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California Legal Forms--Transaction Guide

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PART IV: Transactions in Turbulent Times - Real Estate.

CHAPTER 34: Leases--Default and Termination.

*37TTT-34 California Legal Forms--Transaction Guide 34.syn*

**§ 34.syn Synopsis to Chapter 34: Leases--Default and Termination.**

Form T34-1 Lease Provision--Termination on Default

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37TTT-34 California Legal Forms--Transaction Guide Form T34-1

**Form T34-1 Lease Provision--Termination on Default**

**Description:** This form is for use by either party to terminate the lease upon the default of the corresponding party.

**Form T34-1 Lease Provision--Termination on Default**

ARTICLE \_\_\_\_\_ . TERMINATION

**Excluding Tenant From Premises**

\_\_\_\_\_.01. The Landlord or its agent may not intentionally exclude the Tenant from the premises in any manner except by judicial process. Intentional exclusion means preventing Tenant from entering into the premises--with intent to deprive Tenant of entry--for a reason other than the following: (1) bona fide repairs, construction, or emergency; (2) removing the contents of the premises when Tenant has abandoned the premises; or (3) changing the door locks after Tenant is delinquent in paying rent in whole or in part.

If Landlord changes any door lock under the circumstances set forth in the above paragraph, Landlord must leave a written notice on the Tenant's front door stating \_\_\_\_\_ [*include if residential lease:* an on-site location where the tenant may go 24 hours a day to obtain the new key or a telephone number that is answered 24 hours a day that the tenant may call to have a key delivered within two hours after calling the number; the fact that the landlord must provide the new key to the tenant at any hour, regardless of whether or not the tenant pays any of the delinquent rent; and the amount of rent and other charges for which the tenant is delinquent *or if commercial lease:* the name and the address or telephone number of the individual or company from which the new key may be obtained during Tenant's regular business hours. But Landlord will provide a key only if Tenant pays any delinquent rent].

**Termination by Landlord**

\_\_\_\_\_.02. In addition to all Landlord's rights and remedies under law, Landlord may terminate this lease on \_\_\_\_\_ days' written notice to Tenant of Landlord's intention to do so when Tenant commits any of the following acts: \_\_\_\_\_

[List acts constituting breaches, e.g.]:

1. Failing to pay rent when due.
2. Failing to pay taxes, assessments, insurance premiums, liens, claims, or other charges required by this Lease.
3. Failing to begin or complete the construction, restoration, or replacement of the building or other improvements on the leased premises as this Lease provides.
4. Failing to begin and continuously conduct the \_\_\_\_\_ [describe] business on the leased premises.
5. Failing to use, maintain, and operate the leased premises as this Lease requires.
6. Failing to make the repairs to the leased premises that the Tenant has promised to make under this lease within \_\_\_\_\_ [a reasonable time or specify number of days] after Landlord's written request to do so.
7. Assigning or subleasing the leased premises.
8. Committing waste on the leased premises.
9. Maintaining, committing, or permitting the maintenance or commission of a nuisance on the leased premises.
10. Using the leased premises for any unlawful purpose, whether the purpose is in addition to, or in lieu of, the uses specifically permitted by this Lease.
11. Failing to restore the security deposit to the original sum required, on Landlord's written demand, after the Landlord's resort to the sum according to this Lease.

#### **Termination by Tenant**

\_\_\_\_\_.03. In addition to all rights and remedies the Tenant has under law, Tenant may terminate this lease on \_\_\_\_\_ days' written notice to Landlord of Tenant's intention to do so when Landlord commits any of the following acts: \_\_\_\_\_ [List acts constituting breaches, e.g.]:

1. Failing to begin or complete construction of the building, improvements, and replacements required by this Lease.
2. Failing to make the repairs to the leased premises that Landlord must make under this Lease within \_\_\_\_\_ [specify number of days or a reasonable time] after Tenant's written request to do so.
3. Failing to secure Tenant in the quiet possession of the leased premises.
4. Using or permitting the use of any portion of \_\_\_\_\_ [building or area] in which the leased premises are situated for any one or more of the purposes prohibited by Article \_\_\_\_\_.

#### **Termination After Damage to Premises**

\_\_\_\_\_.04. Tenant also may terminate this lease:

1. Immediately, if the leased premises are totally destroyed or damaged so as to render them substantially unfit for Tenant's purposes, as long as the destruction was not the fault of the Tenant or its agents or employees.
2. Immediately, if any one or more of the following improvements on the leased premises are destroyed without the fault of the Tenant or its agents or employees: \_\_\_\_\_ [*specify improvements*]. It is agreed that those improvements constitute the material inducement to Tenant to enter into this Lease.

**Effect of Termination**

\_\_\_\_\_.05. No termination of this Lease under this Article will relieve either party from paying any sum or sums then due and payable under this Lease, or from any claims for damages accruing under this Lease. No termination will prevent either party's enforcing payment of the sum or sums or claims for damages by any remedy provided for by law. The rights and remedies under this Lease are cumulative and nonexclusive, and the parties may pursue any of those rights and remedies or any other remedies provided by \_\_\_\_\_ [state] law.

**Waiver**

\_\_\_\_\_.06. No waiver by either party of a breach of any provision of this Lease may be deemed or alleged to be a continuing waiver or a waiver of any other breach, whether of the same or of any other covenant, condition, or restriction of this Lease.



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*37TTT-34 California Legal Forms--Transaction Guide Form T34-2*

**Form T34-2 Nonwaiver Clause**

**Description:** This form presents a lease clause that attempts to prevent the lessor's conduct or delay in response to some failure on the lessee's part from being considered as a waiver of the lessor's rights.

**Form T34-2 Nonwaiver Clause**

*[Include in default section of lease, following lessor's remedies]*

§ \_\_\_\_\_. No Waiver. Failure of Lessor to declare any default upon its occurrence, as provided in the foregoing section defining default, or delay action in connection with a matter that may constitute a default, shall not waive the default or breach. Rather, Lessor shall have the right to declare a default as a result of a breach or failure to perform on Lessee's part at any time and take such action in response as may be lawful or authorized under this lease. Moreover, Lessor's conduct with regard to a lapse, breach, or default by Lessee at one time or in one respect shall not be construed as a waiver of any subsequent or other lapse, breach, or default of any term, condition or covenant of this lease.



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*37TTT-34 California Legal Forms--Transaction Guide Form T34-3*

**Form T34-3 Lessor's Remedies Upon Default**

**Description:** The provision in this section is illustrative of a clause describing the lessor's options if the lessee is in default. It should be in the article of the lease dealing with default and follow the clause defining a default and affording any period of grace to cure the problem.

**Form T34-3 Lessor's Remedies Upon Default**

*[Include as section in article covering default of lease, immediately following definition of default]*

§ \_\_\_\_\_. Lessor's Remedies for Default. In the event of default by Lessee as set out in the preceding section, Lessor shall have the option to pursue any one or more of the remedies provided in this lease or afforded Lessor by law, without further notice or demand and without prejudice to any other remedy:

a. Lessor may enter into and upon the leased premises and retake possession, by legal proceedings or otherwise, expel Lessee and anyone claiming through or under Lessee, remove Lessee's or a claimant's goods and effects, forcibly, if necessary, and store the goods in the name and at the expense of Lessee.

b. After retaking possession as set out above, or upon abandonment of the premises by Lessee, Lessor may at Lessor's option relet the premises or any part of the premises, in the name of Lessor or otherwise, for a term or terms that may be less than or exceed the period that would otherwise constitute the balance of the term of this lease. The term of such reletting by the Lessor shall be evidence of the fair rental value of the premises for the balance of the term and the Lessee shall be liable to the Lessor for the amount by which the rent and other charges due under this lease for the balance of its term exceeds the fair rental value of the premises for that period.



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37TTT-34 California Legal Forms--Transaction Guide Form T34-4

**Form T34-4 Notice of Termination of Lease Pursuant to Lease Provision**

**Description:** The landlord or tenant may use this notice to terminate a lease under a lease provision reserving that right to the landlord or granting that right to the tenant.

**Form T34-4 Notice of Termination of Lease Pursuant to Lease Provision**

NOTICE OF TERMINATION OF LEASE UNDER LEASE PROVISION

To: \_\_\_\_\_ [Name and address of landlord or tenant]

Under the election \_\_\_\_\_ [granted *or* reserved] to me by Paragraph \_\_\_\_\_ of our lease, dated \_\_\_\_\_ [date], I elect to terminate the lease on \_\_\_\_\_ [*specify date or describe number of days required by lease*]. Under the lease, \_\_\_\_\_ [I *or* you] have possession of the premises commonly known as \_\_\_\_\_ [address *or* other common designation of property].

\_\_\_\_\_ [I will *or* You must] vacate the premises on or before \_\_\_\_\_ [date].

Dated: \_\_\_\_\_.

\_\_\_\_\_ [signature]

\_\_\_\_\_ [typed name of tenant or landlord]



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*37TTT-34 California Legal Forms--Transaction Guide Form T34-5*

**Form T34-5 Notice of Termination of Month-to-Month Tenancy**

**Description:** Either the landlord or tenant may use this notice to terminate a tenancy from month to month, also known as a monthly tenancy.

**Form T34-5 Notice of Termination of Month-to-Month Tenancy**

NOTICE OF TERMINATING MONTH-TO-MONTH TENANCY

To: \_\_\_\_\_ [Name and address of landlord or tenant]

The month-to-month tenancy we entered into on \_\_\_\_\_ [date], for the premises commonly known as \_\_\_\_\_ [specify address or other common designation], is terminated as of \_\_\_\_\_ [date].

Dated: \_\_\_\_\_.

\_\_\_\_\_ [signature]

\_\_\_\_\_ [typed name of tenant or landlord]



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37TTT-34 California Legal Forms--Transaction Guide Form T34-6

**Form T34-6 Notice of Termination of Tenancy After Casualty Loss**

**Description:** Either the landlord or the tenant may use this form to notify the other party that the lease is terminated because of a casualty loss.

**Form T34-6 Notice of Termination of Tenancy After Casualty Loss**

NOTICE OF TERMINATION AFTER CASUALTY LOSS

To: \_\_\_\_\_ [Name and address of landlord or tenant]

The \_\_\_\_\_ [written *or* oral] lease we entered into on \_\_\_\_\_ [date], for the premises commonly known as \_\_\_\_\_ [*specify address or other common designation*], is terminated as of \_\_\_\_\_ [date]. I have elected to terminate the lease as allowed by *Section* \_\_\_\_\_ *of the* \_\_\_\_\_ [*state*] *Property Code* because of a casualty loss rendering the premises totally unusable for residential purposes. The casualty loss was not caused by \_\_\_\_\_ [my *or* your] negligence or fault, the negligence or fault a member of \_\_\_\_\_ [my *or* your] family, or one of \_\_\_\_\_ [my *or* your] guests or invitees.

\_\_\_\_\_ [I will *or* You must] vacate the premises on or before \_\_\_\_\_ [date].

Dated: \_\_\_\_\_.

\_\_\_\_\_ [signature]

\_\_\_\_\_ [typed name of tenant or landlord]



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37TTT-34 California Legal Forms--Transaction Guide Form T34-7

**Form T34-7 Notice to Vacate on Tenant's Default****Description:** This notice to vacate is a prerequisite to an eviction suit.**Form T34-7 Notice to Vacate on Tenant's Default**

## NOTICE TO VACATE FOR DEFAULT

To: \_\_\_\_\_ [Name and address of tenant]

This is a formal notice and demand that you vacate the premises at \_\_\_\_\_ [street address], within \_\_\_\_\_ [if attorney's fees and costs are not desired: three days after delivery of this notice to those premises or, if attorney's fees and costs are desired: 10 days after this notice was sent by registered or certified mail, return receipt requested], because of \_\_\_\_\_ [nonpayment of rent or describe other default].

*[If default is for nonpayment of rent]*

Under your \_\_\_\_\_ [written or oral] lease with \_\_\_\_\_ [name of landlord], you agreed to pay monthly rental of \$ \_\_\_\_\_, in advance, each month on the \_\_\_\_\_ [e.g., first] of the month. You have failed and continue to fail to pay rent due for \_\_\_\_\_ [specify period or periods], and you now owe rent of \$ \_\_\_\_\_, plus late charges of \$ \_\_\_\_\_ arising under the lease. [Add if applicable: In addition, you owe \$ \_\_\_\_\_ for the following damages to the leased premises: \_\_\_\_\_ (describe items damaged and itemize amounts for each item damaged).] The total amount you owe is \$ \_\_\_\_\_.

[OR]

*[If default is for other than nonpayment of rent]*

Under your [written] lease with \_\_\_\_\_ [name of landlord], you agreed \_\_\_\_\_  
[describe lease provision that tenant has violated, e.g., to use the leased premises for private residence purposes, and  
that only you, as the tenant, would occupy them]. Despite notice and demand to cease doing so, \_\_\_\_\_  
[describe violation of lease provision, e.g., you have, since approximately \_\_\_\_\_ (date), operated a  
commercial woodworking shop on the leased premises] and, therefore, are in default under the lease.

[If attorney's fees and costs are not desired]

If you do not vacate the premises within three days after delivery of this notice, we may institute a forcible-detainer  
action against you.

[OR]

[If attorney's fees and costs are desired]

If you do not vacate the premises before the 11th day after the date you receive this notice, we may institute a  
forcible-detainer action against you. If we file such an action, we may recover attorney's fees.

[Continue with the following]

You are also advised that unless you pay all rent, late charges, and damages set forth in this notice, we intend to file suit  
against you to recover those amounts and any other amounts due or that may become due under the lease.

Dated: \_\_\_\_\_.

\_\_\_\_\_ [signature]

\_\_\_\_\_ [typed name of tenant or landlord]



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CHAPTER 35: Mortgages and Deeds of Trust-- Lending Agreements.

*37TTT-35 California Legal Forms--Transaction Guide 35.syn*

**§ 35.syn Synopsis to Chapter 35: Mortgages and Deeds of Trust-- Lending Agreements.**

Form T35-1 Mortgage Clauses and Provisions

Form T35-1 Mortgage Clauses and Provisions

Form T35-2 Release Agreement Terminating Existing Real Estate Contract

Form T35-2 Release agreement terminating existing real estate contract

Form T35-3 Mortgagee Waiver

Form T35-3 Mortgagee Waiver

Form T35-4 Adjustable Rate Home Equity Conversion Deed of Trust--FHA.

Form T35-4 Adjustable Rate Home Equity Conversion Deed of Trust--FHA.



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*37TTT-35 California Legal Forms--Transaction Guide Form T35-1*

**Form T35-1 Mortgage Clauses and Provisions**

**Description:** The following clauses and provisions cover the principal terms of mortgages, as well as many of the more specialized situations. In addition to numerous examples of plain language and other residential clauses, there are more specialized clauses covering matters such as nonrecourse mortgages (1), commercial leases and assignment of rents ((86) to (89)), extension of the mortgage lien to fixtures and other personal property ((6) and (90)), and a reduced interest rate for an employee-borrower (78).

**Form T35-1 Mortgage Clauses and Provisions** \_\_\_\_\_

(1) Nonrecourse mortgage with carveouts

*No recourse against mortgagor.* Mortgagee shall not look to Mortgagor or any principal of Mortgagor with respect to the indebtedness evidenced by this Mortgage. In enforcing its rights and remedies under this Mortgage, Mortgagee shall look solely to the mortgaged premises for the payment of the indebtedness secured hereby and for the performance of the provisions hereof. Mortgagee shall not seek a deficiency or other money judgment against Mortgagor or any principal of Mortgagor and shall not institute any separate action against Mortgagor by reason of any default which may occur in the performance of any term or condition of this Mortgage or the Note. This agreement by Mortgagee shall not be construed in any way so as to affect or impair the lien of this Mortgage or Mortgagee's right to foreclose hereunder as provided by law, or to limit or restrict any of Mortgagee's rights or remedies in any foreclosure proceedings or other enforcement of payment of the indebtedness secured hereby out of and from the security given therefor.

Notwithstanding the aforesaid, Mortgagee may look to Mortgagor and any principal of Mortgagor for (i) misapplication of insurance proceeds, condemnation proceeds, tenant's security deposits, (ii) rent revenue and other income collected more than one month in advance (iii) rental revenue and other income collected after an event of default under the Loan Documents not applied to the debt service or operating expenses of the business, (iv) intentional damage to the property, (v) failure to pay (or deposit into reserves held by Mortgagee) funds sufficient to pay taxes or other liens with priority over Mortgagee's Loan Documents, (vi) damages arising from any fraud or misrepresentation of Mortgagor or any of its principals, and (vii) damages arising from the existence of hazardous or toxic substances or the failure of the property to comply with environmental laws.

## (2) Purchase money mortgage

*Purchase money.* This is a purchase money mortgage used to secure the repayment of funds used by Mortgagor to purchase the above described property.

## (3) Purchase money mortgage: plain language

*Nature of this agreement.* This Agreement is a purchase money mortgage. I am signing this Agreement in exchange for the loan which you have given me for the purpose of purchasing the premises.

## (4) Mortgaged premises, including all right, title and interest

The mortgaged premises includes all of Mortgagor's right, title, and interest in and to the streets abutting the premises to the center line thereof.

The mortgaged premises are the same premises conveyed to Mortgagor by deed delivered and intended to be recorded simultaneously with this mortgage. This mortgage is a purchase money mortgage.

The mortgaged premises includes all and singular the tenements, hereditaments, and appurtenances belonging or appertaining, and the reversion or reversions, remainder and remainders, rents, issues, and profits; also all the estate, right, title, interest, property, possession, claim, and demand whatsoever, in law and in equity, of Mortgagor, and every part and parcel with the appurtenances; and also all the right, title, and interest of Mortgagor in and to all equipment and fixtures now used or hereafter to be used in connection with the operation or enjoyment of the buildings on the premises or any part thereof.

## (5) Mortgaged premises, including condemnation award

Now, therefore, in consideration of the indebtedness and for better securing the payment of the same, Mortgagor does hereby grant, convey, and mortgage unto Mortgagee, the real property described in Exhibit "A" attached (the "Land").

TOGETHER with any and all buildings and improvements erected or hereafter erected thereon.

TOGETHER with all of Mortgagor's right, title, and interest, now owned or hereafter acquired, in and to any land lying in the bed of any street, road, or avenue, open or proposed, in front of or adjoining said Land.

TOGETHER with all of Mortgagor's right, title and interest, now owned or hereafter acquired, in and to all sidewalks and alleys, and all strips and gores of land, adjacent to or used in connection with said Land.

TOGETHER with all awards, damages, payments and other compensation and all claims therefor and rights thereto which may result from taking or injury by virtue of the exercise of the power of eminent domain of or to, or any damage, injury, or destruction in any manner caused to the Premises, or any part thereof, or from any change of grade or vacation of any street abutting thereon. All of such awards, damages, payments, compensation, claims, and rights are hereby assigned, transferred, and set over to Mortgagee to the fullest extent that Mortgagor may under the law so do. Mortgagee is irrevocably appointed attorney-in-fact for Mortgagor to settle for, collect and receive any such awards, damages, payments, and compensation from the authorities making the same, to appear in and prosecute any proceeding therefor, and to give receipts and acquittances therefor.

## (6) Fixtures and personal property included in mortgage: commercial property

TOGETHER with all fixtures, and all machinery, equipment, chattels, goods, and other articles of property, whether real estate or not, now or at any time hereafter attached to or situated in or upon, and used or useful in the operation of,

the Land or the buildings and improvements erected or hereafter erected thereon, or of any business now or hereafter operated by the owner or any occupant of the Premises, or any part thereof, including:

All gas and electric fixtures, radiators, heaters, engines and machinery, boilers, ranges, ovens, elevators and motors, bathtubs, sinks, toilets, basins, pipes, faucets, air-conditioning equipment, plumbing fixtures, heating fixtures, mirrors, mantels, refrigerating plant, refrigerators, dishwashers, carpeting, furniture, laundry equipment, cooking apparatus, and appurtenances, and all building material and equipment now or hereafter delivered to the Premises and intended to be installed therein; and all renewals or replacements thereof, all additions or articles in substitution and all of the estate, right, title, and interest of Mortgagor in and to all property of any nature whatsoever, now or hereafter situate on the Premises or intended to be used in connection with its operation shall be deemed to be fixtures and an accession to the freehold and a part of the realty as between the parties hereto and all persons claiming by, through or under them and shall be deemed to be a portion of the security for the indebtedness secured by this Mortgage.

(7) Miscellaneous property interests included in mortgage

TOGETHER with all and singular the tenements, hereditaments and appurtenances belonging to the mortgaged Land or any part thereof, or the buildings and improvements thereon, or in anyway appertaining, including but not limited to all income, rents, issues and profits arising therefrom, all streets, alleys, passages, ways, watercourses, easements, all other rights, liberties, and privileges of whatsoever kind or character, the reversions and remainders, and all the estate, right, title, interest, property, possession, claim, and demand whatsoever, as well at law as in equity, of Mortgagor, in and to all the foregoing or any or every part thereof. The Land, buildings, improvements, fixtures, machinery, equipment, tenements, and other property interests described and enumerated above are collectively referred to in this mortgage as the "Premises."

(8) Mortgaged property and fixtures--short form

TOGETHER with all of Mortgagor's right, title, and interest to the land located in the streets and roads in front of and adjoining the premises, and

TOGETHER with all fixtures, and articles of personal property which now or in the future are attached to or used in the operation of any building on the premises together with any replacements thereof or additions thereto (but excluding the furniture of Mortgagor); and

TOGETHER with all awards or payments made to Mortgagor in the event of a taking of all or part of the premises by eminent domain ("condemnation"), including awards or payments for changes of the grades of streets and awards and payments made in the event of any other injury to or decrease in the value of the premises.

(9) Mortgaged premises: plain language

*Mortgaged property.* I give you a mortgage on my property at \_\_\_\_\_ [address or location] and all the buildings and improvements on it. This is the legal description of my property for the official records:

A. *Legal description of property and improvements.* ALL that certain tract or parcel of land and premises, hereinafter particularly described, situate, lying and being

[insert legal description]

B. *Streets.* I also give you a mortgage on any right that I may have in the land in the streets or roads in front of or alongside my property.

C. *Fixtures.* I also give you a mortgage on the property now or later attached to my land and buildings, and on all replacements of this property. These are called "fixtures." (Some examples of fixtures: furnaces, radiators, plumbing and heating pipes, bathroom fixtures, kitchen cabinets, stoves, shrubbery, and trees).

D. *Condemnation awards.* I also give you a mortgage on any money I am entitled to receive if all or part of my property or my right to use it is taken from me by a government agency or other lawful authority. You are authorized to collect this money, give receipts for it, and use it to reduce my debt to you. I agree to give you a written assignment or any other document you may need to obtain this money. If for a time after the property is taken the agency or authority delays making payment but instead pays you interest, I agree to pay you the difference between the interest you receive and the interest I would owe you under the Mortgage Note.

E. *Additional security.* As additional security for this loan, I also give you what is known as a security interest on any accounts maintained by me and in any securities of mine in your possession at any time while this loan remains unpaid.

(10) Acceleration on sale or transfer, except to spouse

*Nonassumability.* Upon the sale or transfer of all or part of the premises, Mortgagee may declare the entire principal sum and accrued interest thereon to be immediately due and payable. This paragraph, however, shall not apply to any sale or transfer between Mortgagor and his spouse.

(11) Acceleration on sale or transfer: plain language (residence)

*Sale or transfer of premises.* If I sell or transfer ownership of my property, I agree to repay what I owe you in full with interest up to the date of the sale or transfer, unless you have agreed in writing in advance to allow the new owner to take over my obligations under this Mortgage and the Mortgage Note.

(12) Title warranty

Mortgagor warrants and covenants with Mortgagee, that Mortgagor is seized of an indefeasible estate in fee simple in the premises, its appurtenances, equipment and fixtures, and will warrant and forever defend the title unto Mortgagee against all lawful claims.

(13) Title guaranty: plain language (residence)

*Warranty.* I guarantee to you that I am the sole owner of this property and that I have the legal right to give you a first mortgage on it. I guarantee to you title to the premises.

(14) Title warranty: plain language

I covenant ("agree") with you as follows:

*Title.* I warrant the title to the premises.

(15) Title warranty and covenant to defend

*Warranty of title.* Mortgagor warrants that it is lawfully seized of the Premises, that it has full right and is lawfully authorized to sell, convey, or encumber the same, and that the Premises are free and clear of all liens and encumbrances

except as provided herein. Mortgagor further covenants to warrant and forever defend, all and singular, the Premises unto the Mortgagee forever from and against the Mortgagor and all persons whomsoever lawfully claiming the same or any part thereof.

(16) Further instruments to continue or preserve lien

*Further assurances.* At any time, and from time to time, upon Mortgagee's request, Mortgagor will make, execute, acknowledge, and deliver or cause to be made, executed, acknowledged, and delivered to Mortgagee, all other or further instruments, mortgages, conveyances, deeds, certificates, and documents that Mortgagee deems necessary, or desirable in order to effect, complete, confirm, enlarge, or perfect or to continue and preserve Mortgagor's obligation under the Note and the lien of this Mortgage. Upon any failure by Mortgagor to do so, Mortgagee may make, execute, and record any and all such instruments, certificates, and documents for and in the name of Mortgagor, and Mortgagor irrevocably appoints Mortgagee its agent and attorney-in-fact of Mortgagor to do so. Mortgagor agrees to pay all filing, registration, and recording fees and all federal, state, county, and municipal fee, taxes or other duties, imposts, assessments, and charges on all such instruments, certificates, and documents.

(17) Warranty of corporate or partnership status

*Good standing.* If Mortgagor purports to be a partnership or a corporation, it warrants and covenants that:

- (i) it is duly organized, validly existing, and in good standing under the laws of the state in which it is organized or incorporated,
- (ii) it is duly qualified and in good standing in the state in which the Premises is located,
- (iii) it has full power, authority, and legal right to carry on the business now being conducted by it and to engaged in the transactions contemplated by this Mortgage and the Note, and
- (iv) the execution and delivery of and the carrying out of the transaction contemplated by this Mortgage, the execution and delivery of the Note and this Mortgage, and the performance and observance of the terms, covenants, agreements, and provisions of all of the foregoing, have been duly authorized by all necessary actions of Mortgagor and will not conflict with or result in a breach of the terms or provisions of any other agreement or of any existing law or any existing rule, regulation, or order of any court or governmental body or of the Certificate of Partnership or Certificate of Incorporation or the Partnership Agreement or the By-laws of Mortgagor.

(18) Payment without deduction for taxes or assessments

This mortgage is granted upon this express condition, that if Mortgagor pays to Mortgagee all moneys secured hereby when due and payable, and the interest, without deduction or credit for any amount for taxes, assessments or other impositions, then this mortgage, and the estate hereby granted shall cease, terminate, and be void, otherwise to remain in full force and effect.

And Mortgagor covenants and agrees to pay to Mortgagee the principal and interest owing on the note or obligation, without any deduction or credit for any amount paid for taxes, assessments, or other impositions assessed or to be assessed upon the mortgaged premises.

(19) Repayment without deductions or credits: plain language (residence)

This grant is made upon the express condition, that if Mortgagor repays to Mortgagee the principal sum specified in the note bearing today's date along with all interest due on such sum without deductions or credits of any kind according to

the terms of the note, this grant shall be void and of no legal effect whatsoever.

(20) Payment of debt: plain language

*Payment.* I will pay the indebtedness as provided by the Mortgage Note.

(21) Payment and performance of all terms by borrower

*Payment of sums secured.* Mortgagor shall pay to Mortgagee the principal of and interest upon the Note according to the terms of the Note, reasonable charges fixed by Mortgagee to satisfy and discharge this Mortgage of record, and all other sums hereby secured. Mortgagor shall keep and perform every other term, provision, covenant, and agreement of the Note and this Mortgage.

(22) Timely payment, satisfaction of mortgage

*Satisfaction of this mortgage.* If Mortgagor complies with all of the provisions of this Mortgage and pays to Mortgagee the principal sum, and all other sums payable by Mortgagor to Mortgagee as are hereby secured, in accordance with the provisions of the Note and in the manner and at the times therein set forth, without credit for taxes, deduction, fraud, or delay, then and from thenceforth this Mortgage, and the estate hereby granted, shall cease and become void, otherwise to remain in full force and effect.

(23) Medium and place of payment

*Medium of payment.* All payments of principal, interest and all other payments required or provided for herein shall be paid in lawful money of the United States of America which shall be legal tender in payment of all debts and dues, public and private, at the time of payment, at the office of Mortgagee or at any other place either within or without the State of \_\_\_\_\_ that Mortgagee may from time to time designate.

(24) Partial release of lien, continued liability

*Right of release.* Mortgagee may allow Mortgagor any indulgences or forbearances, or extensions of any kind, respecting payment of the indebtedness secured hereby, or may release portions of the Premises without affecting the personal liability of any person, corporation or other entity for the payment of the indebtedness, or the lien of this Mortgage upon the remainder of the Premises for the full amount of the indebtedness then remaining unpaid. In the event of the sale or transfer by operation of law or otherwise, of all or any part of, or interest in, the Premises described in this Mortgage, Mortgagee is authorized and empowered to deal with the buyer or transferee with reference to the Premises and/or the debt secured hereby, or with reference to any of the terms and/or conditions hereof, as fully and to the same extent as it might deal with the original parties and without in any way releasing or discharging any of the liabilities or undertakings hereunder all of which shall remain in full force and effect notwithstanding any such action.

(25) Mortgage security for adjustable interest note: plain language

By signing this Mortgage document, I give you a mortgage on the property described below, as security for your loan to me of \$40,000, plus interest, as specified by the Mortgage Note signed the same day as this Mortgage. The Mortgage Note which this Mortgage secures provides for an adjustable interest rate. The interest rate may be increased or decreased at three-year intervals according to the formula which is fully described in the Mortgage Note. (The terms of the Note must be considered included in the terms of this Mortgage.)

**NOTICE:**

**THE MORTGAGE SECURES A NOTE WHICH CONTAINS A PROVISION ALLOWING**

**FOR CHANGES IN THE INTEREST RATE. INCREASES IN THE INTEREST RATE WILL RESULT IN HIGHER PAYMENTS. DECREASES IN THE INTEREST RATE WILL RESULT IN LOWER PAYMENTS.**

In addition to the covenants and agreements made in the Mortgage, I and you further covenant and agree as follows:

**A. INTEREST RATE AND MONTHLY PAYMENT CHANGES**

The Note has an "Initial Interest Rate" of \_\_\_\_\_ percent. The Note interest rate may be increased or decreased on each Change Date, as described in the Note. Changes in the interest rate are governed by changes in the "\_\_\_\_\_" made available by the \_\_\_\_\_ (the "Index"). The interest rate cannot be changed to more than \_\_\_\_\_ percentage points higher or lower than the Initial Interest Rate.

If the interest rate changes, the amount of my monthly payments will change as provided in the Note. Increases in the interest rate will result in higher payments. Decreases in the interest rate will result in lower payments.

**B. LOAN CHARGES**

It could be that the loan secured by the Mortgage is subject to a law which sets maximum loan charges and that law is interpreted so that the interest or other loan charges collected or to be collected in connection with the loan would exceed permitted limits. If this is the case, 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 me which exceeded permitted limits will be refunded to me. You may choose to make this refund by reducing the principal owed under the Note or by making a direct payment to me.

**C. TRANSFER OF THE PROPERTY**

If there is a transfer of the Property subject to paragraph \_\_\_\_\_ of this mortgage, you may require either an increase in the current Note interest rate or an increase in the Base Index figure, or both, as a condition of your waiving the option to accelerate provided in paragraph \_\_\_\_\_.

By signing this, I agree to all of the above.

(26) Repayment with interest, late charges: plain language (residence)

*When this mortgage becomes void.* When the loan secured by this Mortgage has been paid in full with all interest due, this Mortgage shall become void.

*Payments and late charge.* I promise to repay this loan according to the terms of this Mortgage and the Mortgage Note. For each payment that reaches you more than 15 days late, I will pay you a late charge of two cents (\$.02) for each dollar of the late payment. This charge covers the extra cost to you of handling late payments.

(27) Late payment charge for handling expenses

*Late charge.* Mortgagor shall pay to Mortgagee a "late charge" of five cents for each \$1.00 of each monthly payment or interest and amortization more than 15 days in arrears to cover the extra expense involved in handling delinquent payments.

## (28) Late charge in addition to other charges

*Late charges.* If any installment of principal, interest, principal and interest or escrow deposit becomes overdue for a period in excess of 15 days, Mortgagee may charge Mortgagor a "late charge" of four cents for each dollar (\$1.00), or part thereof, so overdue, for the purpose of defraying Mortgagee's expenses incident to handling the delinquent payment. This charge shall be in addition to, and not in lieu of, any other remedy Mortgagee may have, and is in addition to any reasonable fees and charges of any agents or attorneys which Mortgagee is entitled to employ on any default hereunder, whether authorized herein, or by law. The "late charges" if not previously paid, shall, if Mortgagee so desires, be added to and become part of the next monthly payment to be made under the Note.

## (29) Late charge: plain language

*Late charges.* If I fail to pay any mortgage installment within 15 days after its due date, I will pay a late charge in addition to the installment. This late charge cannot exceed 3 percent of the amount of the late installment and will cover your expenses in handling my late payment.

## (30) Insurance requirement

*Insurance.* Mortgagor shall keep the buildings erected or to be erected upon the mortgaged premises insured against loss or damage by fire, and all other hazards specified by Mortgagee, for Mortgagee's benefit, and by insurers and in amounts approved by Mortgagee, and deliver such insurance policy or policies to Mortgagee. The policies shall have attached to them loss payable clauses in favor of and in form acceptable to Mortgagee, and the fire insurance policies shall contain the usual extended coverage endorsement. In default of this insurance requirement, Mortgagee may effect such insurance, and the premium or premiums paid shall be a lien on the mortgaged premises; added to the amount of the note or obligation and secured by this mortgage payable on demand with interest at the highest legal rate from the time of such payment. In case of loss, any insurance monies payable to Mortgagor and/or Mortgagee are, to the extent of Mortgagor's interest, assigned to Mortgagee to the end and with the right to so employ such monies as to preserve and protect Mortgagee's rights under this mortgage and the accompanying note or obligation; or to secure repayment of its indebtedness; or to rebuild or restore the damaged building or improvements, as Mortgagee in its absolute discretion may deem best; provided, however, that if Mortgagor is not in default and further provided that if such insurance proceeds alone or together with Mortgagor's own funds are sufficient to rebuild and restore the building and improvements, then Mortgagee agrees that Mortgagee shall have the right to use such proceeds for such purpose. Mortgagee shall have the absolute right to settle and compromise, without Mortgagor's consent, all claims under the policies of insurance.

## (31) Insurance requirement, commercial building

*Insurance*

*(a) Policies.* Mortgagor shall keep the Premises continuously insured against loss by fire, with extended coverage and against any other hazards reasonably required by Mortgagee, in any total amount Mortgagee may require from time to time. In no event, however, shall the amount on the buildings and improvements on the Land be less than the greater of: (i) 100 percent of the full replacement cost of such buildings and improvements, without deduction for depreciation; (ii) an amount sufficient to prevent Mortgagee or Mortgagor from becoming a co-insurer within the terms of the applicable policies; or (3) the principal amount of the Mortgage. Mortgagor shall also maintain rent insurance on the Premises in an amount equal to at least one year's gross rent from the buildings and improvements on the Land. The policy or policies for all such insurance shall contain replacement cost endorsements and shall be maintained in full force and effect until the secured indebtedness is fully repaid. All policies, and any renewals, including policies for any amounts carried in excess of the minimum and policies not specifically required by Mortgagee, shall be with an insurance company or companies, and in form and substance satisfactory to Mortgagee, and shall be deposited, premiums paid,

with Mortgagee.

*(b) Loss proceeds.* Any loss shall be payable to Mortgagee according to the terms of a standard mortgagee clause, not subject to contribution, or of such other form of mortgagee or loss payment clause as is satisfactory to Mortgagee. Mortgagee may adjust or compromise any loss claims under the insurance, and collect and receive the proceeds and apply them either to reduce the secured indebtedness or to restore the Premises. However, if the insurance proceeds do not exceed \$5,000, Mortgagor may use the proceeds to repair and reconstruct the Premises. In such event, Mortgagee may not retain the proceeds or apply them to the secured indebtedness. Mortgagor shall deliver all renewal policies, premiums paid, to Mortgagee at least ten days before the policies expire. Each policy shall provide Mortgagee with 20 days' prior written notice before any termination or cancellation becomes effective. If Mortgagee becomes the owner of all or any part of the Premises by foreclosure or otherwise, the policies shall become Mortgagee's absolute property. In the event of damage by fire, other casualty or catastrophe, Mortgagor shall forthwith restore the Premises to their prior condition, irrespective of adequacy or availability of insurance proceeds.

*(c) Separate insurance.* Mortgagor shall not take out separate insurance concurrent in form or contributing in the event of loss with that required to be maintained under this Mortgage unless Mortgagee is included thereon as a named insured with loss payable to Mortgagee under a standard mortgage endorsement of the character above described. Mortgagor shall immediately notify Mortgagee whenever any such separate insurance is taken out, and shall promptly deliver to Mortgagee the policy or policies of such insurance.

(32) Insurance requirement: homeowner's and flood insurance

*Insurance.* I agree to keep the buildings on my property insured at all times against loss by fire and any other risks you may require. All policies shall be for at least the amounts and time periods that you specify. Each policy will contain the usual extended coverage endorsement. (A "Homeowner's Policy" will satisfy the extended-coverage requirement). If the property is located in an area with a high risk of flooding, I will insure it against flood damage if insurance is available under the National Flood Insurance Act of 1968. All policies will name you as the Mortgagee, which means you will receive payment made on any insurance claims. I agree to show you any of these policies whenever you ask to see them. I agree to pay all insurance premiums when due. If I do not, you may make the payment for me, and I will repay you immediately. If you receive payment of a claim, you may choose to let me use the money to repair the damage, or you may use the money to reduce what I owe you.

(33) Insurance requirement: plain language

*Insurance.* I will keep the buildings on the premises insured for your benefit against loss or damage by fire, flood, and any other hazards. I will purchase insurance in the amounts and for the time periods which you require, and will assign and deliver the policies to you. All insurance policies shall contain the usual extended coverage endorsements and the standard mortgagee endorsements. If you do not require payments for insurance premiums to be paid in escrow, I will make all premium payments according to the terms of the policies. If I default on the payment of premiums under such policies, you may pay the premiums and I shall repay you upon demand. If I default on any of my obligations under this Agreement, all insurance policies which I have purchased in connection with the premises and the unearned premiums on such policies shall be assigned to you as further security for my mortgage debt. If you collect on any of the insurance policies for loss or damage to the premises, you may apply such money towards the payment of my mortgage debt or you may turn over all or part of the money to me; provided, however, if I am not in default, I shall have the right to use the proceeds if I can rebuild and restore the buildings to the condition they were in prior to their damage. If you apply the insurance money which you collect towards the payment of my mortgage debt, the amount of your mortgage lien shall only be reduced by the amount of the insurance money which you collect and keep.

(34) Flood insurance requirement

*Flood insurance.* Mortgagor covenants and agrees that if, at any time during the term or any extensions of the Mortgage, the area in which all or part of the Premises is located is designated a "flood prone" area under the Flood Disaster Protection Act, as amended, Mortgagor shall obtain flood insurance in whatever amount Mortgagee requires from time to time, and shall otherwise comply with the National Flood Insurance Program as set forth in such Act. Mortgagor further agrees to fully comply with the requirements of the National Flood Insurance Act and the Flood Disaster Protection Act, as amended, and any other law, order, rule, ordinance, or regulation concerning flood insurance, to the extent that such law applies to all or any part of the Premises.

(35) Taxes paid by borrower

*Taxes.* Mortgagor shall pay all taxes, assessments, water rents, and other governmental charges levied upon the premises, within 15 days after they become due and payable, and will deliver proper receipts therefor to Mortgagee. If Mortgagor fails to make such payments, Mortgagee may pay the charges, in which case its payments shall be a lien on the mortgaged premises, added to the amount of the debt, and secured by this mortgage, and shall be due and payable on demand, with interest at the highest legal rate from the time of such payment.

(36) Taxes and utility charges

*Taxes and other charges.* Mortgagor shall pay all real estate taxes, water and sewer rents, fines, impositions, and other similar claims and liens now or later assessed against all or any part of the Premises, without any deduction, defalcation, or abatement, not later than ten days before the dates on which such taxes and other charges start to bear interest or penalties, and shall produce to Mortgagee receipts for the payment thereof in full by not later than such dates. Mortgagor shall pay every other tax, assessment, claim, fine, imposition, lien, or encumbrance which may at any time be or become a lien upon the Premises prior to, or on a parity with, the lien of this Mortgage. If Mortgagor, in good faith and by proper legal action, contests the validity or amount of any taxes, assessments, fines, impositions, claims, liens, encumbrances, or other charges, and establishes on its books or by deposit of cash with Mortgagee (as Mortgagee may elect) a reserve for payment in such amount as Mortgagee shall require, Mortgagor shall not be required to pay such taxes or charges, or to produce such receipts, during the maintenance of the reserve and for so long as such contest operates to prevent collections, is maintained and prosecuted with diligence, and is not terminated or discontinued adversely to Mortgagor. Mortgagor shall pay all charges for public or private utilities with respect to the Premises when such charges are due, and shall not allow them to remain outstanding.

(37) No credit for tax payments: plain language

*Taxes.* No owner of the mortgaged property shall be entitled to any credit by reason of the payment of any tax thereon.

(38) Future mortgage or other tax

*Future mortgage or other taxes.* If any future federal, state, or local law, rule, regulation, or ordinance imposes a tax on Mortgagee either with respect to the Premises, the value of Mortgagor's equity, the amount of the secured indebtedness, the Note, or this Mortgage, Mortgagee may from time to time give Mortgagor 60 days' written notice to pay the secured indebtedness. The indebtedness shall then become due, payable, and collectible at the end of the 60-day period unless before such time Mortgagor has lawfully, without violation of any usury or other law, paid any such tax in full as it becomes due and payable. In such event, the notice shall be deemed rescinded with respect to any of Mortgagee's rights arising by reason of the tax so paid. No prepayment charge or premium shall apply to any payment of the secured indebtedness pursuant to any such notice, if the payment is made before the expiration of the 60-day period.

(39) No credit for taxes assessed

*No credit for taxes.* Mortgagor will not claim, demand, or be entitled to receive, any credit or credits on the principal indebtedness, or on the interest, for so much of the taxes assessed against the Premises as is equal to the tax rate applied

to the principal indebtedness due on this Mortgage or any part thereof, and no deduction shall be claimed from the taxable value of the Premises by reason of this Mortgage.

(40) Escrow for taxes and insurance, without interest

*Escrow funds.* At Mortgagee's request, Mortgagor shall pay to Mortgagee monthly at the time when the monthly installment of principal, interest or principal and interest, is payable, an amount equal to one twelfth of the annual premium for fire and extended coverage insurance, other hazard insurance and the annual real estate taxes, water rents, sewer rents, special assessments, and any other tax, assessment, claim, lien, or encumbrance which may at any time be or become a lien upon the Premises prior to, or on a parity with, the lien of this Mortgage to enable Mortgagee to pay same at least 30 days before they become due, and on demand from time to time shall pay to Mortgagee additional sums necessary to pay the premiums and other payments, all as estimated by Mortgagee, the amounts so paid to be security for the premiums and other payments and to be used in payment thereof. No amounts so paid shall be deemed to be trust funds but may be commingled with Mortgagee's general funds, and no interest shall be payable thereon. If, pursuant to any provision of this Mortgage, the entire principal debt remaining or any installment of interest, principal, or principal and interest becomes due and payable, Mortgagee may apply any amounts so held against all or any part of the secured indebtedness, any interest thereon, or in payment of the premiums or payments for which the amounts were deposited.

(41) Escrow payments and account: plain language (residence)

A. *Escrow Account.* At the time of the signing of this Mortgage, I will deposit with you a sum of money to establish an escrow account, from which you will pay future private mortgage insurance premiums, if any, real estate taxes, municipal water charges, sewer rents and special assessments on the property (together called "the Charges"). There must be enough money in the escrow account at all times to pay the Charges one month before they become due. I will make a new deposit to this account every month along with my monthly payment of the loan principal and interest as specified in the Mortgage Note. My monthly deposits shall be one twelfth of the annual Charges as estimated by you. I agree that your estimates may allow for possible future increases in the Charges. Whenever you decide the amount in the escrow account will be too small to pay the Charges when they become due, I agree to make whatever lump sum payment you request and/or to increase my monthly deposit. If I am in default (*see* Paragraph \_\_\_\_\_) and you become owner of my property or sell it at public sale, you may use the balance left in the escrow account to pay the Charges, or you may use this Balance to reduce what I owe you. When I have paid what I owe you in full, you will refund to me whatever money is in the escrow account at that time.

B. *Charges not paid from escrow account.* I agree to pay when due all Charges (See Paragraph A) that are not being paid by you from my escrow account. I will promptly show you receipts for these payments if you request it. If I do not pay these Charges when they are due, you may do so and I will repay you immediately. Even though I may be given the choice of paying an assessment in installments, you can demand that I pay the full assessment when the first installment is due.

(42) Monthly escrow payments: plain language

*Monthly escrow deposits.* Upon your request, I will pay you, in addition to my monthly installments of principal and interest, an amount equal to one twelfth of the taxes, municipal water rates, sewer rents, and assessments levied or to be levied against the premises, together with fire and other hazard insurance premiums, which you estimate will be due during a 1-year period. These amounts are called "escrow deposits." I will continue to make such monthly escrow deposits until my mortgage debt is fully paid so that you will have enough money to pay taxes, municipal water rates, sewer rents, assessments, and insurance premiums on the first day of the month preceding the month in which such payments become due. If at any time you decide that my monthly escrow deposits are not sufficient to make any of

these payments as they become due, at your request I shall deposit the amount which you need in order to make payments when due. Should I default on any of the terms of this Agreement and (a) a public sale of the premises is conducted, or (b) if you otherwise acquire the premises after my default, you will have the right to use my escrow deposit funds to pay any taxes, municipal water rates, sewer rents, assessments, and insurance premiums or to apply my escrow deposit funds to the balance remaining on the mortgage. If you should do this, you will not be obligated to account to me for it. My escrow deposit funds may be kept with your general funds. You shall pay interest on my monthly escrow deposits only to the extent required by law. You may at any time decide to discontinue or reinstate my monthly escrow deposit requirements.

(43) Immediate acceleration for specified defaults

*Default.* The whole of the principal sum and the interest shall become due, at Mortgagee's option: (a) after failure to exhibit to Mortgagee, within ten days after demand, receipts showing payment of all taxes, water rates, sewer rents, and assessments; (b) after the actual or threatened alteration, demolition or removal of any building on the premises without Mortgagee's written consent; (c) after the assignment of the rents of the premises or any part thereof without Mortgagee's written consent; (d) if the buildings on said premises are not maintained in reasonably good repair; (e) after failure to comply with any requirement or order or notice of violation of law or ordinance issued by any governmental department claiming jurisdiction over the premises within three months from the issuance thereof; (f) if on Mortgagee's application two or more fire insurance companies lawfully doing business in the state refuse to issue policies insuring the buildings on the premises; or (g) if Mortgagor fails to keep, observe, and perform any other covenant, condition, or agreement in this mortgage.

(44) Delayed acceleration for late payment, other defaults

*Acceleration.* The entire unpaid principal sum and accrued interest shall become due, at Mortgagee's option: (a) after default for 15 days in the payment of all or part of any installment of principal or interest; (b) after default in the payment of any tax, water rate, sewer rent, or assessment for 15 days after notice and demand; (c) after default after notice and demand either in delivering the policies insuring the buildings against loss by fire or in reimbursing Mortgagee for premiums paid on such insurance, as provided in this mortgage; or (d) after default upon request in furnishing a statement of the amount due on the mortgage and whether any offsets or defenses exist against the mortgage debt, as provided in this mortgage.

(45) Immediate default for nonpayment or other specified event

*Events of default.* The following shall constitute events of default under this Mortgage ("Events of Default"):

- (a) Mortgagor's failure to pay any installment of principal, interest or principal and interest, or any escrow deposit, when due and payable;
- (b) Mortgagor's failure to pay any other required sum in the Note or in this Mortgage when the same is due and payable;
- (c) Mortgagor's failure to perform or observe any other term, provision, covenant, or agreement in the Note or this Mortgage within 15 days after same is to be performed;
- (d) The filing by Mortgagor of a voluntary petition in Bankruptcy; Mortgagor's application as a bankrupt or insolvent; the filing by Mortgagor of any petition or answer seeking or acquiescing in any reorganization arrangement, composition, readjustment, liquidation, dissolution, or similar relief for itself under any present or future federal, state or other statute, law or regulation relating to bankruptcy, insolvency, or other relief for debtors; Mortgagor's seeking or consenting to or acquiescence in the

appointment of any trustee, receiver, or liquidator of Mortgagor or of all or any substantial part of the Premises or of any or all of the rents, revenues, issues, earnings, profits, or income thereof; the making of any general assignment for the benefit of creditors; or the admission in writing of Mortgagor's inability to pay its debts generally as they become due; or

(e) The occurrence of any event of default under the Note.

(46) Default: plain language (residence)

*Default.* I will be in default if I do not make any payment required by this Mortgage or the Mortgage Note within 15 days after the date it is due. I will also be in default if I violate any other terms and conditions of the Mortgage and Mortgage Note. If, in your opinion, my property is threatened with destruction or demolition, you may consider me to be in default. If I am in default for any reason, you have the right to demand payment of the entire amount I owe you, with interest up to the day you receive payment. I agree to repay you for your reasonable legal expenses, if any, in collecting what I owe you.

(47) Default: plain language

*Default.* The entire amount of the mortgage debt, including principal and interest, shall become due and payable at your option:

If I fail to pay any installment of principal or interest, late charge or escrow deposit required under this Agreement within ten days of the date on which such amount is due.

If I fail to pay any tax, municipal water rate, sewer rent, assessment, or insurance premium which I am required to pay within 30 days of the date on which such amount is due.

If I fail to show you the receipts evidencing payment of all taxes, water rates, sewer rents, and assessments within ten days after you ask me to do so.

If I fail to assign and deliver to you the insurance policies insuring the premises against loss or other hazards after you have asked me to do so.

If I fail to repay you for those insurance premiums which you pay in connection with any insurance policies as herein provided.

If I fail to give you a statement which sets forth the amount due on the mortgage debt and any defenses or offsets which exist against the debt, after you ask me to do so.

If I have structurally altered, demolished, or removed any building on the premises or threatened to do so without your written consent.

If I do not keep any building on the premises in reasonably good repair.

If any of the fixtures or articles of personal property on the premises are removed, or totally or partly destroyed, and I fail to replace them promptly with similar items of at least equal quality which are free from any other security interests.

If an action is started to foreclose any lien affecting the premises.

If I fail to remove any federal tax lien on the premises within 30 days of your request that I do so.

If the premises are sold or transferred without your written consent.

If I fail to comply with any requirement, order, or notice issued by a governmental department claiming to have jurisdiction over the premises within three months after such requirement, order, or notice is issued, or within such shorter period of time as may be allowed by the governmental department.

If two or more fire insurance companies lawfully doing business in this state refuse to issue policies insuring any building(s) on the premises after you have applied for it.

If there are any changes in the way in which mortgages are to be taxed for state or local purposes. (You must give me 30 days' written notice that you intend to demand that I repay my entire mortgage debt under this circumstance of default.)

If I assign the rents or profits received from the premises without your written consent.

If there is any subordinate financing of the premises.

If the premises are no longer my domicile ("principal residence").

If I fail to honor any of my promises under this Agreement.

(48) Remedies: possession, rents, receiver

*Mortgagee's remedies.* If Mortgagor shall fail to observe, perform and keep all of the terms, provisions, covenants and conditions required by it to be kept, observed, and performed hereunder, Mortgagee may immediately enter upon, take possession of, and let the mortgaged premises, receive the rents, issues, and profits thereof, and apply such proceeds, after paying all necessary charges and expenses, on account of the amount secured hereby. In the event of any such default, all rents and profits shall thereupon be deemed assigned to Mortgagee, who may immediately, upon commencing proceedings for the foreclosure of this mortgage, apply for the appointment of a receiver of the rents and profits of the premises. Mortgagee shall be entitled to the appointment of such receiver as a matter of right, as security for the amounts due Mortgagee, without consideration of the value of the mortgaged premises or solvency of any person or persons liable for the payment of such amounts.

(49) Remedies: acceleration, foreclosure, entry, receiver

*Remedies.* Upon the happening of any one or more of the Events of Default, the entire unpaid balance of the principal, the accrued interest, and all other sums secured by this Mortgage shall, at Mortgagee's option, become immediately due and payable without notice or demand, and in any Event of Default Mortgagee may forthwith undertake any one or more of the following:

(a) *Foreclosure.* Institute an action of mortgage foreclosure, or take any other action allowed at law or in equity, for the enforcement and realization on the mortgage security or any other security which is herein or elsewhere provided for, and proceed to final judgment and execution for the entire unpaid balance of the principal sum, with interest at the rate stipulated in the Note to the date of default and thereafter at the rate stipulated in the Note, together with all other sums secured by this Mortgage, all costs of suit, interest at the rate stipulated in the Note on any judgment obtained by Mortgagee from and after the date of any foreclosure sale of the Premises (which may be sold in one parcel or in such parcels, manner or order as Mortgagee shall elect) until actual payment is made by the selling authority of the full amount due Mortgagee, and reasonable attorney's fees, without further stay, any law, usage or custom to the contrary notwithstanding;

(b) *Entry.* Enter into possession of the Premises, with or without legal action, and by force if necessary; lease the same, collect all rents, issues, and profits therefrom and, after deducting all costs of collection and administration expense, apply the net rents, issues, and profits to the payment of taxes, water and sewer rents, charges and claims, insurance premiums, and all other carrying charges (including agents' compensation and fees and costs of counsel and receivers) and to the maintenance, repair, and restoration of the Premises, or on account and in reduction of the secured principal or interest, in such order and amounts as Mortgagee in its sole discretion elects;

(c) *Receivership.* Have a receiver appointed to enter into possession of the Premises, collect the rents, issues, and profits therefrom and apply the same as the court directs. Mortgagee shall be entitled to the appointment of a receiver without having to prove either the inadequacy of the security or the insolvency of Mortgagor or any other person who may be legally or equitably liable to pay moneys secured hereby, and Mortgagor and each such person shall be deemed to have waived such proof and to have consented to the appointment of a receiver. If Mortgagee or any receiver collects rents, issues, or profits from the Premises, the moneys so collected shall not be substituted for payment of the debt or used to cure the default, without Mortgagee's prior written consent. Mortgagee shall be liable to account only for rents, issues, and profits actually received by it.

(50) Cumulative rights and remedies

*Cumulative rights and remedies.* The rights and remedies of Mortgagee as provided in this Mortgage, or in the Note, shall be cumulative and concurrent, but not exclusive, and may be pursued singly, successively, or together at Mortgagee's sole discretion, and may be exercised as often as necessary. The failure to exercise any such right or remedy shall in no event be construed as a waiver or release thereof.

(51) Borrower's waiver of defenses and notices

*Waiver of defenses and certain notices.* To the full extent permitted by law, Mortgagor waives and releases (a) all errors, defects, and imperfections in any proceedings instituted by Mortgagee under this Mortgage, (b) all benefits that might accrue to Mortgagor by virtue of any present or future laws exempting the Premises, or any part of the proceeds arising from any sale thereof, from attachment, levy, or sale under execution, or providing for any stay of execution, exemption from civil process, or extension of time for payment, and (c) all notices, not specifically required by the Note and this Mortgage, of Mortgagor's default or of Mortgagee's exercise, or election to exercise, any option under this Mortgage.

(52) Tenancy of borrower after default

*Use of premises after default.* On or after any event of default in the payment of any sum secured by this mortgage, Mortgagor or anyone claiming by, through, or under it, shall, upon Mortgagor's demand, become a month to month tenant of Mortgagee, and shall pay as monthly rental for the portion of the Premises occupied by Mortgagor, the respective sums agreed to be paid as monthly payments in this Mortgage in advance on the dates and in the manner provided for such payment in the Note. In default of so doing, Mortgagor and anyone claiming by, through, or under it, may be dispossessed by proceeding under the Landlord and Tenant Act, any appropriate summary proceedings, or any other law and this covenant shall be effective either with or without any action being brought to foreclose this Mortgage and without applying for a receiver to collect rents.

(53) Foreclosure proceeds, deficiency and surplus: residence

*Foreclosure.* If I am in default and do not pay what I owe you when you demand payment, you will have the right to sell my property. This is called foreclosing the mortgage. You may use what you receive from the sale to repay what I owe you, after first paying the foreclosure expenses and your reasonable attorney's fees. If what you receive is not enough to pay off the entire amount I owe you, I will still have to pay you the difference. If the sale brings in more money than is needed to pay your expenses and my debt to you, the surplus will be available to pay any other of my

debts which are secured by my property and which may be paid at that time. Any money left over will be paid to me. If you foreclose, you may have a receiver appointed to take care of my property for you until the sale. At the foreclosure sale, you may sell my property as one parcel.

(54) Foreclosure and receiver: plain language

*Foreclosure.* If I default in my obligations under this Agreement and a foreclosure sale is held, the premises may be sold in one parcel.

You or any other holder of this mortgage shall be entitled to the appointment of a receiver in any action to foreclose this mortgage without notice to me and without regard to the adequacy of the security for the debt.

(55) Legal expense reimbursement

*Counsel fees.* If Mortgagee becomes a party (by intervention or otherwise) to any action or proceeding affecting the Premises, the title, or Mortgagee's interest under this Mortgage, or employs an attorney to collect any of the indebtedness or to enforce performance of the obligations, covenants and agreements secured hereby, Mortgagor shall reimburse Mortgagee, forthwith upon written notice and without further demand, for all reasonable costs, charges, and counsel fees incurred by Mortgagee, in any such case, regardless of whether suit is commenced, and the same shall be added to the secured principal sum as a further charge and lien upon the Premises and bear interest at the rate provided for in the Note.

(56) Lender's right to cure borrower's defaults

*Right to remedy defects.* If Mortgagor fails to pay any tax, claim, lien, or encumbrance which shall be or become prior to, or on a parity with, the lien of this Mortgage, or to pay any insurance premium as aforesaid, or to pay any utility bill for services rendered to the Premises or to keep the Premises in repair, as aforesaid, or commits or permits waste or fails to perform or observe any term, agreement, provision, covenant, or condition under this Mortgage, Mortgagee, may pay such claim, lien, encumbrance, tax, assessment, or premium, with right of subrogation thereunder, may make any repairs and take any steps it deems advisable to prevent or cure such waste, and may appear in any action or proceeding with respect to any of the foregoing and retain counsel therein, and take such action therein as Mortgagee deems advisable. Mortgagee is empowered to enter and to authorize others to enter upon the Premises for the purpose of performing or observing any such defaulted covenant or condition without becoming liable to Mortgagor or any person in possession under Mortgagor. For any of such purposes, Mortgagee may advance any sums of money it deems necessary. Mortgagor will pay to Mortgagee, immediately and without demand, all sums of money advanced by Mortgagee pursuant to this paragraph and until paid, all such sums shall be added to the secured principal and bear interest at the rate provided for in the Note secured by this Mortgage.

(57) Legal expense reimbursement: plain language (residence)

*Suits.* If you are sued in any legal action which concerns this Mortgage or if you have to defend your rights to my property, I agree to repay your expenses (including reasonable lawyers' fees) with interest at \_\_\_\_\_ percent a year. This Mortgage is your security for these expenses, plus interest, as if they were part of my original debt to you.

(58) Legal expense reimbursement: plain language

*Legal expenses.* If you become involved in a lawsuit or legal proceeding to foreclose this mortgage or to recover or collect my mortgage debt, applicable provisions of law will govern your recovery of costs, disbursements and allowances.

If you become a party to any other lawsuit or legal proceeding concerning this mortgage, or if it becomes necessary for

you to uphold or defend the lien of this mortgage, it will be my responsibility to pay for your legal expenses (including reasonable attorney's fees) which you reasonably spend in connection with such action. The sum of your legal expenses, plus interest, shall become a lien on the premises, superior to any right, title to, interest in, or claim upon the premises arising after the creation of your lien under this Agreement.

(59) Interest on lender's expenses and advances: plain language

*Interest.* If you ever incur any expenses or advance any money in connection with this Agreement or as required by law, I will pay you interest on that amount which you have spent. This interest will be figured at the interest rate provided for in the Mortgage Note which I have signed in connection with this Agreement.

(60) Waiver of default not waiver of subsequent defaults

*Waiver.* This mortgage, the note secured hereby, Mortgagee's rights hereunder or thereunder, and Mortgagor's obligations and liabilities hereunder or thereunder, shall not in any way be affected by Mortgagee's (a) granting Mortgagor any extension of time to pay this mortgage (b) taking other or additional security for the payment hereof or thereof (c) releasing any security (d) changing any term of this mortgage or of the note secured hereby, or (e) waiver of, or failure to exercise, any right to accelerate the mortgage indebtedness under any covenant or stipulation contained herein.

(61) Notice to borrower and lender

*Notice.* Notice shall be deemed to have been properly given under this Mortgage if in writing and sent by certified mail, return receipt requested, addressed to Mortgagor or to the persons who are then the owners of the Premises, at the Premises, or to any other address designated in writing to Mortgagee, or if sent to Mortgagee, to its address stated above, by certified mail, return receipt requested.

(62) Notice requirement: plain language

*Notices, demands, and request.* All notices, demands, and requests to me with regard to this Agreement may be in writing and delivered in person or by mail.

(63) No oral amendments

*Amendment.* This mortgage may not be changed or terminated orally but only by an instrument signed by all affected parties.

(64) Amendment only by written agreement: plain language (residence)

*Change of terms.* The terms of this Mortgage may be changed only by written agreement signed by you and me.

(65) Amendment by written statement only: plain language

*Changes to or the termination of this agreement.* This Agreement may not be modified or terminated orally. Any modification or termination must be effected by an instrument signed by the party against whom the enforcement of such modification or termination is sought.

(66) Maintenance of property, inspection

*Maintain improvements.* Mortgagor shall maintain the buildings on the mortgaged premises, and all equipment and fixtures used in connection with the operation and enjoyment of the buildings, in reasonably good repair, and shall not

remove or demolish, or permit the same to be removed or demolished, or make such alteration therein or such change in the use thereof, as to create a fire or other hazard not existing on the date hereof. Mortgagor or the then owner of the premises shall, at all reasonable hours, permit Mortgagee or its representatives to inspect the buildings.

(67) Maintenance of property, compliance with laws

*Waste, maintenance, compliance and inspection.* Mortgagor shall abstain from and not permit the commission of waste in or about the Premises; shall not remove or demolish, or alter in any substantial manner, the structure or character of any building at any time erected on the Land without Mortgagee's prior written consent; shall maintain the Premises in good condition and repair, reasonable wear and tear excepted; shall not remove, sell, or otherwise dispose of any fixture or personal property without Mortgagee's prior written consent unless the same is replaced or substituted by fixtures or personal property of like character and equivalent value and not subject to any encumbrance or security interest. Mortgagor shall comply with any present or future municipal, city, county, state, federal, or other governmental law, order, rule, ordinance, or regulation affecting the Premises. However, if Mortgagor, in good faith and without cost or liability of any kind to Mortgagee, contests by proper legal proceedings any such law or regulation and furnishes satisfactory security to Mortgagee against any loss, injury, or damage to it by reason of such contest, Mortgagor shall not be required to comply therewith as long as the contest operates to prevent enforcement, is maintained and prosecuted with diligence, and is not terminated or discontinued adversely to Mortgagor. Mortgagee may enter upon the Premises at any reasonable hour to inspect the same. If all or any part of the Premises is damaged by fire or other cause, Mortgagor shall immediately notify Mortgagee thereof by written notice.

(68) Maintenance of building in good repair: residence

*Repairs and alterations.* I will keep the building on the property in good repair, and will not make major changes in them, tear them down, or move them without first getting your written consent. If any of the fixtures are destroyed or removed, I will replace them with other fixtures of the same quality and condition which are free of any mortgages.

(69) Permitted use, general

*Use.* Mortgagor shall use and occupy the Premises as general office space, and for all purposes related thereto and for no other use or purpose, unless Mortgagee's written consent is first obtained.

(70) Office and laboratory use by lessees

*Use.* Mortgagor's present lessees shall use and occupy the Premises for office and laboratory uses and for any purpose related thereto. Mortgagor's present and future lessees shall not use the Premises for any other use or purpose without Mortgagee's prior written consent, which Mortgagee shall not unreasonably withhold or delay.

(71) Compliance with environmental laws

*Compliance with environmental laws* Mortgagor hereby represents and warrants to Mortgagee that as of the date hereof to the best of Mortgagor's knowledge, the property is not in direct or indirect violation of any local, state or federal law, rule or regulation pertaining to environmental regulation, contamination or cleanup (collectively, "Environmental Laws"), including without limitation the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), the Resource Conservation and Recovery Act of 1976 ("RCRA"), the Federal Water Pollution Control Act, the Hazardous Materials Transportation Act, and other regulations promulgated pursuant to said laws. Mortgagor shall keep or cause the Property to be kept free from hazardous substances (except those substances used by Mortgagor in the ordinary course of its business and in compliance with all Environmental Laws) and in compliance with all Environmental Laws, shall not install or use any underground storage tanks, shall expressly prohibit the use, generation, handling, storage, production, processing and disposal of hazardous substances by all tenants of space in the Property, and without limiting the generality of the foregoing, during the term of this Mortgage, shall not install any

improvements or permit to be installed any improvements of asbestos or any substance containing asbestos.

Mortgagor covenants and agrees, at Mortgagor's sole cost and expense, to indemnify, defend and hold harmless Mortgagee from and against any and all liens, damages, losses, liabilities, obligations, penalties, assessments, citations, directives, claims, litigation, demands, defenses, judgments, suits, proceedings, costs, disbursements or expenses of any kind or of any nature whatsoever which may at any time be imposed upon, incurred by or asserted or awarded against Mortgagee or the Property, and arising directly or indirectly from or out of: (i) the presence, release or threat of release of any hazardous substances on, in, under or affecting all or any portion of the Property or any surrounding areas, whether or not caused by or under the control of Mortgagor; (ii) the violation of any Environmental Laws relating to or affecting the Property, whether or not caused by or within the control of Mortgagor; (iii) the failure by Mortgagor to comply fully with the terms and conditions of this paragraph; (iv) the breach of any representation or warranty contained in this paragraph; or (v) the enforcement of the provisions of this paragraph including, without limitation, the costs of assessment, containment and/or removal of any and all hazardous substances from all or any portion of the Property or any surrounding areas.

(72) Borrower to maintain exemption from specific law

*Exemption.* Mortgagor warrants that it is an exempt person within the meaning of Section \_\_\_\_\_ of the \_\_\_\_\_ Act, commonly known as the \_\_\_\_\_. Mortgagor shall not do any act or thing which would make this Mortgage subject to such \_\_\_\_\_ Act as amended. If this Mortgage at any time becomes subject thereto, all sums secured by this Mortgage without any deduction shall at Mortgagee's option become immediately due and payable.

(73) Compliance with government regulations: plain language (residence)

*Government regulations.* If any government authority issues regulations, orders, or notices of violation about the use or condition of my property, I understand I must correct the violations and comply with the orders or regulations within a reasonable time.

(74) No alteration or removal of building: plain language

*Alterations, removal or demolition of buildings.* I will not make any structural alterations to any building on the premises and will not remove or demolish any building on the premises without first receiving your written consent.

(75) Condemnation award

*Condemnation.* If all or any part of the premises is taken or condemned for public or quasi public purposes by the proper authorities, Mortgagor shall have no claim against the award for damages superior to that of Mortgagee, or be entitled to any portion of the award until the secured indebtedness is paid. All rights of Mortgagor to such damages, or such awards are assigned to Mortgagee to the extent of any indebtedness that then remains unpaid. Mortgagor, however, may appeal the award to any court of competent jurisdiction.

(76) Condemnation award, legal proceedings

*Condemnation.* If all or any part of the Premises is damaged or taken through condemnation, temporarily or permanently, except as hereinafter provided in this paragraph, all proceeds, at Mortgagee's option, shall be applied first to pay the secured indebtedness. Mortgagee is authorized to commence, appear in and prosecute, in its own or Mortgagor's name, any action or proceeding relating to any such condemnation, and to settle or compromise any claim in connection therewith. Mortgagee shall not settle or compromise any claim in connection with any damage or taking through condemnation without Mortgagor's prior written consent, which it shall not unreasonably withhold. Mortgagor shall not make any settlement for the damages sustained thereby without Mortgagee's prior written approval. If the

amount of an initial award of damages for the condemnation is insufficient to pay the amount of the secured indebtedness in full with interest and costs, Mortgagee may file an appeal or other legal proceedings as its legal counsel may advise to be appropriate under the circumstances in the name of Mortgagor or of Mortgagee (for which action Mortgagee or any counsel it chooses is irrevocably appointed attorney in fact for Mortgagor) and to prosecute same to final conclusion or otherwise dispose thereof. In such event, the expenses of the appeal or other appropriate legal proceedings, including counsel fees, shall be first paid out of the proceeds, and no credit shall be given on account of the Mortgage debt other than a credit for the amount, if any, whereby the final proceeds exceed all such expenses. Nothing in this covenant or elsewhere in this Mortgage shall limit rights otherwise available at law or in equity to Mortgagee, including rights to intervene as a party to any condemnation proceeding. All compensation, awards, damages, claims, rights of action, and proceeds hereunder are assigned by Mortgagor to Mortgagee, to be applied as herein provided. Mortgagor agrees to execute any assignment agreements that Mortgagee may require in furtherance thereof. In the case of any taking covered by the provisions of this Paragraph, Mortgagor and Mortgagee (to the extent that Mortgagee has not been reimbursed therefor by Mortgagor) shall be entitled as a first priority to reimbursement out of any award or awards for all reasonable costs, fees, reimbursements to Mortgagee, and expenses incurred in the determination and collection of any such awards.

(77) Condemnation award: plain language

*Effect of eminent domain, injury to, or decrease in the value of the premises by a public or quasi-public authority or corporation.* If the premises are taken by eminent domain ("condemnation") or if any public or quasi-public authority or corporation injures or decreases the value of the premises, I shall continue to pay interest on the whole principal due under this Agreement at the rate set forth in the Mortgage Note, until you have actually received the money from an award or payment compensating you for the injury to or decrease in value or taking of the premises. You may choose to keep such money and apply it to reduce the principal sum of my mortgage debt after you have received it or you may pay part or all of the money to me. If the premises are sold on the foreclosure of this mortgage before you receive the money from the award or payment and there remains a difference between what I owe you and what you receive after such foreclosure sale (called "deficiency"), you may retain that amount of the award or payment which is necessary to cure such deficiency, including legal interest on the amount of the deficiency. You may do so regardless of whether a deficiency judgment on this mortgage has been sought, recovered or denied. The award or payment may also be used to pay any expenses which you incur in connection with the collection of the award or payment (including reasonable attorney's fees, costs and disbursements). Upon your request, I will make, sign, and deliver an instrument which will assign the awards or payments discussed in this section to you, free of any encumbrances of any kind.

(78) Employee-borrower reduced interest rate

*Employee interest rate.* Since the interest rate on the loan secured by this Mortgage is less than that available to persons not employed by Mortgagee, the interest rate as stated in this Mortgage will remain in effect only so long as Mortgagor remains in the employ of Mortgagee. If Mortgagor leaves Mortgagee's employ for any reason other than death or retirement, the interest rate shall increase to \_\_\_\_\_ percent. Similarly, if Mortgagor no longer occupies the mortgaged premises as his principal residence, the interest rate shall increase to \_\_\_\_\_ percent.

Any increase in the interest rate, which occurs as provided for by this paragraph, will take effect six months after the happening of any of the events recited in this paragraph.

(79) Joint and several liability

*Liability.* If Mortgagor consists of more than one party, Mortgagors shall be jointly and severally liable under all of Mortgagor's obligations, covenants, and agreements contained in this Mortgage.

(80) Joint and several liability: plain language

*Effect of two or more borrowers.* If I sign this Agreement together with another person or other persons, I will be jointly and individually responsible with the other person(s) for repaying the entire mortgage debt. If you are not paid when any mortgage installment is due, I will be responsible for the payment of the entire installment upon receiving notice from you that you have not received payment. I will remain responsible for repaying the mortgage debt even if changes are made in the terms of this Agreement and even if you release any or all of the security given in connection with this Agreement.

(81) Binding effect on successors, assigns, subsequent owners

*Binding effect.* The covenants contained in this mortgage shall run with the land and bind Mortgagor, his heirs, personal representatives, successors and assigns, and all subsequent owners, encumbrancers, tenants, and subtenants of the premises, and shall enure to the benefit of Mortgagee, its successor and assigns, and to all subsequent holders of this mortgage.

(82) Binding effect on successors and assigns

*Successors and assigns.* All of the grants, covenants, terms, provisions and conditions herein shall run with the Land and shall apply to, bind, and inure to the benefit of, the successors and assigns of Mortgagor and of Mortgagee.

(83) Binding effect on heirs, agents and future owners: plain language (residence)

*Who is covered by this mortgage.* Until I have satisfied all my obligation under this Mortgage and the Mortgage Note, the terms of this Mortgage will be binding on me, my heirs, and all those acting for me, and on all future owners and tenants of my property. The Mortgage is for your benefit, and for the benefit of anyone to whom you may assign it.

(84) Binding effect on personal representatives: plain language

*Effect of covenants.* The covenants contained in this Agreement are for your benefit and for the benefit of your successors and assigns. They must be honored by me, as well as by my heirs, personal representatives, successors, and assigns. All subsequent owners and tenants of the premises must also honor the covenants contained in this Agreement.

(85) Number and gender

*Number and gender.* Whenever the singular and plural number, masculine or feminine or neuter gender is used herein, it shall equally include the other.

(86) Leases, borrower's duties as landlord

*Leases.* Mortgagor will comply with and observe its obligation as landlord under all leases affecting the Premises or any part or parts thereof. No existing or future lease which covers all or any part of the Premises, or any facilities or business located or operated thereon or therefrom, shall be cancelled, surrendered, or modified without Mortgagee's prior written consent if the lease is for a term in excess of two years, is at an annual rent of over \$5,000, or affects more than 10 percent of the gross income of the Premises. Mortgagor shall notify Mortgagee immediately of any default asserted against Mortgagor by any tenant under such lease. If Mortgagor fails to cure such default, as landlord under any such lease, Mortgagee is authorized to cure such default in order to prevent the tenant's termination of the lease. All such leases shall set forth the above provisions. If, by reason of Mortgagor's default in the performance of any such lease, the tenant has the right to cancel the same or to claim any diminution of or offset against future rents, Mortgagee may elect to have the default deemed a default under the Note and this Mortgage. Mortgagor upon request, from time to time, but not more often than annually unless a default has occurred and is continuing under this Mortgage, will furnish to Mortgagee in such reasonable detail as Mortgagee may request, certified by Mortgagor, copies of all leases relating to the Premises; and on demand, Mortgagor will furnish to Mortgagee executed counterparts of all such leases. Further,

Mortgagor, upon request, will furnish to Mortgagee information relative to the occupancy and vacancy rates of the Premises.

Mortgagor agrees that it will not, without Mortgagee's written consent, assign the rents, issues, or profits, or any part thereof, from the Premises, receive or collect rents from any tenant, subtenant, undertenant, or other occupant of any part of the Premises for a period of more than one month in advance, or grant any concessions to any of the foregoing persons or parties which will in any way reduce the monthly rentals as stated in any lease, and further that all leases on said Premises shall not be modified so as to in any way reduce the rental without Mortgagee's written consent.

The Mortgagor authorizes Mortgagee at its option to foreclose this Mortgage subject to the rights of any tenants of the Premises. The failure to make any such tenants parties defendant to any such foreclosure proceeding and to foreclose their rights will not be asserted by Mortgagor as a defense to any proceeding instituted by Mortgagee to collect the secured indebtedness, or any deficiency remaining unpaid after the foreclosure sale of the Premises. It is expressly understood and agreed, however, that nothing herein contained shall prevent Mortgagor from asserting in any proceeding disputing the amount of the deficiency or the sufficiency of any bid at such foreclosure sale, that any such tenancies adversely affect the value of the Premises.

(87) Leases and rents assigned as security, commercial property

*Assignment of leases and rents after default.* As further security for payment of all indebtedness and performance of all obligations, covenants and agreements secured hereby, Mortgagor assigns to Mortgagee all existing and future leases, together with all rents to become due under such leases. This assignment, however, shall be operative only in the event of the occurrence of an Event of Default hereunder, or under the Note or any other instrument given as collateral security for the secured obligation, remaining uncured at the expiration of the grace period, if any, for the Event of Default. In any such case, Mortgagor confers on Mortgagee the exclusive power, to be used or not in its sole discretion, to act as agent, or to appoint a third person to act as agent for Mortgagor, with power to take possession of, and collect all rents arising from the Premises and apply such rents, at Mortgagee's option, to the payments of the mortgage debt, taxes, costs of maintenance, repairs, expenses incident to managing, and other expenses, in any order of priority Mortgagee determines, and to turn over to Mortgagor any remaining balance. Such collection of rents, however, shall not operate as an affirmation of the tenant or lease in the event Mortgagee acquires Mortgagor's title to the Premises. Mortgagee shall be liable to account only for rents and profits which it actually receives. In exercising any of its powers contained in this paragraph, Mortgagee may also take possession of, and for these purposes use, all personal property contained in or on the Premises and used by Mortgagor in the rental or leasing thereof or any part thereof.

(88) Records and certified rental statements, commercial building

*Books, records and accounts.* Mortgagor will keep and maintain, or will cause to be kept and maintained, proper and accurate books, records and accounts reflecting all items of income and expense in connection with the operation of the Premises or any services, equipment, or furnishings provided in connection with such operation, whether such income or expenses are realized by Mortgagor or by any other person or entity, excepting sublessors unrelated to and unaffiliated with Mortgagor, and who leased from Mortgagor portions of the Premises for the purposes of occupying the same. Mortgagee may, from time to time at all times during normal business hours, examine the books, records, and accounts at the office of Mortgagor, or other person or entity maintaining the books, records and accounts and make copies or extracts requested by Mortgagee. Mortgagor will furnish to Mortgagee, within 90 days after the end of each calendar year, a balance sheet and an income and expense statement both in detail satisfactory to Mortgagee and certified by a Certified Public Accountant. The balance sheet and income and expense statement shall include income from all sources in addition to rental and other income from the Premises.

(89) Assignment of rents: plain language (residence)

*Right to collect rents and profits.* I assign to you all rents and profits received from the premises as additional security for this debt. I grant you the right to enter the premises for the purpose of collecting rents and profits until my entire mortgage debt has been paid. You may rent or lease the premises and apply any rents or profits earned by the rental or lease to reduce my mortgage debt, after payment of all necessary charges and expenses. However, you agree to waive ("give up") the right to enter the premises for the purpose of collecting rents and profits and I am entitled to collect the rents and profits. I agree to use the rents and profits towards the payment of principal and interest becoming due under my monthly mortgage installments and towards the payment of my monthly escrow deposits. However, you may revoke my right to collect rents and profits should I default on any of the terms or obligations of this Agreement, but you must give me five days' written notice that you intend to revoke this right.

I will not receive or collect any rent from any tenant of the premises for a period of more than one month in advance without your prior written consent.

If I default under the terms of this Agreement, I will pay over to you or to a receiver appointed to collect these rents, all rent security deposits. In addition, I agree that I will pay you or the receiver every month, 30 days in advance, the fair and reasonable rental value of that portion of the premises which is in my possession. Upon my default in making such payments, I will vacate the premises and surrender the possession of the premises to you or to the receiver. If I fail to do this, I may be evicted from the premises by summary proceedings.

(90) Fixtures security interest

*Security agreement: fixtures.* This Mortgage creates a security interest in the property included in Premises and constitutes a security agreement under the Uniform Commercial Code. Mortgagor shall execute, file, and refile all financing statements or other security agreements required by Mortgagee from time to time with respect to property included in Premises. However, all such financing statements may be filed only with the signature of Mortgagee, or else signed by Mortgagee on behalf of Mortgagor, to the extent the same is permitted by the applicable provisions of the Uniform Commercial Code.

It is understood and agreed that, to protect Mortgagee against the effect of *UCC 9-313 [list appropriate UCC section according to state]*,<sup>n\*</sup> in the event that (a) any fixture on the Premises is replaced or added to, or any new fixture is installed or substituted by Mortgagor, and (b) such fixture is or may be subject to a security interest held by a seller or any other party:

A. Mortgagor or any owner, occupant or tenant shall, before the replacement, addition, installation, or substitution of any such fixture, obtain Mortgagee's written approval, and give Mortgagee written notice that a security agreement with respect to such fixture has been or will be consummated. Such notice shall contain the following information:

- (1) A description of the fixtures to be replaced, added to, installed, or substituted;
- (2) A recital of the address at which the fixtures will be replaced, added to, installed, or substituted;
- (3) A statement of the name and address of the holder and amount of the security interest; and
- (4) The date of the purchase of such fixtures.

Mortgagor's failure to give such notice shall be a material breach of its covenants under this Mortgage, and shall, at Mortgagee's option, constitute a default hereunder, entitling Mortgagee to all rights and remedies provided for herein on default of any term, covenant, agreement, or provision of this Mortgage and the Note.

B. Mortgagee may, at any time, pay the balance due under said security agreement, and the amount so paid shall be (1) a lien on the Premises, (2) added to the amount of the Note or other secured obligation, and (3) payable on demand with interest at the rate specified in the Note from the time of such payment as aforesaid. If Mortgagor is in default thereof for ten days after demand, the principal sum secured hereby with all interest, shall, at the option of Mortgagee, its successors or assigns, become due and payable immediately thereafter, notwithstanding any provision in this Mortgage or the Note to the contrary. Or, Mortgagee shall have the right to acquire by assignment from the holder of such security interest all contract rights, accounts receivable, chattel paper, negotiable or nonnegotiable instruments, or other evidence of Mortgagor's indebtedness for such fixtures, and, upon acquiring such security interest, may enforce it as assignee, in accordance with the terms and provisions of the Uniform Commercial Code in effect in the State of \_\_\_\_\_, as amended or supplemented, and in accordance with law.

C. Regardless of whether Mortgagee has paid or taken an assignment of such security interest, if at any time Mortgagor is in default for a period of ten days under the security agreement covering such fixtures, such default shall be a material breach of Mortgagor's covenants under this Mortgage, and shall, at Mortgagee's option, constitute a default under this Mortgage, and the secured principal sum, with all interest, shall, at Mortgagee's option, become and be due and payable immediately, notwithstanding any contrary provision in this Mortgage or the Note.

(91) UCC financing statements signed by borrower: plain language

*Financing statements.* If at any time you ask me to sign a financing statement with respect to any fixtures or personal property covered by this Agreement, I will honor your request. However, you have the right to sign and file financing statements on my behalf at any time. I agree to pay all filing fees and will repay any money which you spend in connection with such financing statements.

(92) Estoppel statement by borrower on demand

*Accounting.* Mortgagor, within five days after request in person or within ten days after request by mail, will furnish a written statement duly acknowledged of the amount due on this mortgage and whether any offsets or defenses exist against the mortgage debt. Such notice and demand or request may be in writing and may be served in person or by mail.

(93) Estoppel statement on written demand

*Estoppel affidavits.* Mortgagor, within ten days after Mortgagee's written request, shall furnish a written statement, duly acknowledged, setting forth the unpaid principal of, and interest on, the Note and whether any offsets or defenses exist against such principal and interest.

(94) Acknowledgment of debt: plain language

*Acknowledgment of my mortgage debt.* Upon your request, I will provide you with a written and notarized statement stating (a) the amount which I owe on my mortgage debt, and (b) whether any offsets or defenses exist in connection with my mortgage debt. I will deliver my statement to you within five days if you deliver the request in person, or within ten days if you deliver it by mail.

(95) Wrap around financing barred

*Wrap around financing.* Mortgagor agrees that if the Premises at any time are or become subject to the lien of any mortgage or deed of trust in connection with which payments on account of the indebtedness secured hereby are to be made directly or indirectly by or through the mortgagee or beneficiary thereunder, regardless of such mortgagee or beneficiary, the whole of the principal and interest and other sums hereby secured, at the Mortgagee's option, shall immediately become due and payable.

## (96) Subordinate lien limitations

*Subordinate financing.* Mortgagor covenants and agrees that it will not further encumber or mortgage the Premises, or any part thereof, or any interest therein, and will not execute, deliver, or take back any mortgage or mortgages ("Subordinate Mortgage"), unless the Subordinate Mortgage contains provisions to the effect that upon its foreclosure: (i) no tenants under leases of space in the Premises will be made parties defendant, nor will any other action be taken with respect to such tenants which would result in the termination of their leases or tenancies without Mortgagee's prior written consent; (ii) the rents, income, receipts, revenues, issues, and profits issuing from the Premises, or from any lease of space therein, shall not be collected, except through a Receiver appointed by a court after notice of application for such appointment has been given to Mortgagee. The money collected by the Receiver shall be first applied and used for the payment of interest and principal due and owing under this Mortgage and the indebtedness secured hereby, real estate taxes, water rates, sewer rents, assessments, or other governmental charges affecting the Premises and all other maintenance and operation charges and disbursements incurred in connection with the operation and maintenance of the Premises. If during the pendency of any such mortgage foreclosure proceeding, action is instituted for the foreclosure of this Mortgage, and an application is made by Mortgagee for an extension of such Receivership for its benefit, all funds collected by the Receiver prior to the date of such application shall be held by the Receiver and applied solely for the benefit of Mortgagee hereunder, and the holder of such Subordinate Mortgage shall not be entitled to any part thereof, unless there is a surplus remaining after all of the aforesaid payments and any other necessary payments; and (iii) immediate notice of the institution of such foreclosure proceeding shall be given to Mortgagee, and true copies of all papers served or entered in such foreclosure proceeding shall be served upon Mortgagee.

Mortgagor shall deliver to Mortgagee an executed counterpart of each Subordinate Mortgage within ten days after Mortgagor's execution and delivery thereof to the subordinated mortgagee.

Any Subordinate Mortgage shall contain an express covenant to the effect that it is in all respects subject and subordinate to this Mortgage and that the mortgagee thereunder will upon demand further subordinate said Mortgage to the lien and terms, covenants and conditions of this Mortgage as hereinafter extended, renewed, modified, or consolidated.

## (97) Compliance with recorded instruments

*Recorded instruments.* Mortgagor will promptly perform and observe, or cause to be performed or observed, all of the terms, covenants, and conditions of all instruments of record affecting the Premises, noncompliance with which may affect the security of this Mortgage, or which may impose any duty or obligation upon Mortgagor or any sublessee or other occupant of the Premises or any part thereof. Mortgagor shall do or cause to be done all things necessary to preserve intact and unimpaired all easements, appurtenances, and other interest and rights in favor of or constituting any portion of the Premises.

## (98) Invalid provisions to affect no others

*Invalid provisions.* If any one or more of the covenants, agreements, terms, or provisions in this Mortgage or the Note are invalid, illegal, or unenforceable in any respect, the validity of the remaining covenants, agreements, terms, or provisions contained herein and in the Note shall be in no way affected, prejudiced, or disturbed thereby.

## (99) Captions for convenience only

*Captions.* The captions in this Mortgage are inserted only for convenience of reference and in no way define, limit, or describe the scope, intent, or proper construction of this Mortgage or any particular paragraph or section hereof.

## (100) Joint and several liability, successors and assigns

*Construction.* The term Mortgagor as used in every instance shall include Mortgagor's heirs, executors, administrators, successors, legal representatives, and assigns, either voluntary by act of the parties or involuntary by operation of law and shall denote the singular and/or plural, and the masculine and/or feminine and natural and/or artificial persons, whenever and wherever the context so requires or admits. If more than one party is named as Mortgagor, the obligation hereunder of each such party shall be deemed to be joint and several. The term Mortgagee as used in every instance shall include Mortgagee's successors, legal representatives, and assigns, including all subsequent assignees, either voluntary or by act of the parties, or involuntary by operation of law.

(101) Governing law

*Governing law.* This Mortgage and the Note secured hereby are to be construed according to and shall be entitled to the benefits of the laws of the State of \_\_\_\_\_.

(102) "Mortgagor" and "Mortgagee" includes plural

*"Mortgagor," "Mortgagee."* The word "Mortgagor" shall be construed as if it read "Mortgagors" and the word "Mortgagee" shall be construed as if it read "Mortgagees" whenever the sense of this mortgage so requires.

(103) "I" and "you": plain language

The words "I," "me" and "my" represent every individual person who signs this Mortgage Agreement. The words "you" and "your" represent \_\_\_\_\_.

*or*

In this Agreement, the words I, me and mine mean each person whose name appears at the top of this page. The words you, your and yours mean \_\_\_\_\_.

**FOOTNOTES:**

(n1)Footnote \*. Review your state's statutory version of U.C.C. Section 9-313, as it may include variances from the model U.C.C. version.



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*37TTT-35 California Legal Forms--Transaction Guide Form T35-2*

**Form T35-2 Release Agreement Terminating Existing Real Estate Contract**

**Description:** This form is intended to terminate the existing real estate sale agreement upon failure of contingencies.

**Form T35-2 Release agreement terminating existing real estate contract**

RELEASE made this day of \_\_\_\_\_ [date], between \_\_\_\_\_ [insert name of seller ], residing at \_\_\_\_\_ [address] ("Seller"), and THE CORPORATION, a corporation existing under the laws of the State of \_\_\_\_\_ [state], with offices for the transaction of business at \_\_\_\_\_ [address] ("Purchaser").

WHEREAS, the parties hereto entered into an earlier agreement dated \_\_\_\_\_ [insert date of original contract], for the purchase and sale of property commonly known as \_\_\_\_\_ [insert street address or other description of the property's location, including city, state and zip code] and more particularly described in said agreement; and

WHEREAS, said agreement contained a contingency in Paragraph No. \_\_\_\_\_ for \_\_\_\_\_ [e.g., an environmental site assessment ("ESA") to be performed by Worldwide Scientific Company (Worldwide)]; and

WHEREAS, \_\_\_\_\_ [e.g., the ESA was timely performed by Worldwide, but Worldwide was unable to render an opinion that there did not exist any evidence of an adverse environmental impact]; and

WHEREAS, Purchaser gave timely notice of the failure of the contingency, pursuant to Paragraph No. \_\_\_\_\_; and

WHEREAS, the parties wish to release each other and clarify their rights and obligations;

It is, therefore, agreed as follows:

1. *Release.* The parties, for themselves, their heirs, successors and assigns, hereby release each other from any further

obligation under said agreement dated \_\_\_\_\_[date].

2. *Parties have no more rights under original contract.* Each party acknowledges that it has no further rights under the said agreement dated \_\_\_\_\_[date].

3. *Return of deposit.* Upon execution of this release, the Purchaser's deposit of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) shall be delivered to Purchaser by the real estate broker, namely, Realty, Inc.

4. *Confidentiality clause.* Purchaser agrees for itself, its successors, heirs and assigns to refrain from disclosing to any individual, partnership, corporation or other entity any information \_\_\_\_\_[e.g., that is contained in the Worldwide report or any information learned as a result of the inspections made by Worldwide]. Purchaser acknowledges that release of such information could have a serious impact on the value of Seller's property and upon Seller's ability to conduct business. Seller shall be entitled to injunctive relief and monetary damages in the event that Purchaser violates the provisions of this Paragraph 4.

5. *Seller to make best efforts to remedy problem plaguing property.* Seller represents that he/she will make his/her best efforts to learn more about the problem with the property and take steps to remediate the problem, if possible. However, Seller is not committed to take any particular course of action. Failure of Seller to take action does not relieve Purchaser of the confidentiality requirements under Paragraph 4 hereof.

\_\_\_\_\_ [Add, if appropriate:]

6. *Purchaser has returned copy of environmental site assessment.* Purchaser represents that it has returned its copy of the ESA report to Seller. Purchaser further represents that it has not made any photocopies or disseminated any copies or information to any third party.

The parties hereto have set their hands the day and year first above written.

\_\_\_\_\_

Seller

THE CORPORATION

Purchaser

By: \_\_\_\_\_

President



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37TTT-35 California Legal Forms--Transaction Guide Form T35-3

Form T35-3 Mortgagee Waiver

Description: This form provides lender with assurances from a mortgagee related to lender's secured lending agreement with the mortgagor and collateral that may be present on premises of mortgagee.

Form T35-3 Mortgagee Waiver

20\_\_\_\_\_

[LENDER'S NAME]
[LENDER'S ADDRESS]

Ladies and Gentlemen:

The undersigned is the holder of a Mortgage dated \_\_\_\_\_,
\_\_\_\_\_ (the "Mortgage") from \_\_\_\_\_ (the "Mortgagor") on the premises located at
\_\_\_\_\_ (the "Premises"). The Mortgagor leases the Premises to \_\_\_\_\_ ("Borrower").
Pursuant to the terms of a [Revolving Credit] [Term Loan] [and Security] Agreement between Borrower and
\_\_\_\_\_ ("Lender"), Borrower will be obtaining financing from the Lender. To secure such financing the
Lender will be receiving a lien and security interest in the personal property of Borrower (the "Collateral") some of
which may be located on the Premises. The undersigned understands that Lender desires assurance from the
undersigned that the Mortgage is in good standing and agrees that Lender may rely on this letter. With respect to the
foregoing, the undersigned certifies and acknowledges as follows:

- 1. As of the date hereof, the Mortgage together with the notes secured thereby and all other ancillary documents
delivered in connection therewith (hereinafter together with the Mortgage collectively, the "Mortgage Documents"), are
in full force and effect according to their terms and have not been modified, amended or supplemented in any way.
2. To the best knowledge of the undersigned, (i) the Mortgagor is not in default under any of the terms, covenants or
provisions of the Mortgage Documents and (ii) the undersigned knows of no event, other than as specified in subsection

(i) above which, but for the passage of time or the giving of notice, or both, would constitute a default or event of default by the Mortgagor under the Mortgage Documents.

3. The undersigned agrees that it will give the Lender notice of any default or event of default under any of the Mortgage Documents simultaneously with the giving of such notice to the Mortgagor and any other parties entitled thereto under the Mortgage Documents at the following address: \_\_\_\_\_, Attention: \_\_\_\_\_ . Lender may cure such default or event of default under the Mortgage Documents within the time permitted in the Mortgage Documents or if no such cure period is provided therein, within ten (10) days after Lender's receipt of such notice of default or event of default.

4. The undersigned hereby agrees that the Collateral may be stored, utilized and/or installed at the Premises and shall not be deemed a fixture or part of the real estate but shall at all times be considered personal property, except for the following Collateral: \_\_\_\_\_. The undersigned further agrees that if a default or event of default is declared by the undersigned under the Mortgage Documents and the undersigned obtains possession of the Premises (of which event the undersigned shall give prompt notice to the Lender): (a) Lender or its representatives are hereby granted the right and the option of possession of the Premises for purposes of operation and/or sale of the Collateral for a period of up to one hundred and eighty (180) days (the "Period") from the date of the exercise of said option, which option shall be exercised within ten (10) business days by notice in writing by the Lender to the undersigned. During the Period, the Lender shall have all rights of the Mortgagor in and to the Premises provided, however, that Lender shall be liable to the undersigned for the reasonable cost of repairing any damage caused to the Premises during Lender's possession of the Premises as aforesaid, but Lender shall not be responsible to the undersigned for any past due installment which may be owing at the time of the exercise of Lender's option, for any pre-existing damage to the Premises or for any diminution in value of the Premises caused by the absence of the Collateral actually removed. Lender's right to occupy the Premises shall be extended for the time period Lender is prohibited from selling the Collateral due to the imposition of the automatic stay by the filing of bankruptcy proceedings by the Mortgagor or Borrower. The undersigned will not interfere with any sale of the Collateral, by public auction or otherwise, conducted by or on behalf of Lender on the Premises.

5. This agreement shall inure to the benefit of Lender and its successors and assigns and shall be binding on the undersigned and its successors and assigns.

Very truly yours,  
\_\_\_\_\_ as Mortgagee  
By: \_\_\_\_\_  
Title: \_\_\_\_\_

AGREED TO AND ACCEPTED:

\_\_\_\_\_ as Mortgagor  
By: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF \_\_\_\_\_ )  
COUNTY OF \_\_\_\_\_ ) ss.:

On the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me personally came \_\_\_\_\_, to me known, who, being by me duly sworn, did depose and say that s/he is the

\_\_\_\_\_ of \_\_\_\_\_, the corporation described in and which executed the foregoing instrument; and that s/he signed her/his name thereto by order of the board of directors of said corporation.

\_\_\_\_\_  
Notary Public



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37TTT-35 California Legal Forms--Transaction Guide Form T35-4

Form T35-4 Adjustable Rate Home Equity Conversion Deed of Trust--FHA.

Description: In order to secure payments that the Lender may make to or on behalf of the Borrower, the Lender requires the Borrower in this form to execute a Second Note. Under the Second Note, the initial stated interest rate of percent (%) that accrues on the unpaid principal balance ("Initial Interest Rate") is subject to change, as described below.

Form T35-4 Adjustable Rate Home Equity Conversion Deed of Trust--FHA.

This instrument drafted by: \_\_\_\_\_

After recording, mail to: \_\_\_\_\_

State of \_\_\_\_\_ )
County ) FHA Case No: \_\_\_\_\_
)
)

ADJUSTABLE RATE HOME EQUITY CONVERSION DEED OF TRUST

THE DEED OF TRUST ("Security Instrument" or "Second Security Instrument") is made on \_\_\_\_\_
The Grantor is \_\_\_\_\_, and spouse, \_\_\_\_\_ whose address is \_\_\_\_\_
("Borrower"). The trustee is \_\_\_\_\_ ("Trustee"). The beneficiary is the Secretary of Housing and Urban
Development, whose address is 451 Seventh Street, S.W., Washington, DC 20410 ("Lender" or "Secretary"). Borrower
has agreed to repay to Lender amounts which Lender is obligated to advance, including future advances, under the
terms of a Home Equity Conversion Loan Agreement dated the same date as this Security Instrument ("Loan
Agreement"). The agreement to repay is evidenced by Borrower's Note dated the same date as this Security Instrument
("Second Note"). This Security Instrument secures to Lender: (a) The repayment of the debt evidenced by the Second
Note, with interest at a rate subject to adjustment, and all renewals, extensions, and modifications of the Note, in the
present amount of \_\_\_\_\_ Dollars (\$\_\_\_\_\_); (b) the payment of all other sums, with interest,

advanced under Paragraph 5 to protect the security of this Security Instrument or otherwise due under the terms of this Security Instrument; and (c) the performance of Borrower's covenants and agreements under this Security Instrument and the Second Note. The full debt, including amounts described in (a), (b), and (c) above, if not paid earlier, is due and payable on \_\_\_\_\_ For this purpose, Borrower irrevocably grants and conveys to Trustee and Trustee's successors and assigns, in trust, with power of sale, the following described property located in \_\_\_\_\_ County, \_\_\_\_\_ [state]:

[Description]

The property address is:

\_\_\_\_\_  
\_\_\_\_\_

TO HAVE AND TO HOLD said property unto Trustee and Trustee's successors and assigns, forever, together with all the improvements now or hereafter erected on the property, and all easements, rights, 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 grant and convey the Property and that the Property is only encumbered by a First Security Instrument given by Borrower and dated the same date as this Security Instrument ("First Security Instrument"). Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

THIS SECURITY INSTRUMENT combines uniform covenants for national use and nonuniform 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.* Borrower shall pay when due the principal of, and interest, on the debt evidenced by the Note.

2. *Payment of Property Charges.* Borrower shall pay all property charges consisting of taxes, ground rents, flood and hazard insurance premiums, and special assessments in a timely manner, and shall provide evidence of payment to Lender, unless Lender pays property charges by withholding funds from monthly payment due to the Borrower or by charging such payments to a line of credit as provided for in the Loan Agreement. Lender may require Borrower to pay specified property charges directly to the party owed payment even though Lender pays other property charges as provided in this Paragraph.

3. *Fire, Flood, and other Hazard Insurance.* Borrower shall insure all improvements on the Property, whether now in existence or subsequently erected, against any hazards, casualties, and contingencies, including fire. This insurance shall be maintained in the amounts, to the extent and for the periods required by Lender. Borrower shall also insure all improvements on the Property, whether now in existence or subsequently erected, against loss by floods to the extent required by the Secretary. All insurance shall be carried with companies approved by Lender. The insurance policies and any renewals shall be held by Lender and shall include loss payable clauses in favor of, and in a form acceptable to, Lender.

In the event of loss, Borrower shall give Lender immediate notice by mail. Lender may make proof of loss if not made promptly by Borrower. Each insurance company concerned is hereby authorized and directed to make payment for such loss to Lender. Insurance proceeds shall be applied to restoration or repair of the damaged Property, 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 first to the reduction of any indebtedness under the Second Note and this Security Instrument shall be paid to the entity legally entitled thereto.

In the event of foreclosure of this Security Instrument or other transfer of title to the Property that extinguishes the indebtedness, all right, title, and interest of Borrower in and to insurance policies in force shall pass to the purchaser.

*4. Occupancy, Preservation, Maintenance, and Protection of the Property; Borrower's Loan Application; Leaseholds.*

Borrower shall occupy, establish, and use the Property as Borrower's principal residence after the execution of this Security Instrument, and Borrower (*or*, at least one Borrower, if initially more than one person are Borrowers) shall continue to occupy the Property as Borrower's principal residence for the term of the Security Instrument. "Principal residence" shall have the same meaning as in the Loan Agreement.

Borrower shall not commit waste or destroy, damage, or substantially change the Property or allow the Property to deteriorate, reasonable wear and tear excepted. 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 Borrower's occupancy of the Property as a principal residence. If this Security Instrument is on a leasehold, Borrower shall comply with the provisions of the lease. If Borrower acquires fee title to the Property, the leasehold and fee title shall not be merged unless Lender agrees to the merger in writing.

*5. Charges to Borrower and Protection of Lender's Rights in the Property.* Borrower shall pay all governmental or municipal charges, fines and impositions that are not included in Paragraph 2. Borrower shall pay these obligations on time directly to the entity which is owed the payment. If failure to pay would adversely affect Lender's interest in the Property, upon Lender's request, Borrower shall promptly furnish to Lender receipts evidencing these payments. Borrower shall promptly discharge any lien which has priority over this Security Instrument in the manner provided in Paragraph 12(c).

If Borrower fails to make these payments or the property charges required by Paragraph 2, or fails to perform any other 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, for condemnation or to enforce laws or regulations), then Lender may do and pay whatever is necessary to protect the value of the Property and Lender's rights in the Property, including payment of taxes, hazard insurance, and other items mentioned in Paragraph 2.

To protect Lender's security in the Property, Lender shall advance and charge to Borrower all amounts due to the Secretary or Mortgage Insurance Premium as defined in the Loan Agreement as well as all sums due to the loan servicer for servicing activities as defined in the Loan Agreement. Any amounts disbursed by Lender under this Paragraph shall become an additional debt of Borrower as provided for in the Loan Agreement and shall be secured by this Security Instrument.

*6. Inspection.* Lender or its agent may enter on, inspect, or make appraisals of the Property in a reasonable manner and at reasonable times provided that Lender shall give the Borrower notice prior to any inspection or appraisal specifying a purpose for inspection or appraisal which must be related to Lender's interest in the Property. If the Property is vacant or abandoned or the loan is in default, Lender may take reasonable action to protect and preserve such vacant or abandoned Property without notice to Borrower.

*7. 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 place of condemnation shall be paid to Lender. The proceeds shall be applied first to the reduction of any indebtedness under a Second Note and this Security Instrument. Any excess proceeds over an amount required to pay all outstanding indebtedness under the Second Note

and this Security Instrument shall be paid to the entity legally entitled thereto.

8. *Fees.* Lender may collect fees and charges authorized by the Secretary for the Home Equity Conversion Mortgage Insurance Program.

9. *Grounds for Acceleration of Debt.*

(a) *Due and Payable.* Lender may require immediate payment in full of all sums secured by this Security Instrument if:

(i) A Borrower dies and the Property is not the principal residence of at least one surviving Borrower, or

(ii) All of a Borrower's title in the Property (*or*, his or her beneficial interest in a trust owning all or part of the Property) is sold or otherwise transferred and no other Borrower retains title to the Property in fee simple or retains a leasehold under a lease for less than ninety-nine (99) years which is renewable or a lease having a remaining period of not less than fifty (50) years beyond the date of the 100th birthday of the youngest Borrower or retains a life estate (*or*, retaining a beneficial interest in a trust with such an interest in the Property); or

(iii) The Property ceases to be the principal residence of a Borrower for reasons other than death and the Property is not the principal residence of at least one other Borrower; or

(iv) For a period of longer than twelve (12) consecutive months, a Borrower fails to occupy the Property because of physical or mental illness and the Property is not the principal residence of at least one other Borrower; or

(v) An obligation of the Borrower under this Security Instrument is not performed.

(b) *Notice to Lender.* Borrower shall notify Lender whenever any of the events listed in Paragraph 9(a)(ii)-(v) occur.

(c) *Notice to Borrower.* Lender shall notify Borrower whenever the loan becomes due and payable under Paragraph 9(a)(ii)-(v). Lender shall not have the right to commence foreclosure until Borrower has had thirty (30) days after notice to either:

(i) Correct the matter which resulted in the Security Instrument coming due and payable; or

(ii) Pay the balance in full; or

(iii) Sell the Property for the lesser of the balance or ninety-five percent (95%) of the appraised value and apply the net proceeds of the sale toward the balance; or

(iv) Provide the Lender with a deed in lieu of foreclosure.

(d) *Trusts.* Conveyance of Borrower's interest in the Property to a trust which meets the requirements of the conveyance for purposes of this Paragraph 9. A trust shall not be considered an occupant or be considered as having a principal residence for purposes of this Paragraph 9.

10. *No Deficiency Judgments.* Borrower shall have no personal liability for payments of debt secured by this Security Instrument. Lender may enforce the debt only through sale of the Property. Lender shall not be permitted to obtain a deficiency judgment against Borrower if the Security Instrument is foreclosed.

11. *Reinstatement.* Borrower has a right to be reinstated if Lender has required immediate payment in full. This right applies even after foreclosure proceedings are instituted. To reinstate this Security Instrument, Borrower shall correct

the condition which resulted in the requirement for immediate payment in full. Foreclosure costs and reasonable and customary attorney's fees and expenses properly associated with the foreclosure proceeding shall be added to the principal balance. Upon reinstatement by Borrower, this Security Instrument and the obligations that it secures shall remain in effect as if Lender had not required immediate payment in full. However, Lender is not required to permit reinstatement if: (i) Lender has accepted reinstatement after the commencement of foreclosure proceedings within two (2) years immediately preceding the commencement of a current foreclosure proceeding; (ii) reinstatement will preclude foreclosure on different grounds in the future; or (iii) reinstatement will adversely affect the priority of the Security Instrument.

#### 12. *Lien Status.*

(a) *Modification.* Borrower agrees to extend this Security Instrument in accordance with this Paragraph 12(a). If Lender determines that the original lien status of the Security Instrument is jeopardized under state law (including but not limited to situations where the amount secured by the Security Instrument equals or exceeds the maximum principal amount stated or the maximum period under which loan advances retain the same lien priority initially granted to loan advances has expired) and state law permits the original lien status to be maintained for future loan advances through the execution and recordation of one or more documents, then Lender shall obtain title evidence at Borrower's expense. If the title evidence indicates that the Property is not encumbered by any liens (except this First Security Instrument described in Paragraph 13(a), this Second Security Instrument and any subordinate liens that the Lender determines will also be subordinate to any future loan advances), Lender shall request the Borrower to execute any documents necessary to protect the lien status of any future loan advances. Borrower agrees to execute such documents. If state law does not permit the original lien status to be extended to future loan advances, Borrower will be deemed to have failed to have performed an obligation under this Security Instrument.

(b) *Tax Deferral Programs.* Borrower shall not participate in a real-estate tax deferral program, if any liens created by the tax deferral are not subordinate to this Security Instrument.

(c) *Prior Liens.* Borrower shall promptly discharge any lien which has 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 forfeiture of any part of the Property; or (c) secures from the holder of the lien an agreement satisfactory to Lender subordinating the lien to all amounts secured by this Security Instrument. If Lender determines that any part of the Property is subject to a lien which may attain priority over this Security Instrument, Lender may give Borrower a notice identifying the lien. Borrower shall satisfy the lien or take one or more of the actions set forth above within ten (10) days of the giving of notice.

#### 13. *Relationship to Second Security Instrument.*

(a) *Second Security Instrument.* In order to secure payments which the Secretary may make to or on behalf of Borrower pursuant to section 255(i)(1)(A) of the National Housing Act and the Loan Agreement, the Secretary has required Borrower to execute a Second Note and this Second Security Instrument. Borrower also has executed a First Note and First Security Instrument.

(b) *Relationship of First and Second Security Instruments.* Payments made by the Secretary shall not be included in the debt under the First Note unless:

(i) The First Security Instrument is assigned to the Secretary; or

(ii) The Secretary accepts reimbursement by the holder of the First Note for all payments made by the Secretary.

If the circumstances described in (i) or (ii) occur, then all payments by the Secretary, including interest on the payments, but excluding late charges paid by the Secretary, shall be included in the debt under the First Note.

(c) *Effect on Borrower.* Where there is no assignment or reimbursement as described in (b)(i) or (ii) and the Secretary makes payments to Borrower, then Borrower shall not:

(i) Be required to pay amounts owed under the Note, or pay any rents and revenues of the Property under Paragraph 19 to holder of the First Note or a receiver of the Property until the Secretary has required payment in full of all outstanding principal and accrued interest under the Second Note; or

(ii) Be obligated to pay interest or shared appreciation under the First Note at any time, whether accrued before or after the payments by the Secretary, and whether or not accrued interest has been included in the principal balance under the First Note.

(d) *No Duty of the Secretary.* The Secretary has no duty to the holder of the First Note to enforce covenants of the Second Security Instrument or to take actions to preserve the value of the Property, even though the holder of the First Note may be unable to collect amounts owed under the Note because of restrictions in this Paragraph 13.

(e) *Restrictions on Enforcement.* Notwithstanding anything else in this Security Instrument, the Borrower shall not be obligated to comply with the covenants hereof, and Paragraph 19 shall have no force and effect, whenever there is no outstanding balance under the Second Note.

14. *Forbearance by Lender Not a Waiver.* 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.

15. *Successors and Assigns Bound; Joint and Several Liability.* Borrower may not assign rights or obligations under this Security Instrument or the Second Note, except to a trust that meets the requirements of the Secretary. Borrower's covenants and agreements shall be joint and several.

16. *Notices.* Any notice to Borrower provided for in this Security Instrument shall be given by delivering it or by mailing it by first class mail unless applicable law requires use of another method. The notice shall be directed to the Property Address or any other address all Borrowers jointly designated. Any notice to Secretary shall be given by first class mail to HUD Field Office with jurisdiction over the Property or any other address designated by the Secretary. Any notice provided for in this Security Instrument shall be deemed to have been given to Borrower or Lender when given as provided in this Paragraph 16.

17. *Governing Law; Severability.* This Security Instrument shall be governed by Federal law and the law of the jurisdiction in which the Property is located. In the event that any provision or clause of this Security Instrument or the Second Note conflicts with applicable law, such conflict shall not affect other provisions of the Security Instrument or the Second Note which can be given effect without the conflicting provision. To this end the provisions of the Security Instrument and the Second Note are declared to be severable.

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

NONUNIFORM COVENANTS. Borrower and Lender covenant and agree as follows:

19. *Assignment of Rents.* Borrower unconditionally assigns and transfers to Lender all the rents and revenues of the Property. Borrower authorizes Lender or Lender's agents to collect the rents and revenues and hereby directs each tenant of the Property to pay the rents to Lender or Lender's agents. However, prior to Lender's notice to Borrower of Borrower's breach of any covenant or agreement in the Security Instrument, Borrower shall collect and receive all rents

and revenues of the Property as trustee for the benefit of Lender and Borrower. This assignment of rents constitutes an absolute assignment and not an assignment for additional security only.

If Lender gives notice of breach to Borrower: (a) all rents received by Borrower shall be held by Borrower as trustee for benefit of Lender only, to be applied to the sums secured by this Security Instrument; (b) Lender shall be entitled to collect and receive all of the rents of the Property; and (c) each tenant of the Property shall pay all rents due and unpaid to Lender or Lender's agent on Lender's written demand to the tenant.

Borrower has not executed any prior assignment of the rents and has not and will not perform any act that would prevent Lender from exercising its rights under this Paragraph 19, except as provided in the First Security Instrument.

Lender shall not be required to enter upon, take control of, or maintain the Property before or after giving notice of breach to Borrower. However, Lender or a judicially appointed receiver may do so at any time there is a breach. Any application of rents shall not cure or waive any default or invalidate any other right or remedy of Lender. This assignment of rents of the Property shall terminate when the debt secured by this Security Instrument is paid in full.

20. *Foreclosure Procedure.* If Lender requires immediate payment in full under Paragraph 9, Lender 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 Paragraph 20, including, but not limited to, reasonable attorney's fees and costs of title evidence.

If Lender invokes the power of sale, and if it is determined in a hearing held in accordance with applicable law that Trustee can proceed to sale, Trustee shall take such action regarding notice of sale and shall give such notices to Borrower and to other persons as applicable law may require. After the time required by applicable law and after publication of the notice of sale, Trustee, without demand on Borrower, shall sell the Property at public auction to the highest bidder at the time and place and under the terms designated in the notice of sale in one or more parcels and in any order Trustee determines. Lender or its designee may purchase the Property at any sale.

Trustee shall deliver to the purchaser Trustee's deed conveying the Property without any covenant or warranty, expressed or implied. The recitals in the Trustee's deed shall be prima facie evidence of the truth of the statement made therein. Trustee shall apply the proceeds of the sale in the following order: (a) to all expenses of the sale, including, but not limited to, Trustee's fees of \_\_\_\_\_ percent (\_\_\_\_%) of the gross sale price; (b) to all sums secured by this Security Instrument; and (c) any excess to the person or persons legally entitled to it. The interest rate set forth in the Note shall apply whether before or after any judgment on the indebtedness evidenced by the Note.

21. *Lien Priority.* The full amount secured by this Security Instrument shall have a lien priority subordinate only to the full amount secured by the First Security Instrument.

22. *Adjustable Rate Feature.* Under the Second Note, the initial stated interest rate of \_\_\_\_\_ percent (\_\_\_\_%) which accrues on the unpaid principal balance ("Initial Interest Rate") is subject to change, as described below. When the interest rate changes, the new adjusted interest rate will be applied to the total outstanding principal balance. Each adjustment to the interest rate will be based upon the weekly average yield on the United States Treasury Securities adjusted to constant maturity of one year, as made available by the Federal Reserve Board in Statistical Release H.15 (519) ("Index"), plus a margin. If the Index is no longer available, Lender will use as a new Index any index prescribed by the Secretary. Lender will give Borrower notice of the new Index.

Lender will perform the calculations described below to determine the new adjusted interest rate. The interest rate may change on the first day of \_\_\_\_\_, and on ( ) that day of each succeeding year ( ) the first day of each succeeding month ("Change Date") until the loan is repaid in full.





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*37TTT-36 California Legal Forms--Transaction Guide 36.syn*

**§ 36.syn Synopsis to Chapter 36: Mortgages and Deeds of Trust--Foreclosure.**

Form T36-1 Notice of Intent to Enforce Remedy

Form T36-1 Notice of Intent to Enforce Remedy

Form T36-2 Power of Attorney to Foreclose a Mortgage

Form T36-2 Power of Attorney to Foreclose a Mortgage

Form T36-3 Petition for Hearing Before Clerk

Form T36-3 Petition for Hearing Before Clerk

Form T36-4 Notice of Hearing Before Clerk

Form T36-4 Notice of Hearing Before Clerk

Form T36-5 Affidavit of Mailing of Notice of Hearing

Form T36-5 Affidavit of Mailing of Notice of Hearing

Form T36-6 Letter to Internal Revenue Service About Foreclosure

Form T36-6 Letter to Internal Revenue Service About Foreclosure

Form T36-7 Notice of Foreclosure Sale

Form T36-7 Notice of Foreclosure Sale

Form T36-8 Notice of Postponement of Foreclosure Sale

Form T36-8 Notice of Postponement of Foreclosure Sale

Form T36-9 Notice of Resale

Form T36-9 Notice of Resale

Form T36-10 Motion to Enjoin Mortgage Sale

Form T36-10 Motion to Enjoin Mortgage Sale

Form T36-11 Report of Foreclosure Sale

Form T36-11 Report of Foreclosure Sale



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37TTT-36 California Legal Forms--Transaction Guide Form T36-1

**Form T36-1 Notice of Intent to Enforce Remedy**

**Description:** This form may be used by a seller of residential real estate under a contract of deed or executory contract to notify the buyer that the buyer is in default and that the seller intends to enforce the remedy of rescission or forfeiture.

**Form T36-1 Notice of Intent to Enforce Remedy**

NOTICE OF DEFAULT

To: \_\_\_\_\_ [name of buyer]

From: \_\_\_\_\_ [name of seller]

NOTICE

*[The following paragraph must be on a separate page, set out conspicuously, and printed in 14-point boldface or 14-point uppercase typewritten letters]*

**YOU ARE NOT COMPLYING WITH THE TERMS OF THE CONTRACT TO BUY YOUR PROPERTY. UNLESS YOU TAKE THE ACTION SPECIFIED IN THIS NOTICE BY \_\_\_\_\_ [date] THE SELLER HAS THE RIGHT TO TAKE POSSESSION OF YOUR PROPERTY.**

1. You are hereby notified that you are in default of the contract for a deed dated \_\_\_\_\_ [date], executed by you the buyer, and the undersigned, the seller \_\_\_\_\_ [add, if applicable, and recorded on \_\_\_\_\_ (date) in \_\_\_\_\_ (recording locations)]. You are in default because \_\_\_\_\_ [explain nature of default, e.g., you have not made the payment due on \_\_\_\_\_ (date) or you have violated a term of the contract].

2. The seller intends to exercise the remedy of \_\_\_\_\_ [e.g., FORFEITURE or ACCELERATION OF

THE DEBT *or* RESCISSION OF THE CONTRACT]. This means that \_\_\_\_\_ [*explain remedy, e.g., you will lose the right to buy or possess the property, and the seller will be able to retain the payments you have made to date or the contract will be set aside, and the seller will be sole owner of the property, although you will be entitled to the return of \_\_\_\_\_ (e.g., your down payment and monthly payments made before the default).*]

[*Use when default consists of failure to make timely payments*]

3. You are delinquent in your payments for the period \_\_\_\_\_ [*specify time period*]. To become current you must pay the amount of \$ \_\_\_\_\_ by \_\_\_\_\_ [date]. This amount consists of the following sums:

- a. Principal: \$ \_\_\_\_\_  
\_\_\_\_\_
- b. Interest: \$ \_\_\_\_\_  
\_\_\_\_\_
- c. Additional charges consisting of \$ \_\_\_\_\_  
\_\_\_\_\_ [*explain, e.g., late fees or attorney's fees*]: \_\_\_\_\_

[*OR*]

[*Use when default consists of failure to comply with contract term*]

3. You are in default of the contract because you have failed to \_\_\_\_\_ [*describe failure to comply with contract*]. To cure this default you must, by \_\_\_\_\_ [date] do the following: \_\_\_\_\_ [*describe action required to cure default*].

Dated: \_\_\_\_\_

\_\_\_\_\_ [signature of seller]

\_\_\_\_\_ [typed name]



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37TTT-36 California Legal Forms--Transaction Guide Form T36-2

Form T36-2 Power of Attorney to Foreclose a Mortgage

Description: This form is a limited power of attorney that authorizes the agent to foreclose upon a mortgage held by the principal.

Form T36-2 Power of Attorney to Foreclose a Mortgage

State of \_\_\_\_\_ )
County of \_\_\_\_\_ )

Know all men by these presents, that I, \_\_\_\_\_ [name of principal] residing at \_\_\_\_\_ [address], do hereby make, constitute, and appoint \_\_\_\_\_ [name of agent], of \_\_\_\_\_ [address], my true and lawful attorney-in-fact for me and in my name, place, and stead:

To bring an action or proceeding in any court of competent jurisdiction and to take all such steps as may be necessary to foreclose a certain mortgage bearing date \_\_\_\_\_ [date of mortgage], made, executed, and delivered by \_\_\_\_\_ [name of mortgagor] to me and recorded in the Office of the County Clerk in and for the County of \_\_\_\_\_ in Liber \_\_\_\_\_ of Mortgages at page \_\_\_\_\_ and covering real property more particularly bounded and described as follows: [Insert description as in mortgage].

Dated: \_\_\_\_\_

(signature of principal)

State of \_\_\_\_\_ )
County of \_\_\_\_\_ )

On \_\_\_\_\_ [date], before me personally came \_\_\_\_\_ [name of principal], satisfactorily proven to be the person described in and who executed the foregoing instrument,

and acknowledged that he executed the same.

Notary Public

\_\_\_\_\_

[Seal]



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37TTT-36 California Legal Forms--Transaction Guide Form T36-3

Form T36-3 Petition for Hearing Before Clerk

Description: This form is a petition for a hearing for foreclosure of a deed of trust.

Form T36-3 Petition for Hearing Before Clerk

\_\_\_\_\_, In the General Court of Justice
\_\_\_\_\_, Superior Court Division
\_\_\_\_\_, Before the Clerk
\_\_\_\_\_, County

)
In the Matter of the Foreclosure of the Deed of Trust )
of \_\_\_\_\_, )
Mortgagors-Grantors ) PETITION
To \_\_\_\_\_, )
(Substitute) Trustee )
And \_\_\_\_\_, )
Noteholder )

As recorded in Deed of Trust
Book \_\_\_\_\_, Page \_\_\_\_\_

To: Clerk of Superior Court, \_\_\_\_\_ County, \_\_\_\_\_ [State]:

The undersigned (substitute) Trustee in the above-entitled action shows unto the court the following:

- 1.

[When original Trustee is used]

The undersigned is the Trustee named in that certain Deed of Trust executed by \_\_\_\_\_ and recorded in Deed of Trust Book \_\_\_\_\_, Page \_\_\_\_\_ of the \_\_\_\_\_ County Registry;

or

[When substitute Trustee is used]

The undersigned is the Substitute Trustee named in that certain Substitution of Trustee executed by \_\_\_\_\_ and recorded in Deed Book \_\_\_\_\_, Page \_\_\_\_\_ of the \_\_\_\_\_ County Registry, the original Deed of Trust having been executed by \_\_\_\_\_, and recorded in Deed of Trust Book \_\_\_\_\_, Page \_\_\_\_\_;

2.

The aforesaid Deed of Trust secures a note in the original amount of \_\_\_\_\_ Dollars payable to \_\_\_\_\_, and the note is held by \_\_\_\_\_;

3.

There has been default in the payment of the indebtedness evidenced by the note and Deed of Trust by the mortgagors-grantors;

4.

Because of the default, the holder of the note has accelerated the maturity of the debt and has requested the (substitute) Trustee to foreclose the Deed of Trust securing the note for the purpose of satisfying the indebtedness.

Wherefore, the undersigned (substitute) Trustee prays that this court hold a hearing prior to the foreclosure sale pursuant to \_\_\_\_\_ [State] General Statutes, Section \_\_\_\_\_ for the purpose of finding the existence of the following:

- (1) A valid debt of which the party seeking to foreclose is the holder;
- (2) Default;
- (3) Right to foreclose under the instrument; and
- (4) Notice of Hearing to those entitled to such and for any other purposes as are proper.

Respectfully submitted this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_

(Substitute) Trustee

---

[Address]

---

[Telephone Number]



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37TTT-36 California Legal Forms--Transaction Guide Form T36-4

**Form T36-4 Notice of Hearing Before Clerk**

**Description:** This form is used for a notice of hearing for foreclosure of a deed of trust.

**Form T36-4 Notice of Hearing Before Clerk**  
IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION

\_\_\_\_\_ [State]  
\_\_\_\_\_ COUNTY

Before the Clerk  
**[FILE NUMBER]**

In the Matter of	)	
the Foreclosure of	)	
the Deed of trust of	)	
Mortgagors-Grantors	)	
To	)	NOTICE OF HEARING FOR FORECLOSURE OF
_____	)	A DEED OF TRUST
(Substitute) Trustee	)	
And	)	
_____, Noteholder	)	
	)	

As recorded in Deed of Trust

Book \_\_\_\_\_, Page \_\_\_\_\_

To: [List all persons or corporations to whom Notice must be sent]

Take notice that the above-named noteholder has made demand upon the above-named (substitute) Trustee, to proceed

with the foreclosure of the above-referenced Deed of Trust in compliance with applicable law and the terms of the Deed of Trust.

Further take notice that a hearing will be held before the Assistant/Clerk of Superior Court at \_\_\_\_\_ o'clock \_\_\_\_M. on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, in the Clerk of Court's office, (room or other information), in the \_\_\_\_\_ County Courthouse, \_\_\_\_\_ [State], to determine the (substitute) Trustee's right to proceed with the foreclosure.

At the hearing the (substitute) Trustee will present the mortgagors-grantors' note and the Deed of Trust securing it executed the day of \_\_\_\_\_, which is in the sum of \_\_\_\_\_ Dollars, as of the \_\_\_\_\_ day of 20\_\_\_\_, plus the costs of this proceeding, including a reasonable fee for the Trustee and Trustee's attorney, which has been due and payable for some time and is and has been in default; the Deed of Trust was recorded in Deed of Trust Book \_\_\_\_\_, Page \_\_\_\_\_, in the office of the Register of Deeds of \_\_\_\_\_ County, \_\_\_\_\_ [state].

[If present noteholder is not original]

\_\_\_\_\_ was the original noteholder of the note, the same having been negotiated to the above-named noteholder.

The Deed of Trust described the property to be foreclosed as follows: \_\_\_\_\_ [adequate description of the property].

The above-named noteholder contends that the entire sum, as aforesaid, plus interest, charges and fees from the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, is due and payable and has been due and payable for some time, and that the mortgagors-grantors have refused and neglected to pay the same.

The above-named noteholder hereby confirms that within thirty (30) days of this notice, the debtor was sent by first class mail at his last known address, a written statement of the amount of principal and interest that the holder claims in good faith is owed on the date of the written statement, a daily interest charge based on the contract rate as of the date of the statement, and the amount of other expenses the noteholder contends are owed as of the date of the statement.

The sale will be held at \_\_\_\_\_ o'clock \_\_\_\_M. on \_\_\_\_\_, the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, at \_\_\_\_\_; the sale to be for cash and will remain open for ten (10) days after the report of the sale for advance or upset bids.

The mortgagors-grantors should keep the (substitute) Trustee or his attorney notified in writing of any change of address so that the mortgagors-grantors can be mailed a copy of the notice of foreclosure, the report of sale, together with any notices of postponements or resales.

The mortgagors-grantors can pay to the undersigned the sum of interest, costs and a reasonable Trustee's fee at any time prior to the confirmation of the sale. Unless the mortgagors-grantors do redeem by paying the sum, the purchaser at the sale will be entitled to possession of the property as of the date of delivery of the deed by the (substitute) Trustee, and the mortgagors-grantors, if still in possession, can then be evicted.

At the hearing, all parties shall be allowed to present evidence themselves or through their attorney and all parties, including the mortgagors-grantors, will be afforded the opportunity to show cause as to why the foreclosure should not be allowed to proceed. If the mortgagors-grantors do not intend to contest the noteholder's allegations of default, no appearance is required, and failure to appear will not affect the mortgagors-grantors' right to pay the indebtedness prior

to the confirmation of sale and thereby prevent the sale or to attend the actual sale.

Upon the basis of the evidence presented, the Assistant/Clerk of Superior Court will decide whether or not to issue an order authorizing the (substitute) Trustee to proceed with foreclosure under the applicable law and the provisions of the Deed of Trust.

This the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
(Substitute) Trustee

\_\_\_\_\_  
[Address]

\_\_\_\_\_  
[Telephone]

**Sheriff's Return:**

Received: \_\_\_\_\_

Served: \_\_\_\_\_ by delivering a copy of the within Notice of Hearing and Petition to  
\_\_\_\_\_, at \_\_\_\_\_

\_\_\_\_\_  
Sheriff  
By: \_\_\_\_\_  
Deputy



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37TTT-36 California Legal Forms--Transaction Guide Form T36-5

Form T36-5 Affidavit of Mailing of Notice of Hearing

Description: This form is an affidavit of mailing of notice of hearing.

Form T36-5 Affidavit of Mailing of Notice of Hearing

[State] In the General Court of Justice
Superior Court Division
County Before the Clerk

In the Matter of the Foreclosure of the Deed of Trust )
of ) AFFIDAVIT
Mortgagors-Grantors ) OF MAILING
To )
(Substitute) Trustee )
And )
Noteholder )

As recorded in Deed of Trust
Book , Page

The undersigned (substitute) Trustee, first being duly sworn, states the following:

That he mailed by certified mail the attached Notice of Hearing for Foreclosure of a Deed of Trust to the following individuals at the following addresses:

[List name and address of persons to whom notice was mailed]

And that the registry receipts and the signed return receipts are attached hereto as evidence of the same.

This the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
(Substitute) Trustee

[Acknowledgment]



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37TTT-36 California Legal Forms--Transaction Guide Form T36-6

**Form T36-6 Letter to Internal Revenue Service About Foreclosure**

**Description:** This form is a letter notifying the IRS of a foreclosure, pursuant to Section 7425(c)(1) of the Internal Revenue Code.

**Form T36-6 Letter to Internal Revenue Service About Foreclosure**

District Director of Internal Revenue Service  
\_\_\_\_\_ [address]  
Attention: Chief, Special Procedures Staff

Dear Sir:

This is a Notice of Sale of Property made pursuant to *Section 7425(c)(1) of the Internal Revenue Code*. The notice is submitted by \_\_\_\_\_, Trustee named in the Deed of Trust under which the sale is being conducted. The Trustee's address is \_\_\_\_\_.

Enclosed are copies of each of the following notices of Federal Tax Lien, Form 668, which have been filed since the date of the Deed of Trust through and including the 31st day preceding the date of the proposed sale. These liens may affect the property to be sold.

TAXPAYER	DATE OF LIEN	AMOUNT
_____	_____	_____

A copy of the Notice of Sale given under the provisions of the Deed of Trust is also enclosed, which notice gives a description of the property to be sold and the date, time, place and terms of the sale.

The approximate amount of the principal and interest due the beneficiary of the Deed of Trust as of the date of this letter

is \_\_\_\_\_ Dollars. Additional expenses chargeable against the proceeds are Trustee's commissions and advertising costs of the sale.

Please acknowledge receipt of this notice, indicating the date and time of receipt on the duplicate copy hereof and return the duplicate to the undersigned.

Very truly yours,



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37TTT-36 California Legal Forms--Transaction Guide Form T36-7

Form T36-7 Notice of Foreclosure Sale

Description: This form is a notice of foreclosure sale under a deed of trust.

Form T36-7 Notice of Foreclosure Sale

\_\_\_\_\_ In the General Court of Justice
\_\_\_\_\_ [State] Superior Court Division
\_\_\_\_\_ Before the Clerk
\_\_\_\_\_ County

In the Matter of the Foreclosure of the Deed of Trust )
of \_\_\_\_\_ ) NOTICE OF
Mortgagors-Grantors ) FORECLOSURE
To \_\_\_\_\_ ) SALE UNDER
(Substitute) Trustee ) DEED OF TRUST
And \_\_\_\_\_ )
Noteholder )

As recorded in Deed of Trust
Book \_\_\_\_\_, Page \_\_\_\_\_

Under and by virtue of an order of the Assistant/Clerk of Superior Court of \_\_\_\_\_ County, entered in
the above-entitled action authorizing the undersigned to proceed with the foreclosure of the above-referenced Deed of
Trust (if applicable: under which Deed of Trust a Substitution of Trustee instrument was recorded in Deed Book
\_\_\_\_\_, Page \_\_\_\_\_ in the office of the Register of Deeds of \_\_\_\_\_
County, \_\_\_\_\_ [state], whereby the undersigned was substituted as Trustee under
the provisions of said Deed of Trust) and under and by virtue of the power of sale contained in the above-referenced
Deed of Trust, the undersigned (substitute) Trustee will offer for sale at public auction to the highest bidder for cash at
\_\_\_\_\_ [time], on the \_\_\_\_\_ day of \_\_\_\_\_,

20\_\_\_\_, in the \_\_\_\_\_, in \_\_\_\_\_, \_\_\_\_\_ County,  
\_\_\_\_\_ [State], the following described property:

*[insert adequate description of property]*

The property address is as follows: \_\_\_\_\_.

The above-described property will be sold subject to unpaid county and city ad valorem taxes, including those for the year 20\_\_\_\_, and also city assessments, if any.

The record owners of the property as reflected on the records of the Register of Deeds' office not more than ten (10) days prior to posting of this notice are \_\_\_\_\_.

The highest bidder at the sale will be required to make a cash deposit of ten percent (10%) of the first \$1,000 and five percent (5%) of the balance of the bid when knocked down to him, and the balance upon confirmation of the sale.

The sale will be reported to the court and will remain open for advance or upset bids for a period of ten (10) days. If no advance or upset bids are filed with the Clerk of Superior Court, the sale will be confirmed.

This \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
(Substitute) Trustee

\_\_\_\_\_  
[Address]

\_\_\_\_\_  
[Telephone Number]

[Publication dates]



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37TTT-36 California Legal Forms--Transaction Guide Form T36-8

**Form T36-8 Notice of Postponement of Foreclosure Sale**

**Description:** This form is a notice of postponement of foreclosure sale, and includes a rescheduled foreclosure sale date.

**Form T36-8 Notice of Postponement of Foreclosure Sale**

_____	In the General Court of Justice
_____ [State]	Superior Court Division
_____	Before the Clerk
_____ County	_____ SP _____

IN THE MATTER OF  
THE FORECLOSURE OF  
A DEED OF TRUST EXECUTED  
BY \_\_\_\_\_ AND \_\_\_\_\_,  
\_\_\_\_\_ DATED \_\_\_\_\_, 20\_\_\_\_,  
AND RECORDED IN BOOK \_\_\_\_\_,  
PAGE \_\_\_\_\_, \_\_\_\_\_ COUNTY  
REGISTRY, TO \_\_\_\_\_, TRUSTEE,  
\_\_\_\_\_, SUBSTITUTE TRUSTEE.  
See Book \_\_\_\_\_, Page \_\_\_\_\_  
or Substitution of Trustee

FOR GOOD CAUSE SHOWN, \_\_\_\_\_, substitute trustee (the "Substitute Trustee"), hereby postpones the sale for the above captioned foreclosure originally scheduled to be held at 12:00 o'clock noon on \_\_\_\_\_, 20\_\_\_\_, at the \_\_\_\_\_ County Courthouse. This sale is rescheduled for 12:00 o'clock noon on \_\_\_\_\_, 20\_\_\_\_, at the \_\_\_\_\_ County Courthouse. The reason for this postponement is:

[describe reason]

Except as amended by this Postponement, the sale will be held and conducted in all respects in accordance with the Revised Notice of Sale dated \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
Substitute Trustee

\_\_\_\_\_  
[Address]



*[enter description as used in Deed of Trust]*

The property address is as follows: \_\_\_\_\_.

The above-named property will be sold subject to the following: \_\_\_\_\_.

The highest bidder at the sale will be required to make a cash deposit of ten percent (10%) of the first \$1,000 and five percent (5%) of the balance of the bid when knocked down to him and the balance upon confirmation of the sale. The beginning bid will be \_\_\_\_\_ Dollars.

The sale will be reported to the court and will remain open for advance or upset bids for a period of ten (10) days. If no advance or upset bids are filed with the Clerk of Superior Court, the sale will be confirmed.

This the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
(Substitute) Trustee



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CHAPTER 36: Mortgages and Deeds of Trust--Foreclosure.

37TTT-36 California Legal Forms--Transaction Guide Form T36-10

Form T36-10 Motion to Enjoin Mortgage Sale

Description: This form is used for the request to enjoin a mortgage sale.

Form T36-10 Motion to Enjoin Mortgage Sale

\_\_\_\_\_ [State]
\_\_\_\_\_ COUNTY
IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

\_\_\_\_\_,
Plaintiff,
v.
\_\_\_\_\_,
Defendant.
)
)
) MOTION TO ENJOIN MORTGAGE SALE
)
)
)

NOW COMES the Plaintiff by and through counsel, and hereby moves this Court for an order pursuant to
\_\_\_\_\_ [state] Gen. Stat. § \_\_\_\_\_ [section
number] to enjoin a mortgage sale and shows unto the court the following:

- 1. The Plaintiff is a citizen and resident of \_\_\_\_\_ County, \_\_\_\_\_
[state].
2. The Defendant, \_\_\_\_\_ (hereinafter the Defendant), is a citizen and resident of
\_\_\_\_\_ County, \_\_\_\_\_ [state].

FACTS

3. Plaintiff is the owner of a certain tract of land: *[enter brief description, including book and page number if registered]*.

4. That Plaintiff conveyed said property to the Defendant *[or to a Deed of Trust for the benefit of the Defendant]* on \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ in order to secure a debt owed to the Defendant as evidenced by a *[promissory note/bond/guarantee]* signed by the Plaintiff on \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

5. That Plaintiff did default on his payments to the Defendant of said debt, entitling the Defendant to foreclose on the property.

6. That Defendant did offer said property for sale and received a bid for \$\_\_\_\_\_.

7. That said property was appraised by \_\_\_\_\_ on \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ and the fair market value of the property at that time was \$\_\_\_\_\_.

8. That the outstanding offer on the property is \$\_\_\_\_\_ below the fair market value of the house.

9. That a sale for that amount is inadequate and inequitable and would cause irreparable damage to the owner and other interested persons.

Wherefore, the Plaintiff prays the Court:

1. Accept this verified pleadings as an affidavit upon which to base further Orders of the Court.
2. Enjoin the mortgage sale of the Plaintiff's property until such time as a fair and reasonable price for the property can be obtained.
3. To enter an order for such other relief as the Court may deem just and proper.

This the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_

\_\_\_\_\_  
[name of plaintiff or attorney]



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37TTT-36 California Legal Forms--Transaction Guide Form T36-11

Form T36-11 Report of Foreclosure Sale

Description: This form is used to report a foreclosure sale.

Form T36-11 Report of Foreclosure Sale

\_\_\_\_\_ In the General Court of Justice
\_\_\_\_\_ [State] Superior Court Division
\_\_\_\_\_ Before the Clerk
\_\_\_\_\_

)
In the Matter of the Foreclosure of the Deed of Trust )
of \_\_\_\_\_ ) REPORT OF
Mortgagors-Grantors ) FORECLOSURE
To \_\_\_\_\_ ) SALE
(Substitute) Trustee )
And \_\_\_\_\_ )
Noteholder )

As recorded in Deed of Trust
Book \_\_\_\_\_, Page \_\_\_\_\_

By authority of the power of sale contained in the above Deed of Trust and by reason of default in the payment of the obligation thereby secured, the undersigned offered for sale at public auction and sold the real property therein described.

At the \_\_\_\_\_ County Courthouse, \_\_\_\_\_,
\_\_\_\_\_ [state], at \_\_\_\_\_ [time],

On the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

To \_\_\_\_\_, the highest bidder.

For \$\_\_\_\_\_

This the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
(Substitute) Trustee



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*37TTT-37 California Legal Forms--Transaction Guide 37.syn*

**§ 37.syn Synopsis to Chapter 37: Mortgages and Deeds of Trust--Foreclosure; Trustees.**

Form T37-1 Notice of Sale by Trustee

Form T37-1 Notice of Sale by Trustee

Form T37-2 Deed by Trustee Under Foreclosure

Form T37-2 Deed by Trustee Under Foreclosure

Form T37-3 Deed by Trustee on Resale Under Foreclosure

Form T37-3 Deed by Trustee on Resale Under Foreclosure



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CHAPTER 37: Mortgages and Deeds of Trust--Foreclosure; Trustees.

37TTT-37 California Legal Forms--Transaction Guide Form T37-1

**Form T37-1 Notice of Sale by Trustee**

**Description:** This form is a notice of trustee's sale to be given when the creditor is foreclosing nonjudicially under a power of sale provision in a deed of trust.

**Form T37-1 Notice of Sale by Trustee**

## NOTICE OF TRUSTEE'S SALE

You, \_\_\_\_\_ [name of debtor], are hereby notified that on Tuesday \_\_\_\_\_ [date], between the hours of 1:00 P.M. and 4:00 P.M., [*add unless commissioners court has designated another area where sales may take place: at the courthouse door located*] at \_\_\_\_\_ [address where sale will be held] in the city of \_\_\_\_\_, County of \_\_\_\_\_, State of \_\_\_\_\_, I, the undersigned, will sell at public auction to the highest bidder for cash the following real property: \_\_\_\_\_ [*insert legal description of property, as stated in deed of trust*]. [The earliest time that the sale will begin is: \_\_\_\_\_.]

The address or other common designation of this real property is: \_\_\_\_\_ [*specify, or if none, insert None*].

This sale will be made to satisfy the debt evidenced by the promissory note dated \_\_\_\_\_, in the original principal sum of \$\_\_\_\_\_, executed by you as Maker to \_\_\_\_\_ [name of payee] as payee, and secured by and pursuant to the power of sale conferred in the deed of trust dated \_\_\_\_\_ (referred to in this notice as the Deed of Trust). The Deed of Trust was executed by you as Grantor to \_\_\_\_\_ [name of original trustee] as Trustee for the benefit of \_\_\_\_\_ [name of original beneficiary], and was recorded \_\_\_\_\_ [date], in Volume \_\_\_\_\_, page \_\_\_\_\_, in the deed of trust records of \_\_\_\_\_ County, \_\_\_\_\_. \_\_\_\_\_ [name of present holder of note and deed of trust] has requested me, the undersigned, to enforce this trust by selling the real property because you are in default in the payment of the note described in the Deed of Trust.

[*If notice that the debt has been accelerated was not sent to debtor, add the following clause:*]

Your debt has been accelerated, and the entire unpaid balance of your note is now due and payable. You now owe us the sum of \$\_\_\_\_\_. Your debt has been accelerated because you failed to cure the default as was requested in the Notice of Intent to Accelerate sent to you on \_\_\_\_\_ [date], namely \_\_\_\_\_ [e.g., you failed to make the overdue payment(s) totaling \$\_\_\_\_\_ on or before \_\_\_\_\_ (date)].

*[If the present holder of the note is not the original beneficiary of the deed of trust, add the following clause:]*

The beneficial interest under the Deed of Trust and the obligations secured by the Deed of Trust were assigned to \_\_\_\_\_ [name of assignee], \_\_\_\_\_ [status, e.g., a corporation], by an assignment dated \_\_\_\_\_ [and recorded \_\_\_\_\_ [date], in Volume \_\_\_\_\_, page \_\_\_\_\_, \_\_\_\_\_ Records of \_\_\_\_\_ County, \_\_\_\_\_ [state].

*[If the undersigned is a substitute trustee, add the following clause:]*

The beneficiary of the Deed of Trust appointed and substituted me, the undersigned, as trustee under the Deed of Trust by a substitution dated \_\_\_\_\_. As substitute trustee, I am vested with and succeed to all the powers and duties given to the original trustee.

*[If the undersigned is a mortgage servicer, add the following clause:]*

The undersigned is representing the beneficiary of the Deed of Trust under an agreement with the beneficiary granting the undersigned authority to service the Deed of Trust.

Dated: \_\_\_\_\_

\_\_\_\_\_  
[signature of trustee, substitute trustee, or mortgage servicer]

\_\_\_\_\_  
[typed name]  
\_\_\_\_\_ [address]



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37TTT-37 California Legal Forms--Transaction Guide Form T37-2

Form T37-2 Deed by Trustee Under Foreclosure

Description: This form is a deed by trustee where the borrower has defaulted in the payment of the debt and trustee has sold the property.

Form T37-2 Deed by Trustee Under Foreclosure

This instrument drafted by: \_\_\_\_\_

After recording, mail to: \_\_\_\_\_

\_\_\_\_\_ County
\_\_\_\_\_ [state]

This deed, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between \_\_\_\_\_, acting as Trustee as hereinafter stated, party of the first part, and \_\_\_\_\_, party of the second part, both of the County of \_\_\_\_\_ and State of \_\_\_\_\_;

WITNESSETH:

That whereas \_\_\_\_\_ executed to said \_\_\_\_\_, Trustee upon the lands hereinafter described as Deed of Trust dated the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, and recorded in Book \_\_\_\_\_, Page \_\_\_\_\_, in the Office of the Register of Deeds of \_\_\_\_\_ County; and whereas the indebtedness thereby secured being overdue and unpaid, and the holder of the said indebtedness having called upon the said Trustee to foreclose the said Deed of Trust, the said Trustee after due notice, hearing, and advertisement as required by law and the terms of the Deed of Trust offered said land for sale at the door of the Courthouse on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, when and where \_\_\_\_\_ became the last and highest bidder at the price of \_\_\_\_\_ Dollars; and whereas on the day of said sale a report thereof was made to the Clerk of the Superior Court; and whereas said bid remained open for more than \_\_\_\_\_ days and no advance bid was offered, and no objection made.

Now, therefore, the said \_\_\_\_\_, acting as Trustee as aforesaid in consideration of the premises and of the said sum of \_\_\_\_\_ Dollars to him in hand paid, has bargained and sold and by these presents does grant, bargain, sell, and convey unto the said \_\_\_\_\_ his heirs and assigns, the said land sold as aforesaid, the same lying and being in the County of \_\_\_\_\_, and State of \_\_\_\_\_, in \_\_\_\_\_ Township, and more particularly described and bounded as follows:

[Description]

To have and to hold, said lands and premises, together with all privileges and appurtenances thereunto belonging to him, the said party of the second part and his heirs and assigns in as full and ample a manner as the said Trustee has power to convey the same.

In Testimony Whereof, said \_\_\_\_\_, acting as Trustee as hereinabove stated, has hereunto set his hand and seal the day and year first above written.

\_\_\_\_\_ [Seal]  
Trustee

[Acknowledgment]



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37TTT-37 California Legal Forms--Transaction Guide Form T37-3

Form T37-3 Deed by Trustee on Resale Under Foreclosure

Description: This form is a deed by trustee where the borrower has defaulted in the payment of the debt and trustee has sold the property.

Form T37-3 Deed by Trustee on Resale Under Foreclosure

This instrument drafted by: \_\_\_\_\_

After recording, mail to: \_\_\_\_\_

\_\_\_\_\_ [state] )
\_\_\_\_\_ County ) TRUSTEE'S DEED
\_\_\_\_\_ )
\_\_\_\_\_ )

This deed, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between \_\_\_\_\_, acting as Trustee as hereinafter stated ("Grantor"); and \_\_\_\_\_ ("Grantee"), whose address is: \_\_\_\_\_; both Grantor and Grantee residing in \_\_\_\_\_ County, \_\_\_\_\_ [state];

WITNESSETH:

That whereas \_\_\_\_\_ executed a Deed of Trust to said \_\_\_\_\_, Trustee, upon the lands hereinafter described, dated the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, and recorded in Book \_\_\_\_\_, Page \_\_\_\_\_, in the Office of the Register of Deeds of \_\_\_\_\_ County; and whereas the indebtedness thereby secured being overdue and unpaid and the holder of said indebtedness having called upon said Trustee to foreclose the said Deed of Trust; the said Trustee after notice, hearing and advertisement as required by law and the terms of said Deed of Trust offered said land for sale at the door of the Courthouse to the highest bidder for cash on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_; and whereas a report of said sale was duly made to the Court; and whereas within the ten days allowed by law

## 37TTT-37 California Legal Forms--Transaction Guide Form T37-3

an advance bid was filed with the Clerk of the Superior Court of \_\_\_\_\_ County, and an order issued by said Court directing said Trustee to resell said premises; and whereas said Trustee acting under said order of court and the power of sale contained in said Deed of Trust after advertisement as required by law offered said land for sale at public auction for cash at the door of the Courthouse at noon, on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, when and where \_\_\_\_\_ became the last and highest bidder at the price of \_\_\_\_\_ Dollars; and whereas a report of said sale was by the Trustee filed with the Court on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_; and whereas said matter remained open for more than ten days and no advance bid was made; and whereas the said Court under date of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, duly confirmed said sale and directed the Trustee to execute and deliver a deed to said Grantee upon the receipt of his purchase price; and whereas said purchase price has been paid.

Now, therefore, said \_\_\_\_\_, acting as Trustee as aforesaid and under said order of Court, in consideration of the premises and of the said sum of \_\_\_\_\_ Dollars to him in hand paid, has bargained and sold and by these presents does grant, bargain, sell and convey unto Grantee, his heirs and assigns the land sold as aforesaid, the same lying and being in the County of \_\_\_\_\_, and State of \_\_\_\_\_, in \_\_\_\_\_ Township, and more particularly described and bounded as follows:

[Description]

To have and to hold, said lands and premises, together with all privileges and appurtenances thereunto belonging to the Grantee, his heirs and assigns in as full and ample a manner as the said Trustee has power to convey the same.

In Testimony Whereof, said \_\_\_\_\_, acting as Trustee as hereinabove stated, has hereunto set his hand and seal the day and year first above written.

\_\_\_\_\_ [SEAL]  
Trustee

[Acknowledgment]



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CHAPTER 38: Mortgages--Assignments.

*37TTT-38 California Legal Forms--Transaction Guide 38.syn*

**§ 38.syn Synopsis to Chapter 38: Mortgages--Assignments.**

Form T38-1 Mortgage--Balance Due Representation

Form T38-1 Mortgage--Balance Due Representation

Form T38-2 Mortgage--Disclaimers by Assignor

Form T38-2 Mortgage--Disclaimers by Assignor

Form T38-3 Condominium Mortgage Note and Mortgage--Assignable to Institutional Lender

Form T38-3 Condominium Mortgage Note and Mortgage--Assignable to Institutional Lender



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CHAPTER 38: Mortgages--Assignments.

37TTT-38 California Legal Forms--Transaction Guide Form T38-1

**Form T38-1 Mortgage--Balance Due Representation**

**Description:** This form assigns an outstanding mortgage. The assignment recites the mortgagor's name, the original balance of this mortgage, the date it was made, where it was recorded, its current balance, and the interest rate. In addition, a legal description of the mortgage is inserted in the document.

**Form T38-1 Mortgage--Balance Due Representation**

ASSIGNMENT made \_\_\_\_\_ [date], by \_\_\_\_\_ [name of assignor] of \_\_\_\_\_ [city and state], Assignor to \_\_\_\_\_ [name of assignee] of \_\_\_\_\_ [city and state], Assignee.

In consideration of the sum of \$ \_\_\_\_\_ paid by Assignee, Assignor hereby assigns to Assignee a certain mortgage made by \_\_\_\_\_ [name of mortgagor], given to secure the payment of the sum of \$ \_\_\_\_\_ and interest, dated \_\_\_\_\_, and recorded on \_\_\_\_\_ [date], in the office of the Register of \_\_\_\_\_ County, in Liber \_\_\_\_\_ of Mortgages, at page \_\_\_\_\_ covering premises.

[Insert description]

Together with the note described in such mortgage, and the moneys due and to become due thereon with interest,

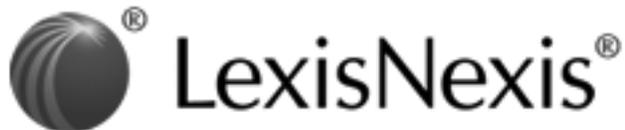
To have and to hold the same unto the Assignee and his successors, legal representatives, and assigns forever.

And Assignor covenants that there is now owing upon such mortgage, without offset or defense of any kind, the principal sum of \$ \_\_\_\_\_, with interest thereon at \_\_\_\_\_% per annum.

In witness whereof, Assignor has duly executed this assignment.

[assignor's signature]

\_\_\_\_\_



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CHAPTER 38: Mortgages--Assignments.

*37TTT-38 California Legal Forms--Transaction Guide Form T38-2*

**Form T38-2 Mortgage--Disclaimers by Assignor**

**Description:** This form is an assignment of a mortgage that is made without any warranty or representation and that the assignee agrees not to make any claim against the assignor with respect to this assignment.

**Form T38-2 Mortgage--Disclaimers by Assignor**

ASSIGNMENT made \_\_\_\_\_ [date], by the \_\_\_\_\_ [name of assignor], of \_\_\_\_\_ [city and state] ("Assignor"), to \_\_\_\_\_ [name of assignee], of \_\_\_\_\_ [city and state] ("Assignee").

In consideration of the payment of \$ \_\_\_\_\_ paid by Assignee to Assignor, receipt of which sum is hereby acknowledged, Assignor hereby assigns a certain mortgage made by \_\_\_\_\_ [name of mortgagor], given to secure the payment of the sum of \$ \_\_\_\_\_ and interest, which mortgage is dated \_\_\_\_\_, and recorded on \_\_\_\_\_, in the office of the Register of the County of \_\_\_\_\_ in Liber \_\_\_\_\_ of Mortgages at page \_\_\_\_\_ covering premises

*[Insert description]*

together with the bond or obligation described in such mortgage, and the moneys due and to become due thereon with interest.

To have and to hold the same unto Assignee, and his executors, administrators, successors, legal representatives, and assigns forever.

This assignment is executed and delivered without any warranty or representation of any nature or kind, either express or implied, as to any matter or thing, and Assignee, his executors, administrators, successors, and assigns shall not make any claim against Assignor with respect to any matter whatsoever arising out of this assignment.

In witness whereof Assignor has caused this assignment to be executed by its duly authorized officer and its corporate

seal to be affixed.

Seal \_\_\_\_\_ [name of assignor]

by

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*37TTT-38 California Legal Forms--Transaction Guide Form T38-3*

**Form T38-3 Condominium Mortgage Note and Mortgage--Assignable to Institutional Lender**

**Description:** These forms may be used if the sponsor of a condominium project is unwilling or unable to sell the units for cash. In such case, the sponsor may decide to accept the purchaser's agreement to pay the unpaid balance of the purchase price over a period of time, evidenced by the purchaser's promissory note, and a mortgage on the unit sold to the purchaser as security for payment.

**Form T38-3 Condominium Mortgage Note and Mortgage--Assignable to Institutional Lender**

---

(1) Mortgage note

New York, New York

November 3, \_\_\_\_\_ [year]

1. *Promise to pay.* For value received, I, Henry Phillips,n\* promise to pay to West House Condominium Corporation, or order, at 700 Central Park South, New York, New York, or at any other place designated in writing by the holder of this note, the principal sum of \$200,000, with interest thereon to be computed from the date hereof at the rate of 10 percent per annum, in constant monthly installments of \$1,755.16 each, commencing on the first day of the calendar month after the date hereof and on the first day of each succeeding calendar month until September 1, \_\_\_\_\_ [year], when the entire unpaid balance of principal, together with accrued interest, shall become due and payable. Each constant monthly installment shall be applied first to the payment of interest accrued on the unpaid principal, and the balance on account of the principal sum.

2. *Total amount due.* The principal sum evidenced by this note and all accrued and unpaid interest shall become due at the option of the holder on the happening of any default or event by which, under the terms of the mortgage securing this note, such principal sum and interest may or shall become due and payable. All of the covenants, conditions, and agreements contained in the mortgage are made part of this instrument.

3. *Extensions.* If time is extended for the payment of the principal sum because the due date falls on a Sunday or a

public holiday, the extended time shall be included in the computation of interest.

4. *Prepayment right.* The principal sum may be prepaid in its entirety, or in part, on the first day of any calendar month without penalty. If partial prepayment of principal is made, the amount of each regular monthly installment of principal and interest thereafter shall not be reduced, and any such partial prepayments shall be applied to the regular monthly payments in the inverse order of their maturity.

5. *Tax escrow payments.* If the holder at any time is a bank, trust company, savings and loan association, insurance company, union, pension, welfare, or retirement fund or other institutional lender (the "Institutional Lender"), the maker agrees to deposit with the holder, at the holder's election, as and when each payment of a monthly installment becomes due during the period of 12 calendar months commencing on the first monthly installment payment date after the Institutional Lender becomes the holder and during each period of 12 calendar months thereafter, one twelfth of the amount, as estimated from time to time by the Institutional Lender, of the taxes, and assessments if any, becoming due with respect to the premises during the respective periods of 12 calendar months. It is intended that not later than one month before the respective due dates for such taxes, or assessments if any, sufficient amounts shall be deposited with the holder to pay the same. Such amounts shall be held by the Institutional Lender without interest, and applied to the payment of the items in respect of which such amounts were deposited, or, at the option of the Institutional Lender, to the payment of the items in any order of priority determined by such holder, on or before the respective dates on which the same or any of them would become delinquent. If one month before the due date of any of the aforesaid items, the amount then on deposit is insufficient for the payment of the item in full, the maker, within ten days after demand, shall deposit the amount of the deficiency with such holder. Nothing contained in this paragraph shall be deemed to affect any right or remedy of the holder under any provision of the mortgage or of any statute or rule of law to pay any such tax or assessment and to add the amount so paid, together with interest at the legal rate, to the indebtedness owing hereon which shall thereupon be secured by the lien of the mortgage.

6. *Joint and several liability.* If the maker consists of two or more parties, such parties shall be jointly and severally liable on all obligations of this note.

7. *Waiver of presentment.* Presentment for payment, notice of dishonor, protest, and notice of protest are waived.

8. *Security of note.* This note is secured by a mortgage made by the maker to the payee of even date herewith on the premises, including furnishings, designated as Unit No. 17W in the Declaration establishing a Plan for Condominium Ownership of the property known as and by the street number 700 Central Park South, Borough of Manhattan, City of New York.

In the Presence of:

\_\_\_\_\_

Mark Davis

\_\_\_\_\_

Henry Phillips

[Acknowledgment]

(2) Mortgage

THIS MORTGAGE, made November 3, \_\_\_\_\_ [year], between Henry Phillips, residing at 980 Riverside Drive, New York, New York (Mortgagor), and West House Condominium Corporation, having an office at 700 Central Park South, New York, New York (Mortgagee).

#### Recitals

To secure the payment of an indebtedness in the sum of \$200,000, lawful money of the United States, to be paid with interest thereon according to a certain note or obligation bearing even date herewith (the "note"), Mortgagor does mortgage to Mortgagee the unit known as Unit No. 17W in the property known as the West House Condominium located at 700 Central Park South, Borough of Manhattan, City, County and State of New York, such unit being designated and described as Unit No. 17W in the Declaration establishing a plan for condominium ownership of such property under Article 9-B (the "Condominium Act"), of the Real Property Law of the State of New York dated \_\_\_\_\_, and recorded in the office of the City Register in the County of New York on \_\_\_\_\_ [date], in Reel 1975, page 1201 and also designated as Tax Lot 874 in Block 7518 of the Borough of Manhattan on the Tax Map of the Real Property Assessment Department of the City of New York and on the Floor Plans of the building, certified by Hans Hartmann, Architect, on June 15, \_\_\_\_\_ [year], and filed in the office of the City Register in the County of New York on September 27, \_\_\_\_\_ [year], as Condominium Plan No. 5018.

Together with the appurtenances and all the estate and rights of Mortgagor, including the appurtenant common interest, in and to the above-described unit conveyed or intended to be conveyed to Mortgagor by deed bearing even date herewith delivered and intended to be recorded simultaneously herewith. This mortgage is a purchase money mortgage.

Together also with all fixtures and equipment used or useful in connection with the above-described unit and now or hereafter attached to or installed therein.

Together also with all furnishings included within the above-described unit and now or hereafter attached to or installed therein, including furniture, rugs, carpeting, lighting fixtures, electrical appliances, cabinets, shelving, wall covering, pictures, decorative objects, draperies, window shades or blinds, and all other like furnishings used or useful within the unit.

Together also with the rents, issues, and profits of the above-described unit, including Mortgagor's right, title, and interest in the common profits.

Together also with all right, title, and interest hereafter acquired by Mortgagor in and to the property and in and to the net proceeds of sale thereof pursuant to provision of law or otherwise, not including, however, any other unit or any appurtenant common interest thereto hereafter acquired by Mortgagor or by the Board of Managers or their designee on Mortgagor's behalf.

The above-described unit is referred to in this mortgage as the Unit. The Unit together with the appurtenances and all the estate and rights of Mortgagor therein and all fixtures, furnishings, and equipment used or useful in connection with the Unit and now or hereafter attached to or installed therein, such rents, issues, and profits and such right, title, and interest of Mortgagor hereafter acquired in the property, and the net proceeds of sale pursuant to any provision of law are sometimes collectively referred to in this mortgage as the Mortgaged Premises.

Together with all awards heretofore and hereafter made for taking by eminent domain the whole or any part of the Mortgaged Premises or any easement, including any awards for changes of grade of streets, such awards being assigned to Mortgagee, which is authorized, subject to the provisions of Article VIII of the Condominium Bylaws, to collect and receive the proceeds of such awards and to give proper receipts and acquittances therefor, and to apply the same toward

the payment of the mortgage debt, even if the amount owing thereon is not then due and payable.

The property in which the Unit is situated is bounded and described as follows:

All that certain plot, piece, or parcel of land, with the building and improvements thereon erected, situate, lying, and being in the Borough of Manhattan, City, County and State of New York, bounded and described as follows:

Beginning at a point on the southerly side of Central Park South, distance 200 feet easterly from the corner formed by the intersection of the easterly side of Apex Avenue with the southerly side of Central Park South; running thence southerly and parallel with Apex Avenue, 10 feet to the northerly side of 58th Street; thence easterly, along the northerly side of 58th Street, 270 feet 8 inches; thence northerly and again parallel with Apex Avenue, 310 feet to the southerly side of Central Park South; thence westerly along the southerly side of Central Park South, 270 feet 8 inches to the point or place of Beginning.

Together with an undivided 1.02 percent interest in the Common Elements of the Property, hereinafter called the Common Elements;

For the purposes of this mortgage, unless the context otherwise requires, the terms used herein shall have the meanings set forth in the Condominium Act.

Mortgagor covenants with Mortgagee as follows:

1. *Promise to pay.* Mortgagor will pay the indebtedness provided as in this mortgage and the note.
2. *Use of deposit.* If Mortgagee exercises any right under this mortgage to declare the principal sum and interest due, it may, at any time thereafter, apply the whole or any part of the amount then on deposit pursuant to the note on account of any accrued interest, and/or on account of the principal sum and/or any costs and expenses (including reasonable attorneys' fees) paid or incurred by Mortgagee in connection with the exercise of any remedies hereunder. If this mortgage is assigned, the assignor shall transfer to the assignee the amount then on deposit with the assignor pursuant to the note, and upon each such assignment and transfer the assignor shall be under no further obligation to Mortgagee with respect to such amount.
3. *Late charges.* To cover the additional expense incurred by Mortgagee in handling delinquent payments, Mortgagor will pay on demand a "late charge" not exceeding 5 cents for each dollar of principal, interest and other sum required to be paid or deposited pursuant to the note or this mortgage if any such payment or deposit is received more than 15 days after its due date. Such late charge shall be payable on each event of delinquency, and payment or tender thereof shall not preclude the exercise by Mortgagee of any remedies herein provided upon Mortgagor's default.
4. *Warranty of title.* Mortgagor warrants the title to the Mortgaged Premises.
5. *Payment of taxes.* To the extent provision has not otherwise been made for the payment under the note, Mortgagor will pay all taxes and assessments affecting the Mortgaged Premises and in default thereof, Mortgagee may pay the same.
6. *Alterations.* No structural alteration or improvement shall be made to the Mortgaged Premises without Mortgagee's prior written consent.
7. *Estoppel certificate, tax receipts.* Mortgagor, within five days upon request in person or within ten days upon request by mail, will furnish a written statement duly acknowledged of the amount due on this mortgage and whether any offsets or defenses exist against the mortgage debt and that after a similar request Mortgagor will exhibit receipts

showing payment of all taxes and assessments affecting the Mortgaged Premises, unless paid by Mortgagee pursuant to the note.

8. *Appointment of receiver.* The holder of this mortgage, in any action to foreclose it, shall be entitled to the appointment of a receiver.

9. *Foreclosure sale.* In case of a foreclosure sale, the Mortgaged Premises may be sold in one parcel.

10. *Defense of rights or lien.* If any action or proceeding is commenced to which Mortgagee is made a party, or in which it becomes necessary to defend or uphold the lien of this mortgage, all sums paid by Mortgagee for the expense of any litigation to prosecute or defend the rights and lien created by this Mortgage (including reasonable counsel fees), shall be paid by Mortgagor within 15 days after written demand, together with interest thereon at the legal rate. Any such sum and the interest thereon shall be a lien on the Mortgaged Premises, prior to any right, or title to, interest in or claim upon the Mortgaged Premises attaching or accruing subsequent to the lien of this mortgage, and shall be deemed to be secured by this mortgage. In any action or proceeding to foreclose this mortgage, or to recover or collect the debt secured hereby, the provisions of law respecting the recovery of costs, disbursements and allowances shall prevail unaffected by this covenant.

11. *Advance rent.* Mortgagor will not, without Mortgagee's written consent, receive or collect rent from any tenant of the Mortgaged Premises for a period of more than two months in advance.

12. *Use of advances.* Mortgagor will, in compliance with Section 13 of the Lien Law, receive the advances secured hereby and will hold the right to receive such advances as a trust fund to be applied first for the purpose of paying the cost of the Mortgaged Premises before using any part of the same for any other purpose.

13. *Rental payments in event of default.* In the event of any default under this mortgage, Mortgagor will pay monthly in advance to Mortgagee, or to any receiver appointed to collect the rents, issues, and profits of the Mortgaged Premises the fair and reasonable rental value for the use and occupancy of the Mortgaged Premises if the same are in Mortgagor's possession. Upon default in any such payment Mortgagor will vacate and surrender the possession of the Mortgaged Premises to Mortgagee or to such receiver, and in default thereof may be evicted by any appropriate legal proceeding.

14. *Joint and several liability.* If Mortgagor consists of more than one party, such mortgagors shall be jointly and severally liable under all of Mortgagor's obligations, covenants, and agreements contained herein.

15. *Payment of common charges.* Mortgagor will pay all assessments for common charges, service charges, and expenses made against the Mortgaged Premises as and when they become due and payable.

16. *Condition of premises.* Mortgagor shall keep the Mortgaged Premises (other than the Common Elements) in reasonably good repair, working order and condition, and shall make all repairs, renewals, and replacements that Mortgagee deems reasonably necessary. Mortgagor shall keep the Mortgaged Premises in compliance with all environmental laws, federal, state and local.

17. *Compliance with rules.* Mortgagor shall observe, perform and keep all of the terms, provisions, covenants, and conditions required by it to be kept, observed and performed under the Declaration, Bylaws, and Rules and Regulations, as the same shall exist from time to time.

18. *Default.* At Mortgagee's option, the entire principal amount and interest accrued thereon, as evidenced by the mortgage and the note secured thereby, shall immediately become due and payable if one or more of the following "Events of Default" shall occur and be continuing:

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- (a) Default is made in the payment of any installment of interest, or of principal and interest, or in the making of any deposit under the note when all or any part thereof becomes due and payable, and such default continues for 15 days;
- (b) Default is made in the payment of any tax or assessment when the same becomes due and payable, and the default continues for 30 days, unless provision for payment thereof has been made pursuant to the note;
- (c) Default is made in the performance of any covenant in paragraph 3, 4, 6, 7, 10, 11, 12, 13, or 20 of this mortgage within the time provided, or in the performance of the covenant in paragraph 15, and the default continues for 30 days;
- (d) Default is made in the performance of any covenant in paragraph 16 or 17, and the default continues for 30 days after written notice is given to Mortgagor, which specifies the nature of such default and requires the same to be remedied;
- (e) Mortgagor sells or otherwise conveys the Mortgaged Premises without having simultaneously paid the note in full plus all interest accrued thereon to the date of the sale or conveyance;
- (f) Withdrawal of the property from the Condominium Act is authorized as provided in Section 339-tn\* of the Act, or 75 percent or more of the building is destroyed or substantially damaged and 75 percent or more of the Unit owners do not duly and promptly resolve to proceed with repair or restoration;
- (g) Any provision of the Condominium Act, or its application, in any circumstances is held invalid, and such invalidity affects the lien of this mortgage or Mortgagee's rights;
- (h) Mortgagor assigns the rents, issues, or profits (including the common profits) of all or part of the Mortgaged Premises without Mortgagee's prior written consent;
- (i) Any fixtures, furniture, or equipment constituting a part of the Mortgaged Premises are removed from such premises unless, before or concurrently with such removal, the fixtures, furniture, or equipment are promptly replaced by other fixtures or equipment not necessarily of the same character but of a value at least equal to the removed items, which shall immediately become subject to the lien of this mortgage;
- (j) Any law is passed that deducts from the value of the property for tax purposes any lien thereon, or that changes in any way the taxation of mortgages or debts secured thereby for state or local purposes so as to affect this mortgage; or
- (k) A petition in bankruptcy is filed by or against Mortgagor, or Mortgagor makes an assignment for the benefit of creditors or receives the benefit of any insolvency or reorganization act.

19. *Waiver of provisions.* Any failure by Mortgagee to insist upon the strict performance by Mortgagor of any term or provision hereof shall not be deemed to be a waiver of that or any other term or provision. Notwithstanding such failure, Mortgagee may thereafter insist upon strict performance by Mortgagor of any or all of the terms and provisions of this mortgage. All clauses and covenants in this agreement that are similar to those construed under Section 254 of the Real Property Law\* shall also be construed under that section. The additional clauses and covenants herein shall afford rights that are supplemental to, and not exclusive of, the rights conferred by the clauses and covenants construed by Section 254. Such additional clauses and covenants shall not impair, modify, alter, or defeat such rights even though they relate to the same subject matter or provide for different or additional rights in the same or similar contingencies as

clauses and covenants construed by Section 254. Mortgagee's rights hereunder shall be separate, distinctive, and cumulative, and none of them shall be exclusive of any other. Moreover, no act of Mortgagee shall be construed as an election to proceed under any one provision hereof to the exclusion of any other provision.

20. *Eminent domain.* Notwithstanding any contrary provisions of existing or future law, Mortgagor shall continue to pay interest on the entire principal sum secured as such principal is reduced from time to time at the rate specified in the note, until any award or payment made by any public or quasi-public authority or corporation for taking by eminent domain of the entire or part of the Mortgaged Premises, or any easement therein, has actually been received by Mortgagee. Any reduction in the principal sum resulting from the application by Mortgagee of such award or payment shall be deemed to take effect only on the date of such receipt.

21. *Inspection of premises.* Mortgagee and all persons authorized by it may enter and inspect the Mortgaged Premises at all reasonable times.

22. *Further assurances.* Promptly upon request, Mortgagor shall execute and deliver to Mortgagee all additional instruments or assurances that are reasonably necessary or desirable to further secure the lien of this mortgage, including the execution and delivery of one or more financing statements on Form UCC-1 under the Uniform Commercial Code.

23. *Definitions.* Wherever used in this mortgage, unless the text clearly indicates a contrary intent or otherwise specifically provided herein, the word "Mortgagor" shall be construed to mean the "Mortgagor and/or any subsequent owner or owners of the Mortgaged Premises," and the word "Mortgagee" shall be construed to mean "Mortgagee or any subsequent holder or holders of the mortgage." Other terms used herein shall be defined as follows: "Declaration" means the instrument recorded, as provided above, in the office of the City Register in New York County submitting the property to the provisions of the Condominium Act; "Bylaws" means the instrument required by Section 339-u of the Condominium Act providing for the operation of the property, a true copy of which is annexed to the Declaration; and "Rules and Regulations" mean the instrument referred to in clause (i) of Section 339-v of the Condominium Act, relating to restrictions and requirements respecting the use and maintenance of the Unit and the common elements of the property.

This mortgage cannot be changed or terminated orally.

In witness whereof this mortgage has been duly executed by Mortgagor.

\_\_\_\_\_ (L.S.)

Henry Phillips

[Acknowledgment]

**FOOTNOTES:**

(n1)Footnote \*. Arbitrary names, dates, and companies have been added to some forms to promote better understanding of the form.

(n2)Footnote \*. Check local statutes for correlating law.

(n3)Footnote \*. Check local statutes for correlating law.



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California Legal Forms--Transaction Guide

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PART IV: Transactions in Turbulent Times - Real Estate.

CHAPTER 39: Real Estate--Miscellaneous.

*37TTT-39 California Legal Forms--Transaction Guide 39.syn*

**§ 39.syn Synopsis to Chapter 39: Real Estate--Miscellaneous.**

Form T39-1 Consent by Owner or Mortgagee of Real Estate to Security Interest in Fixtures

Form T39-1 Consent by Owner or Mortgagee of Real Estate to Security Interest in Fixtures

Form T39-2 Offer to Purchase Motel--Foreclosure Property; Seller's Form Submitted as Bid

Form T39-2 Offer to Purchase Motel--Foreclosure Property; Seller's Form Submitted as Bid



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PART IV: Transactions in Turbulent Times - Real Estate.

CHAPTER 39: Real Estate--Miscellaneous.

37TTT-39 California Legal Forms--Transaction Guide Form T39-1

**Form T39-1 Consent by Owner or Mortgagee of Real Estate to Security Interest in Fixtures**

**Description:** A security interest in fixtures, even if unperfected, has priority over the conflicting interest of a mortgagee or owner of the real estate if either (1) the debtor has a right to remove the goods or (2) the owner or mortgagee has consented in an authenticated record to the security interest or has disclaimed an interest in the goods as fixtures. This form contains the consent of the owner or mortgagee to the secured party's security interest.

**Form T39-1 Consent by Owner or Mortgagee of Real Estate to Security Interest in Fixtures**

CONSENT BY \_\_\_\_\_ [OWNER *or* MORTGAGEE] OF REAL ESTATE TO SECURITY INTEREST IN FIXTURES

The undersigned \_\_\_\_\_ [owner *or* mortgagee] of the real estate located at \_\_\_\_\_ [street address], \_\_\_\_\_ [city], \_\_\_\_\_ [state], consents to the granting of a security interest by \_\_\_\_\_ [name of debtor] to \_\_\_\_\_ [name of secured party] in the fixtures described below and \_\_\_\_\_ [located *or* to be located] on or at the real estate described above: \_\_\_\_\_ [describe fixtures].

Date: \_\_\_\_\_  
\_\_\_\_\_ [signature of owner or mortgagee]  
\_\_\_\_\_ [typed name]



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*37TTT-39 California Legal Forms--Transaction Guide Form T39-2*

**Form T39-2 Offer to Purchase Motel--Foreclosure Property; Seller's Form Submitted as Bid**

**Description:** This offer to purchase is illustrative of the type of contract necessary to accept an invitation for offers to purchase real estate held pursuant to acquisition by foreclosure.

**Form T39-2 Offer to Purchase Motel--Foreclosure Property; Seller's Form Submitted as Bid**

The undersigned, as Purchaser, offers to purchase certain real estate and other property from Fifth Federal Savings and Loan Association as Seller, upon the following terms and conditions:

Article I Property To Be Sold

1.01. *Property.* The property which is the subject of this offer consists of the following:

(a) *Land.* Fee title to the real estate legally described at Exhibit A, located approximately 198 feet South of the Southeast corner of the intersection of Dixie Highway (U.S. 31) and Penn Street,<sup>n\*</sup> in the Town of Rosewood, County of \_\_\_\_\_, State of \_\_\_\_\_, together with all interests of Seller in and to all appurtenances thereto and in and to all adjacent streets, alleys, and other public ways (the "Land").

(b) *Improvements.* Fee title to the improvements (the "Improvements"), in, upon, and under the Land, consisting of the buildings and other property described at Exhibit B. (The Land and the Improvements are collectively the "Real Estate.")

(c) *Lease.* Seller's interest as Lessor under that certain Lease (the "Lease"), dated \_\_\_\_\_ [date and year] made by and between Seller, as Lessor, and Dixie Lodge, Inc., as Lessee. A copy of the Lease is attached as Exhibit C.

(d) *Stock.* All of the issued and outstanding stock (the "Stock") of Dixie Lodge, Inc., an \_\_\_\_\_ [state] corporation (the "Corporation"), which consists of 10 shares of the capital stock of the Corporation registered in the name of Seller. A description of the certificate evidencing such shares is attached as Exhibit D.

(e) *Tangible property.* All fixtures, equipment, furniture, furnishings, and other personal property located on or about the Real Estate and used in connection with it and in connection with the Corporation's operations, to the extent that it is the property of Seller (the "Tangible Property").

A schedule of the Tangible Property which is the property of Seller is attached at Exhibit E, and a schedule of certain tangible property which is the property of the Corporation is attached as Exhibit F.

1.02. *Property.* All of the items of property referred to in Section 1.01 are referred to collectively as the "Property."

#### Article II Purchase Price

2.01. *Price.* The total purchase price of the Property shall be \$3 million.

#### Article III Payment of Purchase Price

3.01. *Payment.* The purchase price of the Property shall be paid as follows:

(a) *Earnest money.* Five percent has been paid by cashier's or certified check to Seller upon the execution and delivery of this offer by Purchaser, and an additional 10 percent shall be paid by cashier's or certified check to Seller within five days after Seller accepts this offer. The payments, totaling 15 percent of the purchase price, shall constitute the Earnest Money for all purposes of this Agreement. No interest shall accrue or become payable on the Earnest Money payment.

(b) *Balance.* The balance of the purchase price, plus or minus prorations, shall be paid to Seller at closing by cashier's or certified check.

#### Article IV Conveyance of the Property

4.01. *Deed.* The Real Estate shall be conveyed by Special Warranty Deed wherein Seller shall warrant only that it has not done or allowed to be done anything whereby the Real Estate has been, or may have been, in any manner encumbered or charged.

4.02. *Assignments.* The Lease and the Stock shall be conveyed by separate assignments without warranty.

4.03. *Bill of sale.* The Tangible Property belonging to Seller shall be conveyed by Bill of Sale wherein Seller shall warrant only that it is the owner of the Tangible Property, that it has not caused same to be encumbered or charged, and that it has full right, power, and authority to sell the same and to make such Bill of Sale. All warranties of quality, fitness, and merchantability shall be expressly excluded from the conveyance of the Tangible Property.

#### Article V Title to the Property

5.01. *Title; adjustments.* The Real Estate and the Lease, and the above instruments by which they are conveyed, shall be subject to the following:

(a) General real estate taxes to the extent that they are not due and payable at the date of closing;

(b) Special taxes or assessments for any improvements not completed as of the date of this Agreement, and all installments not due at the date of this Agreement of any special tax or assessment for completed improvements;

(c) Zoning and building laws, ordinances, and regulations;

- (d) Private, public, and utility easements and roads and highways;
- (e) Covenants, restrictions, and conditions of record;
- (f) Party wall rights, boundary fence agreements, party sidewalks, and driveways;
- (g) The Lease and all other existing leases, tenancy agreements, service and other agreements affecting the Property, including, without limitation, those leases and agreements listed at Exhibit G;
- (h) The exclusions from coverage and the general exceptions to be contained in the policy of owner's title insurance described below, and any commitment therefor;
- (i) Location and condition of the Improvements; and
- (j) All matters arising out of or in connection with the acts of Purchaser or those claiming under or through it.

5.02. *Unpaid taxes and assessments.* The Tangible Property and the above instruments by which the Property is conveyed shall be subject to the matters referred to at Section 5.01(g) and (j), and also to personal property taxes to the extent they are not due and payable at the date of closing.

5.03. *Permitted exceptions.* All of the above matters, including those listed in Exhibit G, are collectively the "Permitted Exceptions."

#### Article VI Title Insurance and Survey

6.01. *Title commitment.* If Purchaser shall so elect, Seller shall at its expense deliver to Purchaser a commitment for an ALTA owner's title insurance policy issued by National Title Insurance Company. The commitment shall be delivered not less than five days prior to the closing date, including any postponement thereof pursuant to any of the provisions hereof. Such commitment shall be for the amount of the purchase price less such amount, if any, that Seller shall allocate to portions of the Property other than the real estate. Purchaser's election under this Section shall be made, if at all, by written notice thereof delivered to Seller within 20 days after the date of approval of this Agreement pursuant to Section 12.01 hereof.

6.02. *Title exceptions.* The above commitment shall be dated on or after \_\_\_\_\_ [date and year]. It shall show fee title to the Real Estate to be vested in Seller as of that date, subject only to the Permitted Exceptions and title exceptions pertaining to liens or encumbrances of an ascertainable amount which may be removed by the payment of money at the time of closing and which Seller may so remove at that time by using a portion of the purchase price to be paid at closing, including deposit of same for Seller's account with the title insurer pursuant to a "title indemnity" or similar escrow arrangement pending removal or release of the liens or encumbrances. The policy or commitment shall be conclusive evidence of good title as therein shown as to all matters insured or to be insured by the policy, subject only to the exceptions as therein stated.

6.03. *Nonpermitted exceptions.* If the above policy or commitment discloses any exceptions ("Nonpermitted Exceptions") to title other than the Permitted Exceptions, Seller shall have 90 days from the date of delivery thereof to Purchaser to have the Nonpermitted Exceptions removed from the policy or commitment, or to have the title insurer commit to insure against any loss or damage that is occasioned by such Nonpermitted Exceptions. In that event, the time of closing shall be the day following the date of such removal or commitment to insure, or the date for closing as provided under to Section 8.01, whichever comes later.

6.04. *Conditions of termination.* If Seller fails to have the Nonpermitted Exceptions removed, or in the alternative, to

obtain the commitment for title insurance specified above as to such exceptions within the specified time, Purchaser may terminate this Agreement as to all of the Property or take title as then is, in either case by giving Seller written notice of Purchaser's election and, in the latter case, by tendering performance on Purchaser's part. If Purchaser fails to give such notice within five days after the 90-day period expires, Purchaser shall be deemed to have elected to take title as it then is, and this transaction shall close in accordance with the preceding provisions. If Purchaser gives notice of its election to terminate this Agreement within the time provided, this Agreement shall thereupon, without further action by any party, become null and void and neither party shall have any obligation hereunder, except that Purchaser's Earnest Money payment shall be refunded upon delivery to Seller of all executed copies of this Agreement previously delivered to, or upon the direction of, Purchaser or its agents or representatives.

6.05. *Survey.* Upon Seller's execution of this Agreement, Seller shall deliver to Purchaser a true copy of that certain survey of the Real Estate made by Clark Associates dated \_\_\_\_\_. All recertifications of such survey, and all other surveys which may be required in connection with the closing of this transaction, shall be at Purchaser's expense.

#### Article VII Damages and/or Condemnation

7.01. *Casualty.* If prior to the closing of this transaction the Improvements or any portion thereof are destroyed or materially damaged (as defined in Section 7.02) by fire or other casualty and if Purchaser shall elect within ten days after the date of such fire or other casualty, such election to be made in the manner required in Section 11.07 hereof for service of notice:

(a) This Agreement shall become null and void and all payments previously made by Purchaser to Seller shall be returned to Purchaser, if Purchaser gives notice of such election at or before the closing; or

(b) This transaction shall close in accordance with the other provisions of this agreement, and Seller shall at closing assign to Purchaser all claims arising under any policy of insurance covering such destruction or damage.

7.02. *Material damage.* "Material damage" is damage to the Real Estate caused by fire or other casualty of such a nature that the cost of restoring the property to its prior condition will exceed \$100,000. If the damage is not material damage, the transaction shall close in accordance with and subject to the conditions of Section 7.01(b). At any time after such destruction or damage, and before closing, Seller may proceed to settle all such insurance claims, regardless of whether Purchaser has made its above election or of the nature of the election.

7.03. *Condemnation.* If any governmental or other entity with condemnation authority institutes an eminent domain proceeding against the Real Estate before the closing, Purchaser may terminate this Agreement by giving notice to Seller if Seller decides that the balance of the Real Estate remaining after the taking contemplated by the proceeding would not be suitable for carrying on the business for which the Real Estate is presently used. If Purchaser does not, or is not entitled to, terminate this Agreement, Seller shall assign to Purchaser, at closing, all of Seller's interest in the proceeding and in any resulting award.

#### Article VIII Closing of Possession

8.01. *Closing.* This transaction shall be closed upon a date to be designated by Seller. The date shall be within 60 days following the approval referred to at Section 12.01 subject, however, to the provisions of Section 6.03. The transaction shall be closed at the address of the Real Estate, in \_\_\_\_\_ [city], \_\_\_\_\_ [state], or at any other place the parties agree upon.

8.02. *Delivery of possession.* Possession of the Property shall be delivered to Purchaser at closing subject to the Lease and other Permitted Exceptions.

### Article IX Prorations

9.01. *Adjustments.* All items customarily prorated and adjusted in connection with the closing of the sale of property similar to the Real Estate shall be prorated and adjusted between the parties and computed as of 11:59 p.m. of the day immediately preceding the closing date. The prorations and adjustments shall include the following:

- (a) General real estate taxes and personal property taxes upon the basis of the amounts of the most recent ascertainable taxes;
- (b) The current installment of any special tax or assessment;
- (c) Assignable insurance policies shall be cancelled or assigned at Seller's election and prepaid premiums adjusted as required;
- (d) Water and other utility charges, and assignable utility deposits;
- (e) Prepaid or unpaid amounts under the service and other agreements subject to which conveyance is to be made, including those listed at Exhibit G, and the agreements shall be assigned to Purchaser at closing;
- (f) Prepaid or unpaid amounts of fees and other charges for license and permits assigned by Seller to Purchaser;
- (g) Rents, security deposits, and other payments under the Lease;
- (h) Security deposits, if any, and deposits by guests in excess of their current indebtedness as of the closing or with respect to reservations after the closing;
- (i) Guest ledger accounts relating to guests residing in the Lodge at the closing shall be collected by Purchaser for the benefit of Seller concurrently with the collection by Purchaser from such guests for periods after the closing. All collections from guests residing in the Lodge at or before the closing shall be allocated first to the oldest items due from the respective guests and Purchaser shall use its reasonable best efforts to effect such collections. Purchaser shall make remittances to Seller weekly for the first 30 days after the closing and then on the second and third monthly anniversary of the closing. Purchaser shall return all items unpaid at the end of the three months to Seller for its own collection efforts;
- (j) Income from guests in the Lodge as of 11:59 p.m. on the date before closing shall be allocated with respect to the "hotel day" starting on the day before closing and continuing over to the next calendar day, shall be allocated in equal shares to the parties, and shall be remitted at the times set forth in paragraph (i) above;
- (k) There shall be no proration with respect to payroll. Seller shall pay all accrued wages (including all pro rata vacation allowances and Social Security taxes) through the closing to its employees and the Corporation's employees in the normal course;
- (l) Purchaser shall pay all state and local transfer or similar taxes.

### Article X Purchaser's Representations and Covenants

10.01. *Authorization.* Purchaser Corporation represents and warrants to Seller that the execution and delivery of this Agreement by Purchaser has been duly authorized, and that the Agreement creates legally enforceable obligations as to Purchaser in accordance with its respective terms.

10.02. *Resolutions.* Purchaser Corporation, at Seller's request before closing, shall deliver to Seller certified copies of appropriate shareholder/director resolutions authorizing this transaction, in form reasonably acceptable to Seller and the title insurer.

10.03. *Broker's commission.* Purchaser shall pay all fees, commissions, or other compensation which shall be or become due and payable to any broker, consultant, agent, or finder in connection with this transaction. Purchaser shall also indemnify and hold Seller harmless from and against all claims, demands, actions, causes of actions, debts, liabilities, judgments, and damages (including costs and reasonable attorneys' fees, including those incurred by Seller in connection with the enforcement of this indemnity) which are asserted or recovered against Seller on account of any brokerage fee, consulting fee, commission or other fee arising out of or in connection with this transaction, or by reason of any matter or alleged matter which is inconsistent with Purchaser's representations in this Section.

10.04. *"As is" sale.* The parties expressly agree that the Property (including the Land, Improvements, Lease, and Tangible Property) is sold on an "as is" basis only. Purchaser has examined the Property and the assets of the Corporation and is completely satisfied with their condition. Seller does not make any warranties and representations, expressed or implied, as to the state of the Property, and assets, their area, condition, quality, quantity, character, size or description or suitability or fitness for any use, whether existing or contemplated, matters of zoning or survey, or in any other respect, and makes no agreement as to the condition of title except as expressly provided. Purchaser waives all rights conferred by statute or other law to make any claim against Seller before or after the closing of this transaction with respect to any matter arising out of or in connection with any of the foregoing.

10.05. *Assignment.* This Agreement, and/or any interest of Purchaser hereunder, may not be assigned in whole or in part without Seller's prior written consent.

10.06. *No recordation.* This Agreement shall not be recorded in whole or in part, and any party doing so or causing same to be done shall be deemed to be in default of this Agreement for all purposes hereof.

10.07. *Assumption documents.* Upon the closing of this transaction, Purchaser shall execute and deliver to Seller, in form acceptable to Seller, Purchaser's agreement to assume and be responsible for all obligations of Seller and the Corporation under all instruments affecting the Property and transferred in connection with the closing of this transaction, including, without limitation, the Lease, all licenses and permits, and all contracts and agreements listed in Exhibit G.

#### Article XI Miscellaneous

11.01. *Entire agreement.* This instrument contains the entire Agreement between the parties. Neither Seller nor its agents has made any representation or promise with respect to, or affecting the Property or this Agreement not expressly contained herein.

11.02. *Governing law.* This Agreement shall be governed by, and construed in accordance with, the laws of the State of \_\_\_\_\_.

11.03. *Headings.* Headings in this Agreement are for convenience only and shall not be used to interpret or construe its provisions.

11.04. *Earnest money.* Seller shall hold the Earnest Money payment and the original of this Agreement for the mutual benefit of the parties, but Purchaser's Earnest Money checks shall not be negotiated before the date of the approval referred to in Section 12.01.

11.05. *Time of essence.* Time is expressly declared to be of the essence of this Agreement.

11.06. *Default; specific performance.* If Seller defaults, Purchaser may enforce specific performance of this Agreement, or may terminate the same and recover the Earnest Money and all other payments made on account of the purchase price. The preceding remedies shall be exclusive and in lieu of all other remedies provided by law, including, without limitation, the recovery of damages of any type.

If Purchaser defaults, Seller may enforce specific performance of this Agreement, or may terminate it and retain the above Earnest Money payment of 15 percent of the purchase price as Seller's liquidated damages. Neither party shall then have any further right or claim against the other.

11.07. *Notices.* All notices under this Agreement shall be in writing and delivered personally or mailed by certified mail, postage prepaid, addressed to the parties at their last known addresses.

11.08. *Survival of conditions.* The terms and conditions of this Agreement, and all representations, covenants, warranties, and agreements made herein, shall survive the closing of this transaction, and shall not be deemed to have merged or terminated upon closing.

11.09. *Binding effect.* This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

11.10. *Counterparts.* This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

Article XII Acceptance by Seller

12.01. *Acceptance.* This offer to purchase shall be irrevocable until Seller accepts or rejects the same, or until \_\_\_\_\_ [date and year], whichever occurs first. Upon its acceptance by Seller, this offer shall constitute the agreement between the parties upon all of the terms and conditions contained herein. If Seller does not accept this offer by the above date, it shall be deemed rejected and the Earnest Money paid hereunder shall be returned to Purchaser.

PURCHASER:

NEW ERA MOTEL CORPORATION, a  
corporation of the State of

\_\_\_\_\_.

[Corporate Seal]

by \_\_\_\_\_

[name]  
Vice President

\_\_\_\_\_ [address]  
\_\_\_\_\_ [city],  
\_\_\_\_\_ [state]

Attest:

\_\_\_\_\_

[name]

Secretary

Date of Offer: \_\_\_\_\_ [date and year]

Acceptance of Offer to Purchase

The foregoing offer to purchase is hereby accepted by the undersigned as Seller.

FIFTH FEDERAL SAVINGS AND LOAN ASSOCIATION

by \_\_\_\_\_

[name]

\_\_\_\_\_ [address]

\_\_\_\_\_ [city], \_\_\_\_\_ [state]

Date of acceptance: \_\_\_\_\_ [date and year]

**FOOTNOTES:**

(n1)Footnote \*. Arbitrary names, dates, and companies have been added to some forms to promote better understanding of the form.