DEED OF TRUST AND ASSIGNMENT OF RENTS SECURING

A PROMISSORY NOTE

Record and Return Clause

Recording requested by:

[name]

When recorded mail to:

[name]

[address]

[city, state, zip]

For recorder’s use

**Declaration of Exemption From Gov’t Code § 27388.1 Fee**

Transfer is exempt from fee per GC § 27388.1(a)(2):

recorded concurrently “in connection with” transfer subject to DTT

recorded concurrently “in connection with” a transfer of residential dwelling to an owner-occupier

Transfer is exempt from fee per GC 27388.1(a)(1):

Fee cap of $225.00 reached  Not related to real property

Assessor’s Parcel No.: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title Order No.: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Escrow No.: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Preamble Clause

THIS DEED OF TRUST, ASSIGNMENT OF RENTS, AND REQUEST FOR NOTICE made this [day] day of [month], [year], between [name of trustor] (the “Trustor”), whose address is [trustor’s street address, city, state, zip], and [name of beneficiary] (the “Beneficiary”), whose address is [beneficiary’s street address, city, state, zip], and [name of trustee], a California [entity type] (the “Trustee”), whose address is [trustee’s street address, city, state, zip];

Conveyance Clause

TRUSTOR HEREBY irrevocably grants, transfers, and assigns to Trustee, in trust, with power of sale, all that property in the City of [city name], County of [county name], State of California, described as:

Description of Collateral Clause

See Exhibit A attached hereto and incorporated herein by this reference,

(the “Property”), together with rents, issues, and profits of the Property, subject, however, to the right, power, and authority given to and conferred on Beneficiary to collect and apply these rents, issues, and profits.

Description of Obligations Clause

FOR THE PURPOSE OF SECURING:

1. Payment of the indebtedness evidenced by a promissory note executed by Trustor on [month] [day], [year] in the principal sum of $[amount of indebtedness], and any renewal, extension, or modification of the promissory note (the “Note”);
2. Any additional sums and interest that may hereafter be loaned to the then record owner of the Property by Beneficiary, when evidenced by another note or notes reciting that it or they are so secured; and
3. The performance of each agreement contained in this Deed of Trust.

Collateral Clauses

THE PARTIES AGREE THAT:

**Section 1. Maintenance and Repair Clause**

Trustor agrees to keep the Property in good condition and repair; not to remove or demolish any buildings on the Property; to complete or restore promptly and in good and workmanlike manner any building that may be constructed, damaged, or destroyed on the Property; to pay when due all claims for labor performed and materials furnished for the Property; to comply with all laws affecting the Property or requiring any alterations or improvements to be made on the Property; not to commit or permit waste of the Property; not to commit, suffer, or permit any act on the Property in violation of law; and to cultivate, irrigate, fertilize, fumigate, prune, and do all other acts that from the character or use of the Property may be reasonably necessary, the specific enumerations herein not excluding the general.

**Section 2. Fire Insurance; Other Insurance Clause**

Trustor agrees to provide, maintain, and deliver to Beneficiary fire insurance satisfactory to and with loss payable to Beneficiary. The amount collected under any fire or other insurance policy may be applied by Beneficiary on any indebtedness secured by this Deed of Trust and in any order determined by Beneficiary, or at the option of Beneficiary the entire amount so collected or any part of that amount may be released to Trustor. This application or release shall not cure or waive any default or notice of default under this Deed of Trust or invalidate any act done pursuant to such a notice. Trustor shall also procure and maintain such other insurance covering Trustor and/or the Property as required by Lender from time to time.

**Section 3. Defense of Security Clause**

Trustor agrees to appear in and defend any action or proceeding purporting to affect the security of this Deed of Trust or the rights or powers of Beneficiary, or Trustee; and to pay all costs and expenses, including cost of evidence of title and attorneys' fees in a reasonable sum, in any such action or proceeding in which Beneficiary or Trustee may appear, and in any suit brought by Beneficiary to foreclose this Deed of Trust.

**Section 4. Payment of Liens and Taxes Clause**

Trustor agrees to pay, at least [number of days] days before delinquency, all taxes and assessments affecting the Property, including assessments on appurtenant water stock; all encumbrances, charges, and liens, with interest, on the Property or any part of the Property, which appear to be prior or superior to this Deed of Trust; and all costs, fees, and expenses of this Trust.

**Section 5. Lender’s Right to Cure; Reimbursement of Costs Clause**

If Trustor fails to make any payment or to do any act as provided in this Deed of Trust, then Beneficiary or Trustee may (but is not obligated to) make the payment or do the act in the required manner and to the extent deemed necessary by Beneficiary or Trustee to protect the security of this Deed of Trust. The performance by Beneficiary or Trustee of such an act shall not require notice to or demand on Trustor and shall not release Trustor from any obligation under this Deed of Trust. Beneficiary or Trustee shall also have the following related rights and powers: to enter on the Property for the foregoing purposes; to appear in and defend any action or proceeding purporting to affect the security of this Deed of Trust or the rights or powers of Beneficiary or Trustee; to pay, purchase, contest, or compromise any encumbrance, charge, or lien that in the judgment of either appears to be prior or superior to this Deed of Trust; to employ counsel; and to pay necessary expenses and costs, including attorneys' fees. Trustor agrees to pay immediately and without demand all sums expended by Beneficiary or Trustee pursuant to this Deed of Trust, with interest from date of expenditure at the amount allowed by law in effect at the date of this Deed of Trust, and to pay any amount demanded by Beneficiary (up to the maximum allowed by law at the time of the demand) for any statement regarding the obligation secured by this Deed of Trust.

**Section 6. Condemnation Award Clause**

Any award of damages in connection with any taking or condemnation, or for injury or trespass to the Property is hereby assigned and shall be paid to Beneficiary as further security for all obligations secured by this Deed of Trust. On receipt of any such proceeds, Beneficiary may hold the proceeds as further security, or apply or release them in the same manner and with the same effect as provided in this Deed of Trust for the disposition of proceeds of fire or other insurance.

**Section 7. Waiver of Late Payments Clause**

By accepting payment of any sum secured by this Deed of Trust after its due date, Beneficiary does not waive its right either to require prompt payment when due of all other sums so secured or to declare default for failure to pay any indebtedness secured by this Deed of Trust.

**Section 8. Trustee's Powers Clause**

On written request of Beneficiary and presentation of this Deed of Trust and the Note for endorsement, Trustee may (a) reconvey all or any part of the Property; (b) consent to the making and recording, or either, of any map or plat of all or any part of the Property; (c) join in granting any easement on the Property; or (d) join in or consent to any extension agreement or any agreement subordinating the lien, encumbrance, or charge of this Deed of Trust. Trustee need not provide Trustor with notice before taking any of the foregoing actions, and shall not be liable for the proper performance of the act. The exercise by Trustee of any of the foregoing powers shall not affect the personal liability of any person for payment of the indebtedness secured by this Deed of Trust, or the lien of this Deed of Trust on the remaining property as security for the repayment of the full amount secured by this Deed of Trust.

**Section 9. Full Reconveyance Clause**

On written request of Beneficiary stating that all sums secured by this Deed of Trust have been paid, surrender of this Deed of Trust, the Note, and any other notes secured by this Deed of Trust to the Trustee for cancellation and retention, and payment of Trustee's fees and charges, Trustee shall reconvey, without warranty, the Property then subject to this Deed of Trust. The recitals in the reconveyance shall be conclusive proof of the truthfulness of the recitals. The grantee in the reconveyance may be described as "the person or persons legally entitled thereto." Five years after issuance of the full reconveyance, Trustee may destroy the Note and this Deed, unless directed in the request to retain them.

**Section 10. Assignment of Rents Clause**

As additional security, Trustor hereby gives to and confers on Beneficiary the right, power, and authority during the continuance of these Trusts, to collect the rents, issues, and profits of the Property, but reserves the right, prior to any default by Trustor in payment of any indebtedness secured by this Deed of Trust or in the performance of any agreement under this Deed of Trust, to collect and retain these rents, issues, and profits as they become due and payable. On any such default, Beneficiary may pursue any of the enforcement mechanisms specified in Civil Code Section 2938(c). The exercise of these enforcement rights by Beneficiary shall not cure or waive any default or notice of default under this Deed of Trust or invalidate any act done pursuant to such a notice.

**Section 11. Acceleration**

If payment of any indebtedness or performance of any agreement secured by this Deed of Trust is in default, Beneficiary may at Beneficiary’s option, with or without notice to Trustor, declare all sums secured immediately due and payable by:

1. Commencing suit for their recovery or for foreclosure of this Deed of Trust
2. Delivering to Trustee a written notice declaring a default with demand for sale; a written Notice of Default and election to sell to be recorded by Trustee.

**Section 12. Default/Foreclosure Clause**

On default by Trustor in the payment of any indebtedness secured by this Deed of Trust or in the performance of any obligation under this Deed of Trust, Beneficiary may declare all sums secured by this Deed of Trust immediately due and payable by delivering to Trustee a written declaration of default and demand for sale and a written notice of default and election to sell the Property. Trustee shall cause the notice of default and election to sell to be recorded. Beneficiary also shall deposit with Trustee this Deed of Trust, the Note, and all documents evidencing any additional expenditures secured by this Deed of Trust.

After the required time period has lapsed following the recordation of the notice of default, and after notice of sale has been given as required by law, Trustee, without demand on Trustor, shall sell the Property at the time and place specified in the notice of sale, either as a whole or in separate parcels, and in any order determined by Trustee, at public auction to the highest bidder for cash in lawful money of the United States, payable at the time of sale. Trustee may postpone sale of all or any portion of the Property by public announcement at the time and place of sale, and from time to time thereafter may postpone the sale by public announcement at the time fixed by the preceding postponement. Trustee shall deliver to the purchaser at the auction its deed conveying the Property sold, but without any covenant or warranty, express or implied. The recital in the deed of any matter or fact shall be conclusive proof of the truthfulness of the recital. Any person, including Trustor, Trustee, or Beneficiary, may purchase at the sale.

After deducting all costs, fees, and expenses of Trustee and Beneficiary under this paragraph, including costs of procuring evidence of title incurred in connection with sale, Trustee shall apply the proceeds of sale to payment of: all sums expended under the terms of this Deed of Trust, not then repaid, with accrued interest at the amount allowed by law in effect at the date of this Deed of Trust; all other sums then secured by this Deed of Trust; and the remainder, if any, to the person or persons legally entitled to the remaining proceeds.

**Section 13. Successors in Interest Clause**

This Deed applies to, inures to the benefit of, and binds all parties to this Deed of Trust and their heirs, legatees, devisees, administrators, executors, successors, and assigns.

**Section 14. Definitions Clause**

The term “Beneficiary” shall mean the holder and owner, including pledgee, of the Note secured by this Deed of Trust, whether or not named as a beneficiary in this Deed of Trust, and the heirs, legatees, devisees, administrators, executors, successors, and assigns of any such person. In this Deed, whenever the context so requires, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural.

**Section 15. Substitution of Trustees Clause**

Beneficiary, or any successor in ownership of any indebtedness secured by this Deed of Trust, may from time to time, by written instrument, substitute a successor or successors to any Trustee named in or acting under this Deed of Trust. The substitution instrument shall set forth the following: the date of recordation of this Deed of Trust; the name of the Trustor; the book and page where this Deed of Trust is recorded; and the name of the new Trustee. When executed by Beneficiary and duly acknowledged and recorded in the office of the recorder of the county or counties where the Property is situated, the substitution instrument shall be conclusive proof of proper substitution of the successor Trustee or Trustees. Any successor Trustee or Trustees shall, without conveyance from the Trustee predecessor, succeed to all its title, estate, rights, powers, and duties.

**Section 16. Cumulative Powers and Remedies Clause**

The powers and remedies conferred in this Deed of Trust are concurrent and cumulative to all other rights and remedies provided in this Deed of Trust or given by law. These powers and remedies may be exercised singly, successively, or together, and as often as deemed necessary.

**Section 17. Conclusiveness of Recitals Clause**

The recitals contained in any reconveyance, trustee's deed, or any other instrument executed by the Trustee from time to time under the authority of this Deed of Trust or in the exercise of its powers or the performance of its duties under this Deed of Trust, shall be conclusive evidence of their truth, whether stated as specific and particular facts, or in general statements or conclusions. Further, the recitals shall be binding and conclusive on the Trustor, the Trustor's heirs, executors, administrators, successors, and assigns, and all other persons.

**Section 18. Attorney’s Fees Clause**

If any action is brought for the foreclosure of this Deed of Trust or for the enforcement of any provision of this Deed of Trust (whether or not suit is filed), Trustor agrees to pay all costs and expenses of Beneficiary and Trustee, including reasonable attorney's fees; and these sums shall be secured by this Deed of Trust.

**Section 19. Co-Trustees Clause**

If two or more persons are designated as Trustee in this Deed of Trust, any, or all, power granted in this Deed of Trust to Trustee may be exercised by any of those persons, if the other person or persons are unable, for any reason, to act. Any recital of this inability in any instrument executed by any of those persons shall be conclusive against Trustor and Trustor's heirs and assigns.

**Section 20. Acceptance by Trustee Clause**

Trustee accepts this Trust when this Deed, duly executed and acknowledged, is made a public record as provided by law. Trustee is not obligated to notify any party to this Deed of Trust of pending sale under any other deed of trust or of any action or proceeding in which Trustor, Beneficiary, or Trustee shall be a party unless brought by Trustee.

**Section 21. Request for Notice Clause**

The undersigned Trustor requests that a copy of any Notice of Default and of any Notice of Sale under this Deed of Trust be mailed to Trustor at the address of the Trustor set forth in the first paragraph above.

TRUSTOR

|  |  |
| --- | --- |
|  |  |
| (signature of trustor) |  |
| [trustor’s typed name] |  |

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached and not the truthfulness, accuracy, or validity of that document.

State of California

County of [county name]

On before me, [name and title of the officer], personally appeared [principal], who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

|  |  |
| --- | --- |
|  |  |
| (signature of notary) |  |

(Seal)

Exhibit A. Legal Description of Property.