begin when the notice is given.

Unless Lender and Borrower otherwise agree in writing, any application of proceeds to principal shall not extend or postpone the due date of any payments or change the amount of the payments due to Lender. If under Section 20 the Property is acquired by Lender, Borrower's right to any insurance policies and proceeds resulting from damage to the Property prior to the acquisition shall pass to Lender to the extent of the sums secured by this Security Instrument immediately prior to the acquisition.

**6. Occupancy, Preservation, Maintenance and Protection of the Property; Borrower's Loan Application.** Borrower shall occupy and use the Property throughout the term of this Security Instrument. Borrower shall not destroy, damage or impair the Property, allow the Property to deteriorate, or commit waste on the Property. Borrower shall be in default if any forfeiture action or proceeding, whether civil or criminal, is begun that in Lender's good faith judgment could result in forfeiture of the Property or otherwise materially impair the lien created by this Security Instrument or Lender's security interest. Borrower may cure such a default and reinstate, as provided in Section 17, by causing the action or proceeding to be dismissed with ruling that, in Lender's good faith determination, precludes forfeiture of the Borrower's interest in the Property or other material impairment of the lien created by this Security Instrument or Lender's security interest. Borrower shall also be in default if Borrower, during the loan application process, gave materially false or inaccurate information or statements to Lender (or failed to provide Lender with any material information) in connection with the loan evidenced by the Note, including but not limited to, representations concerning the occupancy of the Property by the Borrower.

**7. Protection of Lender's Rights in the Property.** If Borrower fails to perform the covenants and agreements contained in this Security Instrument, or there is a legal proceeding that may significantly affect Lender's rights in the Property (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture or to enforce laws or regulations), then Lender may do and pay for whatever is necessary to protect the value of the Property and Lender's rights in the Property. Lender's actions may include paying any sums secured by a lien which has priority over this Security Instrument, appearing in court, paying reasonable attorneys' fees and entering on the Property to make repairs. Although Lender may take action under this Section 7, Lender does not have to do so.

Any amounts disbursed by Lender under this Section 7 shall become additional debt of Borrower secured by this Security Instrument. Unless Borrower and Lender agree to other terms of payment, these amounts shall bear interest from the date of disbursement at the Note rate and shall be payable, with interest, upon notice from Lender to Borrower requesting payment.

**8. Inspection.** Lender or its agent may make reasonable entries upon and inspections of the Property. Lender shall give Borrower notice of the time of or prior to an inspection specifying reasonable cause for the inspection.

**9. Condemnation.** The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of any part of the Property, or for conveyance in lieu of condemnation, are hereby assigned and shall be paid to Lender.

In the event of a total taking of the Property, the proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with any excess paid to Borrower. In the event of a partial taking of the Property in which the fair market value of the Property immediately before the taking is equal to or greater than the amount of the sums secured by this Security Instrument immediately before

the taking, unless Borrower and Lender otherwise agree in writing, the sums secured by this Security Instrument shall be reduced by the amount of the proceeds multiplied by the following fraction: (a) the total amount of the sums secured immediately before the taking, divided by (b) the fair market value of the Property immediately before the taking. Any balance shall be paid to Borrower. In the event of a partial taking of the Property in which the fair market value of the Property immediately before the taking is less than the amount of the sums secured immediately before the taking, unless Borrower and Lender otherwise agree in writing or unless applicable law otherwise provides, the proceeds shall be applied to the sums secured by this Security Instrument whether or not the sums are then due.

If the Property is abandoned by Borrower, or if, after notice by Lender to Borrower that the condemnor offers to make an award or settle a claim for damages, Borrower fails to respond to Lender within 30 days after the date the notice is given, Lender is authorized to collect and apply the proceeds, at its option, either to restoration or repair of the Property or to the sums secured by this Security Instrument, whether or not then due.

Unless Lender and Borrower otherwise agree in writing, any application of proceeds to principal shall not extend or postpone the due date of any payments or change the amount of such payments due to Lender.

**10. Borrower Not Released; Forbearance By Lender Not a Waiver.** Extension of the time for payment or modification of amortization of the sums secured by this Security Instrument granted by Lender to any successor in interest of Borrower shall not operate to release the liability of the original Borrower or Borrower's successors in interest. Lender shall not be required to commence proceedings against any successor in interest or refuse to extend time for payment or otherwise modify amortization of the sums secured by this Security Instrument by reason of any demand made by the original Borrower or Borrower's successors in interest. Any forbearance by Lender in exercising any right or remedy shall not be a waiver of or preclude the exercise of any right or remedy.

