

WHEN RECORDED RETURN TO:

**DEED OF TRUST, SECURITY AGREEMENT,
ASSIGNMENT OF RENTS AND LEASES, AND FIXTURE FILING**

DATE: _____, 202__

PARTIES: Trustor: [_____]

Trustor's Address: _____

Trustee: _____

Trustee's Address: _____

Beneficiary: National Homebuyers Fund, Inc.

Beneficiary's
Address: c/o Land Home Financial Services, Inc.
1355 Willow Way, Suite #250
Concord, CA 94520

For good and valuable consideration, the receipt and sufficiency of which are acknowledged, Trustor agrees and covenants as follows:

1. **Grant in Trust.** Trustor irrevocably grants, conveys, and transfers to Trustee, its successors and assigns, in trust, pursuant to this Deed of Trust, Security Agreement, Assignment of Rents and Leases, and Fixture Filing ("**Deed of Trust**") and _____ law, WITH POWER OF SALE AND RIGHT OF ENTRY AND POSSESSION, all of Trustor's right, title, and interest in and to that real property ("**Premises**") situated in the County of _____, State of _____, more particularly described on **Exhibit "A"** attached and, by this reference, incorporated in this Deed of Trust. The Premises are conveyed by Trustor in trust together with all present and future tenements, hereditaments, rights, rights-of-way, easements, privileges, licenses, benefits, and appurtenances that belong to the Premises or in any way pertain to the Premises (all as part of the premises conveyed), which will include, but is not limited to:

(a) Oil, gas, soil, and/or mineral rights including, without limitation, any related royalties;

(b) All buildings, improvements, fixtures, and equipment (whether or not annexed to the Premises) now or in the future located on, used in connection with, or intended to be used in connection with the Premises including, without limiting the generality of the foregoing, all machinery, materials, appliances, and fixtures, all wall safes, boilers, furnaces, air conditioning units, coolers, cabinets, shelving, lockers, partitions, doors, sprinkling systems, irrigating systems, awnings, window shades, shutters, blinds, light fixtures, fire sprinklers, alarm systems, drapery rods, brackets, screens, floor tile, linoleum, carpets, plumbing, water systems, power systems, incinerators, communication systems, built-in furniture, and built-in bars, and all other installations and appliances on the Premises (and all substitutions and replacements for all of the foregoing) (All of the items described in this subparagraph are declared to be part of the real property and are called collectively the “**Improvements**”);

(c) All water and water rights (whether riparian, appropriative, or otherwise and whether or not appurtenant to the Premises) which now relate to or in the future may relate to or be used in connection with the Premises and all shares of stock evidencing any water rights;

(d) All privileges and other rights that are now or in the future may become appurtenant to the Premises including, without limitation, all of Trustor’s right, title, and interest in and to all streets, roads, easements, rights-of-way, and public places, whether opened or proposed or public or private;

(e) Subject to the terms of *Paragraph 15* of this Deed of Trust, all rents, issues, lease payments, incomes, profits, revenues, bonuses, rights, and benefits (collectively, the “**Rents**”) from or under any and all existing and future leases, tenancies, or other use and occupancy agreements created on all or any part of the Premises, together with the right to collect these items for the purposes and upon the terms and conditions set forth in this Deed of Trust;

(f) Subject to the terms of *Paragraph 16* of this Deed of Trust, all current and future judgments, awards of damages, and settlements made as a result of any Condemnation or made as a result of any damage (whether caused by a taking or otherwise) to the Premises or the Improvements or any part of or interest in the Premises, including any award for change of grade or width of streets;

(g) Subject to the terms of *Paragraph 5* of this Deed of Trust, all right, title, and interest of Trustor in and to any insurance proceeds payable to Trustor with respect to all or any portion of the Premises, including, without limitation, the Trust Property (defined below);

(h) All monetary deposits that Trustor has given to any public or private utility with respect to utility services furnished to the Premises;

(i) All funds, accounts, instruments, documents, general intangibles (including trademarks, trade names, and symbols) permits, licenses, franchises, certificates, and other rights and privileges obtained in connection with the Premises;

(j) All proceeds of the voluntary or involuntary conversion of any of the foregoing into cash or liquidated claims;

(k) All reversion and remainder interests arising out of ownership of the Trust Property;

(l) All present and future licenses, permits, approvals, and agreements from or with any governmental, quasi-governmental, or private entity relevant to the zoning, subdivision, development, construction, improvement, sale, lease, or other disposition of all or part of the Premises or Improvements;

(m) All present and future plans, specifications, drawings, surveys, appraisals, reports, and studies regarding the Premises;

(n) All management, maintenance, construction, purchase, sale, or service contracts related to the Premises or its operation;

(o) All present and future rights of Trustor under or with respect to any declaration of covenants, conditions, and/or restrictions imposing rights or responsibilities on the Premises or its owner, including any development rights, declarant rights, or special declarant rights of Trustor under any declaration of covenants, conditions, and/or restrictions;

(p) All rights of Trustor in and to any present or future contracts, agreements, guarantees, options, deposits, refunds, credits, retentions, surety bonds, or any other considerations which relate in any way to the ownership, development, use, improvement, leasing, sale, or other disposition of the Premises or Improvements; and

(q) Without limiting any of the foregoing, all present and future equipment, general intangibles, accounts, chattel papers, instruments, royalties, contract rights, and documents that directly or indirectly relate to or are used or intended for use with the Premises.

2. **Warranty of Title.** All real, personal, intangible, and other property granted, conveyed, and transferred to Trustee under this Deed of Trust is referred to as the “**Trust Property**”. Trustor warrants that it has marketable fee simple title to the Premises, subject only to those matters disclosed in a Title Report issued within six months of the date of this Deed of Trust and that certain first deed of trust approved by Beneficiary recorded on or about event date herewith and which first deed of trust shall be senior to this Deed of Trust (“**Approved Title Exceptions**”). Trustor warrants that its title to the Trust Property is and will remain free and unencumbered, except for the Approved Title Exceptions. Trustor agrees to warrant and defend title to the Trust Property for the benefit of Beneficiary against all claims whatsoever, except the Approved Title Exceptions and those matters consented to in writing by Beneficiary. Trustor warrants that this Deed of Trust is and will remain a valid and enforceable second position lien on the Premises, subject only to the Approved Title Exceptions.

3. **Secured Obligations.** Trustor has executed and delivered this Deed of Trust for the purpose of securing (collectively, the “**Obligations**”):

(a) Payment of the indebtedness evidenced by the Promissory Note dated on even date herewith in the original principal amount of \$_____ executed by Trustor and delivered to Beneficiary (the “**Note**”), and any renewals, extensions, substitutions, modifications, or amendments, together with all interest, late charges, collection costs, fees, and expenses as provided in the Note;

(b) Payment of all amounts specified in this Deed of Trust that Trustor has agreed to or is required to pay; and

(c) Prompt and complete performance and observance of each and every covenant, obligation, or agreement of Trustor contained in this Deed of Trust or contained in any other document or instrument given by Trustor to Beneficiary (“***Additional Documents***”).

4. **Taxes.** Trustor will pay: (i) before delinquent, all taxes, general and special assessments, and improvement district assessments of every type or nature affecting the Trust Property; (ii) all rents or charges payable under any lease affecting the Trust Property; (iii) all adverse claims, liens, charges, and encumbrances which now are or in the future may be or appear to be a lien on the Trust Property; (iv) all charges for water, water delivery, gas, electricity, sewers, waste removal; (v) all repairs; and (vi) all assessments due on any water stock. If any real estate taxes or general, special, or improvement district assessments (collectively, “***Taxes and Assessments***”) are not separately assessed to the Trust Property but include other property owned or not owned by Trustor, Trustor agrees that it will promptly apply for and complete the separation of the Trust Property from all other property for the purpose of all Taxes and Assessments. If Trustor does not promptly complete the separation or pay all Taxes and Assessments or other amounts under (ii) through (vi) above as provided in this paragraph, Beneficiary may exercise all remedies available under this Deed of Trust, including the right to advance all monies necessary to pay all or any portion of the Taxes and Assessments or the amounts under (ii) through (vi) above. All money so advanced will be secured by the lien of this Deed of Trust. Notwithstanding the foregoing, Trustor will have the right to bond over or otherwise protest, contest, or appeal the imposition of any of the matters described in subparagraphs (i) through (vi) above, inclusive, so long as Trustor has provided adequate assurances to Beneficiary that the matters contested, etc. will not have a material and adverse impact on the value of the Trust Property and will not result in a lien superior to the lien of this Deed of Trust (but will be promptly paid if Trustor loses its protest, etc.).

5. **Insurance.** Trustor, at its expense, will comply with all insurance requirements set forth in that certain first deed of trust approved by Beneficiary recorded on or about event date herewith or any other loan document executed in connection therewith.

6. **Repairs and Waste.** Trustor will keep the Trust Property in good condition and repair and will not commit or permit waste. Trustor will not remove or demolish, nor commence or continue any grading or construction of, nor alter the design or structural character of, any Improvements comprising part of the Trust Property, without the written consent of Beneficiary (whose consent will be given or withheld at Beneficiary’s sole but commercially reasonable discretion). Trustor will keep all Improvements comprising part of the Trust Property free of termites, dry rot, fungus, beetles, and all other harmful or destructive insects. Trustor will keep all plants, trees, and shrubs comprising part of the Trust Property neatly pruned and in good condition. Trustor will keep the Trust Property free of rubbish and other unsightly or unhealthful conditions and will not in any way change or restrict the use of the Trust Property without the prior written consent of Beneficiary, whose consent will be given or withheld in Beneficiary’s sole discretion. Beneficiary and its agents and/or its employees may, at any time or from time to time, with reasonable notice to Trustor, and without liability to Trustor (or any entity claiming any rights through Trustor) for trespass, abuse of access, or otherwise, enter and inspect or protect the Trust Property in the manner and to the extent as Beneficiary may deem desirable in its sole discretion.

7. **Improvements.** Trustor will complete promptly any improvements that may be commenced in a good and workmanlike manner. Trustor, with reasonable diligence, will repair and restore any portions of the Trust Property that may be damaged or destroyed whether any insurance proceeds against the cause of the damage or destruction are collected or not. Trustor will pay when due all claims for work performed or materials furnished, or both, on or in connection with the Trust Property,

and will pay, discharge, or cause to be removed, all mechanic's, artisan's, laborer's, or materialmen's charges, liens, claims of liens, or encumbrances upon the Trust Property.

8. **Defense.** Unless otherwise requested by Beneficiary in writing, Trustor will appear in and prosecute or defend any action or proceeding that may affect the priority of this Deed of Trust or the security of the Beneficiary or the Trust Property, and Trustor will pay all reasonable costs, expenses (including, without limitation, the cost of searching title), and attorney fees incurred in the action or proceeding. Beneficiary, at its option, may appear in and defend any action or proceeding purporting to affect the priority of this Deed of Trust or the Trust Property or the rights or powers of Beneficiary. Beneficiary, at its option, may pay, purchase, contest, or compromise any adverse claim, encumbrance, charge, or lien which, in the good faith judgment of Beneficiary, appears to be prior or superior to the lien of this Deed of Trust or which otherwise may affect this Deed of Trust or the Trust Property, without affecting any duty, obligation, or liability of Trustor under this Deed of Trust or under any other document or instrument given by Trustor to evidence or otherwise secure the obligations secured by this Deed of Trust, and without subjecting Beneficiary to any liability to Trustor on account of the payment, purchase, contest, or compromise. All amounts paid, suffered, or incurred by Beneficiary in exercising the authority granted in this Paragraph (including, without limitation, attorney fees in a reasonable amount) will be payments immediately repayable by Trustor pursuant to **Paragraph 11** below.

9. **Compliance.** Trustor will comply with all laws, ordinances, regulations, covenants, conditions, and restrictions affecting the Trust Property.

10. **Performance.** If Trustor fails to do so, Beneficiary, without demand or notice and as it in its sole judgment may consider necessary or advisable, and without obligation to do so, may do any or all things required of Trustor by any of the provisions of this Deed of Trust and incur and pay expenses in connection with the performance. All expenses or charges incurred by Beneficiary in the performance of any matters under this **Paragraph 10** will be considered to be payments that are immediately repayable under **Paragraph 11** below.

11. **Advances or Payments.** Trustor will pay to Trustee and Beneficiary, respectively, promptly and upon demand, but in no event later than five (5) business days following written notice from Beneficiary, all sums of money that Beneficiary or Trustee may have advanced or paid pursuant to, or resulting from, any of the provisions of this Deed of Trust. All of these amounts must be paid with interest from the time of the advance or payment until paid at the Default Rate set forth in the Note.

12. **Default.** Any of the following events will constitute an “**Event of Default**” under this Deed of Trust:

(a) Upon the occurrence of an Event of Default under the Note;

(b) Upon the recordation or filing of any mechanics' or materialmen's lien, attachment, garnishment, replevin, execution, or other statutory or judicial lien against all or any portion of the Trust Property that is not discharged, satisfied, or bonded over to Beneficiary's satisfaction within twenty (20) days after filing; and

(c) Upon any Prohibited Transfer, as defined in **Paragraph 25(a)** below;

13. **Remedies.** Upon an Event of Default, Beneficiary may pursue any and all rights and remedies at law or at equity, including, without limitation, the right to foreclose on the Trust Property non-judicially pursuant to the power of sale or judicially as a mortgage pursuant to this Deed of Trust, or as otherwise provided in this Deed of Trust. Without limiting the foregoing sentence, Beneficiary may

declare all sums secured by this Deed of Trust to be immediately due and payable by delivery to Trustee of written notice setting forth the nature of the default. The notice may contain an election to cause the Trust Property to be sold under this Deed of Trust. Beneficiary may proceed as if all of the Trust Property were real property, or Beneficiary may elect to treat any portion of the Trust Property that either consists of a right of action on property or consists of property that can be severed from the Premises without structural damage as if it were personal property and dispose of the personal property separate and apart from the sale of the real property. Notice to Trustor of Beneficiary's election to accelerate the indebtedness will not be required. If Beneficiary elects to cause the sale of the Trust Property, Trustee will record and give all notices of Trustee's sale in the manner required by law, and after the lapse of time such as then may be required by law, Trustee, without further notice to Trustor, may sell the Trust Property at the time and place fixed by it in the notice of Trustee's sale, either as a whole or in separate parcels, and in the order as Beneficiary may determine, at public auction to the highest bidder for cash in lawful money of the United States, payable at the time of sale. Trustee will deliver to the purchaser its deed conveying the Trust Property so sold, but without any covenant or warranty, express or implied. Any person or entity, including Trustor, Trustee, or Beneficiary, may purchase the Trust Property or any part at the sale. After deducting all costs, fees, and expenses of Trustee, including costs to insure or obtain evidence of title in connection with the sale, Trustee will apply the proceeds of sale to payment of: (i) all sums expended under the terms of this Deed of Trust which are unpaid, together with accrued interest at the Default Rate set forth in the Note (including, without limitation, all sums expended by Beneficiary pursuant to this Deed of Trust); (ii) all other sums by this Deed of Trust; and (iii) the remainder, if any, to the person or persons "legally entitled thereto". To the extent permitted by law, an action may be maintained by Beneficiary to recover a deficiency judgment for any balance due under the Note or due under this Deed of Trust. In lieu of the power of sale, this Deed of Trust, at the option of Beneficiary, may be foreclosed in the same manner provided by law for the foreclosure of mortgages on real property. Beneficiary also will have all other rights and remedies available to it under this Deed of Trust and at law or in equity. All rights and remedies of Beneficiary will be cumulative.

14. **Receiver.** Upon the occurrence of an Event of Default, Beneficiary, in addition to all rights and remedies available at law and/or under this Deed of Trust, will be entitled, at any time and without notice and without regard to the adequacy of any security, to enter upon and take possession of the Trust Property (or any part). Trustor will upon demand peaceably surrender possession of the Trust Property to Beneficiary or the receiver. Beneficiary's entry may be made by Beneficiary's agents, attorneys, or employees or by a court-appointed receiver. Beneficiary, in its name and/or in the name of Trustor, may operate and maintain all or any portion of the Trust Property to the extent Beneficiary deems advisable, and Trustor agrees that Beneficiary will be entitled to do and perform any acts that Beneficiary may deem necessary or proper to conserve the value of the Trust Property, including the ability to sue for and otherwise collect and receive all Rents (including those past due and unpaid as well as those later accruing) and the ability to rent or lease the Trust Property (or any portion) to the persons on terms and conditions approved by Beneficiary in its sole discretion. Trustor further agrees that Beneficiary also may take possession of and use any and all personal property contained in the Trust Property or used by Trustor in the rental or leasing of the Trust Property (or any part). Beneficiary may apply all the Rents collected or received by it to the payment of costs and expenses incurred in the operation of the Trust Property or to protect and preserve its security, or Beneficiary may permit any part of all of these moneys to be released by Beneficiary at its sole option. The expense (including receivers' fees, if any, and compensation to any agent appointed by Beneficiary, and attorney fees, costs, and disbursements) incurred in taking possession and effecting collection or attempting to take possession and effecting collection, will be deemed an expense of this Deed of Trust to be paid by Trustor and secured by this Deed of Trust. Neither the entering upon and taking possession of the Trust Property, nor the collection of the Rents, nor the application or release of these amounts will cure or waive any default or notice of sale or invalidate any act done pursuant to the notice of sale. In dealing with the Trust Property or any related personal property as a beneficiary in possession, Beneficiary will be without any liability, charge,

or obligation to Trustor other than for willful misconduct, and all losses, costs, and expenses incurred by Beneficiary will be advancements covered by **Paragraph 11** of this Deed of Trust. Trustor specifically agrees that the appointment of a receiver may be sought and pursued concurrently with the exercise of any other remedies of Beneficiary, including exercise of Trustee's power of sale.

Upon the occurrence of an Event of Default, Beneficiary, in addition to all rights and remedies available at law and/or under this Deed of Trust, as a matter of right and without notice to Trustor or anyone claiming under Trustor, and without regard to the value of the Trust Property or the interest of Trustor therein, shall have the right to apply to any court having jurisdiction to appoint a receiver or receivers for the Trust Property and Trustor hereby irrevocably consents to such appointment and waives notice of any application therefor. Any such receiver or receivers shall have all the usual powers and duties of receivers in like or similar cases and all the powers and duties of Beneficiary in case of entry as provided herein and shall continue as such and exercise all such powers until the date of confirmation of sale of the Trust Property unless such receivership is sooner terminated.

15. **Assignment of Rents.** All Rents arising out of the use or occupancy of all or any part of the Trust Property, all rights of Trustor in any leases, tenancies, or other use and occupancy agreements affecting all of any part of the Trust Property, and all rights of Trustor against any guarantors of the foregoing are assigned absolutely to Beneficiary as further security for the payment and performance of the Obligations. To enforce Beneficiary's rights under this Deed of Trust, Trustor also assigns to Beneficiary all rights to exercise any landlord liens under any other remedial rights to which a landlord may be entitled under _____ law. When requested by Beneficiary from time to time, and within the time as Beneficiary may reasonably require, Trustor will execute, deliver, and record, and will cause any lessee, tenant, or occupant (collectively, a "**Tenant**") of Trustor designated by Beneficiary to execute, deliver, and record separate lease assignments covering any or all of the leases that may affect any part or all of the Trust Property. All separate lease assignments will be in a form as Beneficiary, in its sole discretion, may require. Without limiting the generality of the foregoing, Beneficiary may require any Tenant to subordinate the Tenant's rights to the lien of this Deed of Trust. Beneficiary will not be required to give non-disturbance or similar commitments to any Tenant. Upon the occurrence of an Event of Default, Trustor authorizes and directs the Tenants of the Trust Property to make, upon written notice from Beneficiary, all payments required under any leases directly to the Beneficiary as they become due. Trustor relieves all Tenants from any liability to Trustor by reason of any payments being made to Beneficiary. Beneficiary may apply all rents collected by Beneficiary in any manner Beneficiary elects, in its sole discretion. Nevertheless, until Beneficiary notifies Tenants in writing to make such payments to Beneficiary, Trustor is granted a revocable license to collect all such Rents and/or payments. Beneficiary will be entitled to give written notification under this **Paragraph 15** only if there is an Event of Default by Trustor. In furtherance of the assignment of rents described above, Beneficiary may require Trustor to execute a separate or specific assignment of rents, the terms of which will be fully incorporated into this Deed of Trust.

16. **Condemnation.**

(a) All of Trustor's right, title and interest in any and all judgments, awards of damages, and settlements made as a result of each of the following (collectively, a "**Condemnation**") are assigned to and will be paid to Beneficiary: (i) any condemnation or other proceeding for public use; (ii) any private trespass to the Trust Property; and (iii) any eminent domain proceeding. Beneficiary will have the right, but not the obligation, to participate in any such proceedings, and Trustor will not settle or otherwise resolve any such proceedings or execute or deliver any deed without the prior written consent of Beneficiary, whose consent will not be unreasonably withheld.

(b) If the Condemnation affects less than substantially all of the Trust Property and further provided that legal access to the Trust Property has not been affected or impaired (“**Partial Condemnation**”), the proceeds of any judgment, award, or settlement will be held, applied, and disbursed by Beneficiary to the restoration of the Trust Property if requested by Trustor.

(c) If a Condemnation other than a Partial Condemnation, Beneficiary will be entitled to any award, judgment, or settlement, and Trustor agrees to immediately deliver to Beneficiary all proceeds of any such award, judgment, or settlement that may be received by Trustor. Beneficiary, at its option, may apply any proceeds to the satisfaction of any amounts secured by this Deed of Trust. Neither the application nor the release of any proceeds will cure or waive any breach or Event of Default or notice of sale or invalidate any act done pursuant to the notice of sale.

(d) If any Condemnation involves the taking of common elements related to all or any part of the Trust Property, the award must compensate Beneficiary for any reduction in value in the Trust Property as a result of the Condemnation of the common elements. Any award payable with respect to the foregoing will be paid to Beneficiary to the extent of its interest in the common elements and will be applied in satisfaction of the amounts secured by this Deed of Trust.

17. **Partial Payment.** Acceptance by Beneficiary of any sum in payment, or part payment, of any indebtedness secured by this Deed of Trust after the amount is due or after the recording of a notice of sale will not constitute a waiver of the right to require prompt payment, when due, of all other sums so secured, nor will the acceptance cure or waive any remaining breach or Event of Default or invalidate any sale held pursuant to notice of sale for any such remaining breach or Event of Default, or prejudice any of the rights of Beneficiary under this Deed of Trust.

18. **Waiver of Certain Statutes.** Trustor waives the pleading of any statute of limitations as a defense to any of the Obligations to the fullest extent permissible by law. Any person or entity that has signed this Deed of Trust as an accommodation. In any action by Beneficiary to recover a deficiency judgment for any balance due under the Note after a foreclosure of this Deed of Trust or in any action to recover or compel the performance of the Obligations, Trustor acknowledges and agrees that the successful bid amount made at any judicial or non-judicial foreclosure sale, if any, will be deemed conclusively to constitute the fair market value of the Trust Property, will be binding against Trustor in any proceeding seeking to determine or contest the fair market value of the Trust Property, and will be the preferred alternative means of determining and establishing the fair market value of the Trust Property. Trustor waives any right to have the fair market value of the Trust Property determined by judge or jury in any action seeking a deficiency judgment. Further, to the fullest extent permitted under the laws of the state of _____, Trustor hereby:

(a) waives all equitable rights of redemption;

(b) waives all rights of reinstatement following acceleration of the obligations secured by this Deed of Trust, it being agreed that Trustor has bargained for the notice and cure rights given to Trustor in this Deed of Trust and in the Note; that such rights provide Trustor with sufficient opportunity to prevent acceleration following a breach or default which could become an Event of Default; and that Trustor has agreed in return to waive any further right of reinstatement following acceleration should no cure be timely made;

(c) waives all rights of redemption Trustor might otherwise have under _____ law with respect to the Trust Property or any other collateral, whether by statute, by subrogation or otherwise;

(d) waives and agrees not to assert any and all rights, benefits and defenses which might otherwise be available in _____ law;

(e) agrees to be and remain liable for the Obligations, and agrees that this Deed of Trust may be enforced (and sale had hereunder or judgment given hereon) at any time and independent of any other action or judgment, all regardless of whether, or when, a trustee's or foreclosure sale of any collateral given by Trustor or any other person is held or any other nonjudicial or judicial action to realize upon collateral, or against Trustor or any other person obligated with respect to the Obligations, is commenced, maintained, concluded, continued or discontinued;

The statutes referred to above in this paragraph shall include any further statutes amending, supplementing or supplanting same. The waivers and agreements contained in this paragraph and elsewhere in this Deed of Trust are given by Trustor knowingly and voluntarily and upon advice of counsel.

19. **Invalidity.** If any one or more of the provisions of this Deed of Trust or the applicability of any such provision to a specific situation are held to be invalid or unenforceable, the provision will be modified to the minimum extent necessary to make it or its application valid and enforceable, and the validity and enforceability of all other provisions of this Deed of Trust and all other applications of the provisions will not be affected.

20. **Legal.** If it becomes necessary for the Beneficiary to employ legal counsel or to take legal action to collect the indebtedness, to enforce any provision, or to protect any of Beneficiary's rights under this Deed of Trust (including any protection of Beneficiary's rights under any proceedings under Title 11 of the United States Code), Trustor agrees to pay to Beneficiary, in addition to taxable costs of any legal proceeding or action, attorney fees in a reasonable amount and all costs of preparation and conduct of the proceedings, including costs of title searches and title policy commitments, all of which will be a lien upon the Trust Property and secured by this Deed of Trust.

21. **No Offset.** No offset or claim that Trustor now has or may in the future have against Beneficiary will relieve Trustor from paying installments or performing any other obligation in or secured by this Deed of Trust.

22. **Corrections.** Trustor will, upon request of the Trustee, promptly correct any defect or error which may be discovered in the contents of this Deed of Trust or in its execution or acknowledgment, and will execute, acknowledge, and deliver such further instruments and do such further acts as may be necessary or as may be reasonably requested by the Trustee or by the Beneficiary to carry out more effectively the purposes of this Deed of Trust and to perfect and maintain the lien and security interest created by this Deed of Trust.

23. **Security Interest.** With respect to any portion of the Trust Property which constitutes personal property, fixtures or other property governed by the Uniform Commercial Code adopted by the State of _____ ("UCC"), this Deed of Trust shall constitute a security agreement between Trustor as the debtor and Beneficiary as the secured party, and Trustor hereby grants to Beneficiary a security interest in such portion of the Trust Property (such portion being the "Personalty"). Cumulative of all other rights of Beneficiary hereunder, Beneficiary shall have all of the rights conferred upon secured parties by the UCC. Trustor hereby authorizes Beneficiary to file all financing statements that may from time to time be required by Beneficiary to establish and maintain the validity and priority of the security interest of Beneficiary, or any modification thereof, and agrees to reimburse Beneficiary for all costs and expenses of any searches required by Beneficiary. Beneficiary may exercise any or all of

the remedies of a secured party available to it under the UCC with respect to such Personalty, and it is expressly agreed that if upon an Event of Default Beneficiary should proceed to dispose of such property in accordance with the provisions of the UCC, ten (10) days' written notice by Beneficiary to Trustor shall be deemed to be reasonable notice under any provision of the UCC requiring such notice; provided, however, that Beneficiary may at its option dispose of such property in accordance with Beneficiary's rights and remedies with respect to the real property pursuant to the provisions of this Deed of Trust, in lieu of proceeding under the UCC.

Trustor shall give advance notice in writing to Beneficiary of any proposed change in Trustor's name, identity, or business form or structure and will execute and deliver to Beneficiary, prior to or concurrently with the occurrence of any such change, all additional financing statements that Beneficiary may reasonably require to establish and maintain the validity and priority of Beneficiary's security interest with respect to any of the Trust Property described or referred to herein.

Some of the items of the Trust Property described herein are goods that are or are to become fixtures related to the Premises, and it is intended that as to those goods, this Deed of Trust shall be effective as a financing statement filed as a fixture filing from the date of its filing for record in the real estate records of the county in which the Trust Property is situated. Information concerning the security interest created by this instrument may be obtained from Beneficiary, as secured party, at the address of Beneficiary stated on the first page of this Deed of Trust. The mailing address of Trustor, as debtor, is as stated on the first page of this Deed of Trust.

24. **Hazardous Materials.**

(a) **"Hazardous Materials"** will mean: (i) any chemical, material, or substance defined or included in the definition of "hazardous substances," "hazardous materials," "toxic substances," or words of similar import under any Hazardous Materials Laws; (ii) any oil, petroleum, flammable substances, explosives, asbestos; or (iii) any other chemical, material or substance which may or could pose a hazard to health or safety.

(b) To Trustor's knowledge, Trustor represents and warrants that no Hazardous Materials have been, are, or will be used, generated, stored, or disposed of on, under, or about the Trust Property; and (b) the Trust Property and all past, present, and future uses of the Trust Property were, are, and will be in compliance with all relevant local, state, and federal laws, rules, regulations, policies, ordinances, court decisions, settlement orders, and consent decrees relating to the protection of the environment on, under, or about the Trust Property (collectively, the **"Hazardous Materials Laws"**). At Trustor's expense, Trustor will comply with and will cause any tenants or occupants of the Trust Property to comply with the Hazardous Materials Laws. If any Hazardous Materials are found to exist on, under, or about the Trust Property, Trustor will at Trustor's expense take all necessary and appropriate remedial action that Beneficiary or any relevant authority will require. Trustor will immediately advise Beneficiary in writing of any governmental or regulatory communications or proposed or instituted actions with regard to Hazardous Materials and the Trust Property, and will immediately provide Beneficiary with copies of any written communications to and from the authorities. Upon any breach or Event of Default under this Deed of Trust, Beneficiary will have the right, at Trustor's expense, to obtain or require Trustor to obtain an environmental survey or study of the Trust Property from a qualified independent environmental engineer, all to the satisfaction of Beneficiary.

(c) Trustor agrees to indemnify, defend, and hold Beneficiary and Trustee harmless on demand for, from, and against any liability, loss, costs, damages, and expenses (including attorney fees) which Beneficiary or Trustee may sustain in any way related to any Hazardous

Materials on, under, or about the Trust Property. This indemnity will survive any foreclosure, trustee's sale, or deed in lieu of the Trust Property, will benefit any foreclosure purchaser, and will not be subject to any otherwise applicable statutory or contractual anti-deficiency limitation or nonrecourse provision.

25. Transfers.

(a) Any actual or attempted sale, transfer, assignment, encumbrance, lease, conveyance, lease with option to purchase any part, right, title, or interest in the Trust Property or the Trustor, whether legal or equitable, will constitute a "**Transfer**". All Transfers are subject to Beneficiary's prior written approval, which approval may be granted or conditioned in Beneficiary's sole and absolute discretion, and any Transfer that is not so approved by Beneficiary will be a "**Prohibited Transfer**".

(b) Consent to any one Transfer will not be deemed to be consent to any other Transfer, and no consent will constitute a commitment to subordinate the lien of this Deed of Trust to any interest created by the Transfer.

26. Change of Tax or Other Laws. If, after the date of recordation of this Deed of Trust, the United States of America or the State of _____ or any other governmental entity enacts a law or regulation which: (i) changes, in any material and adverse way, the taxation of this Deed of Trust as to Beneficiary; (ii) impose a tax, directly or indirectly, on Beneficiary or this Deed of Trust or any sums due and payable under either or both (except for income taxes payable by Beneficiary), Trustor shall pay to Beneficiary the tax levied or assessed.

27. Other Encumbrances. Trustor will pay or perform before delinquency all obligations under any prior or subordinate mortgage, deed of trust, agreement of sale, or any other lien or encumbrance other than the Approved Title Exceptions (collectively called an "**Encumbrance**"), and will not permit any consensual or non-consensual liens, mortgages, deeds of trust, agreements for sale, or security interests, other than the lien of this Deed of Trust and the Approved Title Exceptions, to be placed on any part of the Trust Property without the prior written consent of Beneficiary. If any Encumbrance is in default for any reason, Beneficiary may cure such default without notice, and the cost of curing such default, with interest at the Default Rate set forth in the Note, will be secured by this Deed of Trust. All amounts paid by Beneficiary under this **Paragraph 27** will be added to the Obligations and may be collected from Trustor upon demand at any time after the advances are made, and the holder of the Deed of Trust will be subrogated to the rights of any lienholder so paid. Immediately upon receiving any knowledge or notice of any default or claimed default under any Encumbrance, Trustor will give written notice to Beneficiary.

28. Security Intended. Notwithstanding any provision of this Deed of Trust to the contrary, the parties intend that this document is security for the payment and performance of the Obligations and will be a "deed of trust" as defined in _____ law. Trustor will be deemed a "mortgagor", Beneficiary will be deemed a "mortgagee", and Trustee will be disregarded and all references to the "Trustee" will be deemed to refer to the "mortgagee" to the extent not inconsistent with interpreting this instrument as though it were a realty mortgage. As a realty mortgage, Trustor, as mortgagor, will be deemed to have conveyed the Trust Property *ab initio* to the Beneficiary as mortgagee, the conveyance as a security to be void upon condition that Trustor pay and perform all its Obligations.

29. General.

(a) Upon the written request of Beneficiary stating that all of the Obligations have been paid or performed and upon surrender of this Deed of Trust to Trustee for cancellation and upon payment by Trustor of its fees, Trustee will reconvey, without warranty, the estate in the Trust Property then held by Trustee. The grantee in the reconveyance may be designated and described as the “person or persons legally entitled thereto”, or by other appropriate terms. In lieu of execution of a reconveyance by Trustee, Beneficiary may execute or release or, on behalf of Trustee, execute the reconveyance, in which case legal title will be vested in the “person or persons legally entitled thereto”. Beneficiary will not be obligated to consent to or permit any partial releases of the Trust Property.

(b) This Deed of Trust will inure to and bind the heirs, legatees, devisees, administrators, executors, successors, and assigns of the parties. This Deed of Trust will be so construed that, wherever applicable, the use of the singular number will include the plural number, the use of the plural number will include the singular number, the use of the masculine gender will include the feminine gender. The term “**Beneficiary**” will mean the owner and holder of the Note, and will include all successors and assigns of a beneficiary to this Deed of Trust. Any appointment of Beneficiary as attorney-in-fact for Trustor will be with full power of substitution.

(c) Unless otherwise specifically set forth in this Deed of Trust, any consent, approval, or election by Beneficiary (or the establishment of any item to the satisfaction of Beneficiary) will be deemed and construed as being given, withheld, or established at and in Beneficiary’s sole and absolute discretion.

(d) Time is of the essence in the payment and performance of each and every provision of this Deed of Trust. No failure on the part of Beneficiary to exercise any of its rights upon any Event of Default will be construed to prejudice its rights if any other or subsequent Event of Default. No delay on the part of Beneficiary in exercising any of the rights will be construed to preclude it from their exercise at any time during the continuance of the Event of Default. Beneficiary may enforce any one or more remedies or rights under this Deed of Trust successively or concurrently at its option, and any such enforcement of any one or more remedies will be not deemed to be any election against or preclusion of any other rights or remedies.

(e) Unless otherwise required by applicable law, all notices required to be given under this Deed of Trust will be given in accordance with the terms of the Note.

(f) This Deed of Trust, the Note, and any documents secured by this Deed of Trust will be governed and construed in accordance with the laws of the State of _____. Trustor irrevocably submits to jurisdiction and venue in the State of _____ for any legal action relating to this Deed of Trust, the Note, or any other agreement given in connection with the Note or Deed of Trust. Trustor waives any defense or objection to jurisdiction or venue based on the doctrine of “*forum non conveniens*”, and Trustor stipulates that any state court in the State of _____ will have personal jurisdiction over Trustor for the purpose of litigating any dispute or controversy arising out of this Deed of Trust, the Note, or any other Additional Documents. Trustor agrees that if Trustor commences or maintains any action or proceeding arising out of this Deed of Trust, the Note, or the other Additional Documents in any forum other than a state court in _____, Beneficiary will be entitled to the removal, dismissal, or stay of such action.

[SIGNATURE PAGE ON THE FOLLOWING PAGE]

4842-8298-4269.2

**EXHIBIT “A”
TO
DEED OF TRUST AND ASSIGNMENT OF RENTS
AND SECURITY AGREEMENT AND FIXTURE FILING**

(legal description)

[Insert Property Address], _____:

[Insert Legal Description]

Parcel Identification Number: _____