**11. Successors and Assigns Bound; Joint and Several Liability; Co-signers.** The covenants and agreements of this Security Instrument shall bind and benefit the successors and assigns of Lender and Borrower. Borrower's covenants and agreements shall be joint and several. Any Borrower who co-signs this Security Instrument but does not execute the Note: (a) is co-signing this Security Instrument only to mortgage, grant and convey the Borrower's interest in the Property under the terms of this Security Instrument; (b) is not personally obligated to pay the sums secured by this Security Instrument; and (c) agrees that Lender and any other Borrower may agree to extend, modify, forbear or make any accommodations with regard to the terms of this Security Instrument or the Note without that Borrower's consent; provided, however, that such modification or accommodation shall not be made without the prior written consent of the Senior Lien Holder.

**12. Loan Charges.** If the loan secured by this Security Instrument is subject to a law which sets maximum loan charges, and that law is finally interpreted so that the interest or other loan charges collected or to be collected in connection with the loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from Borrower which exceeded permitted limits will be refunded to Borrower. Lender may choose to make this refund by reducing the principal owed under the Note or by making a direct payment to Borrower. If a refund reduces principal, the reduction will be treated as a partial prepayment without any prepayment charge under the Note.

**13. Notices.** All notices required under or in connection with this Security Instrument shall be delivered or sent by certified or registered mail, return receipt requested, postage prepaid, to the addresses set forth above, or to such other address as any party may designate from time to time by notice to the others in the manner set forth herein. All notices shall be deemed to have been given or made either at the time of delivery thereof to an officer or employee or on the third business day following the time of mailing in the aforesaid manner. Additionally, any notice of default given to borrower shall also be provided to Jeffrey Shew, 28472 Camino La Ronda, San Juan Capistrano, CA 92675

**14. Governing Law; Severability.** This Security Instrument shall be governed by and construed

in accordance with the laws of the State of Florida, notwithstanding any Florida conflict of law provision to the contrary. In the event that any provision or clause of this Security Instrument or the Note conflict(s) with applicable law, such conflict shall not affect other provisions of this Security Instrument or the Note which can be given effect without the conflicting provision. To this end the provisions of this Security Instrument and the Note are declared to be severable.

**15. Borrower's Copy.** Borrower shall be given one conformed copy of the Note and of this Security Instrument.

**16. Transfer of the Property or a Beneficial Interest in Borrower.** If all or any part of the Property or any interest in it is sold or transferred without Lender's prior written consent, Lender may, at its option, require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if exercise is prohibited by federal law as of the date of this Security Instrument.

If Lender exercises this option, Lender shall give Borrower prior written notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is delivered or mailed within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

**17. Borrower's Right to Reinstate.** If Borrower meets certain conditions, Borrower shall have the right to have enforcement of this Security Instrument discontinued at any time prior to the earlier of: (a) 5 days (or such other period as applicable law may specify for reinstatement) before sale of the Property pursuant to any power of said contained in this Security Instrument; or (b) entry of a judgment enforcing this Security Instrument. Those conditions are that Borrower: (a) pays Lender all sums which then would be due under this Security Instrument and the Note as if no acceleration had occurred; (b) cures any default of any other covenants or agreements; (c) pays all expenses incurred in enforcing this Security Instrument, including, but not limited to, reasonable attorneys' fees; and (d) takes such action as Lender may reasonably require to assure that the lien of this Security Instrument, Lender's rights in the Property and Borrower's obligation to pay the sums secured by this Security Instrument shall continue unchanged. Upon reinstatement by Borrower, this Security Instrument and the obligations secured hereby shall remain fully effective as if no acceleration had occurred. However, this right to reinstate shall not apply in the case of acceleration under Section 20.

**18. Sale of Note; Change of Loan Servicer.** The Note or a partial interest in the Note (together with this Security Instrument) may be sold one or more times without prior notice to Borrower. A sale may result in a change in the entity (known as the "Loan Servicer") that collects monthly payments due under the Note and this Security Instrument. There also may be one or more changes of the Loan Servicer unrelated to a sale of the Note. If there is a change of the Loan Servicer, Borrower will be given written notice of the change in accordance with Section 13 above and 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.

**19. Hazardous Substances.** Borrower and Lender are aware that the structures located on the Property contain asbestos and lead paint. Borrower shall not be in default hereunder as the result of the presence of any hazardous material located on the Property at the time Borrower acquired title. 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 commercial and industrial 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.

As used in this Section 19, "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 Section 19, "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection.

NON-UNIFORM COVENANTS. Borrower and Lender further covenant and agree as follows:

**20. Acceleration Remedies.** Lender shall give notice to Borrower prior to acceleration following Borrower's breach of any covenant or agreement in this Security Instrument. The notice shall specify: (a) the default; (b) the action required to cure the default; (c) a date, not less than 30 days from the date the notice is given to Borrower, by which the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Security Instrument and sale of the Property. The notice shall further inform Borrower of the right to reinstate after acceleration and the right to bring a court action to assert the non-existence of a default or any other defense of Borrower to acceleration and sale. If the default is not cured by the Borrower on or before the date specified in the notice, then Lender at its option may require immediate payment in full of all sums secured by this Security Instrument without further demand and may invoke the power of sale and any other remedies permitted by applicable law. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this Section 20, including, but not limited to, reasonable attorneys' fees and costs of this evidence.

If Lender invokes the power of sale, Lender shall mail copies of a notice of sale in the manner prescribed by applicable law to Borrower and to the other persons prescribed by applicable law. Lender shall publish the notice of sale by public advertisement for the time and in the manner prescribed by applicable law. Lender, without demand on Borrower, shall sell the Property at public auction to the highest bidder for cash at the time and place and under the terms designed in the notice of said in one or more parcels and in any order Lender determines. Lender may postpone sale of all or any parcel of the Property to any later time on the same date by public announcement at the time and place of any previously scheduled sale. Lender or its designee may purchase the Property at any sale.

Lender shall deliver to the purchaser Lender's deed conveying the Property without any covenant or warranty, expressed or implied. The recitals in the Lender's deed shall be prima facie evidence of the truth of the statements made therein. Lender shall apply the proceeds of the sale in the following order: (a) to all expenses of the sale, including, but not limited to, reasonable attorneys' fees; (b) to all sums secured by this Security Instrument; and (c) any excess to the person or persons legally entitled to it.

**21. Release.** Upon forgiveness of the Loan as specified above and/or payment of all sums secured by this Security Instrument, Lender shall release this Security Instrument without charge to Borrower. Borrower shall pay any recordation costs.

**22. Riders to this Security Instrument.** If one or more riders are executed by Borrower and recorded together with this Security Instrument, the covenants and agreements of each such rider shall be incorporated into and shall amend and supplement the covenants and agreements of this Security Instrument as if rider(s) were a part of this Security Instrument.

**23. Lost, Misplaced, Omitted, Misstated, and/or Inaccurate Documents.** In the event that any

document is lost, misplaced, misstated, omitted, or inaccurately reflects the true and correct terms and conditions of the Loan, the Borrower agrees to execute, re-execute, acknowledge, initial, and deliver to Lender or its agent any and all documents the Lender deems necessary to replace or correct the lost, misplaced, misstated, omitted and/or inaccurate documents. Borrower agrees to deliver the requested document(s) within ten (10) days after receipt by Borrower of written or verbal request from Lender or its agent.

**24. Uncollected, Under collected, and/or Omitted Fees.** In the event that any fee previously disclosed to the Borrower as a cost or fee required as a condition of Lender providing the Loan is uncollected, under collected, or omitted for whatever reason from the loan closing, the Borrower agrees to pay Lender or its agent within ten (10) days after receipt by Borrower of written or verbal request from Lender or its agent.

**25. Failure to Deliver Replacement Documents.** Should the Borrower fail to deliver documents requested by Lender or its agent within ten (10) days after receiving the Lender's request to do so, the Borrower agrees to be liable for any and all loss or damage which Lender sustains thereby, including but not limited to all reasonable attorney's fees and cost incurred by Lender. Should the Borrower fail to deliver documents requested by Lender or its agent within sixty (60) days after receiving the Lender's request to do so, the Lender may, at its option, declare all sums secured hereby immediately due and payable.

BY SIGNING BELOW, the Borrower and the Lender accept and agree to the terms and covenants contained in this Security Instrument and in any Rider executed by Borrower and recorded with it.

Witnesses:

By: [Signature]  
James G. Coats, Manager of  
Phalanx Defense Systems, LLC  
Borrower

[Signature]  
Bruce Brashear

[Signature]  
Kimberly Bosshardt

STATE OF FLORIDA  
COUNTY OF ALACHUA

The foregoing instrument was acknowledged before me this 7 day of September, 2016, by James G. Coats, Manager of Phalanx Defense Systems, LLC. He/she is personally known to me or has produced a Driver's License as identification.



[Signature]  
Print Name: Kimberly Bosshardt  
Notary Public, State of Florida at Large  
My Commission expires:  
My Commission number: