

# TEXAS HOME IMPROVEMENT DEED OF TRUST ASSIGNMENT OF CONTRACTOR'S LIEN (Second Lien)

NOTICE OF CONFIDENTIALITY RIGHTS: I MAY REMOVE OR STRIKE MY SOCIAL SECURITY NUMBER OR MY DRIVER'S LICENSE NUMBER FROM THIS DOCUMENT BEFORE IT IS FILED IN THE PUBLIC RECORDS.

## DEFINITIONS

- (A) "Borrower" is \_\_\_\_\_, Borrower's address is \_\_\_\_\_.
- (B) "Contractor" is \_\_\_\_\_, Contractor's address is \_\_\_\_\_.
- (C) "Lender" is \_\_\_\_\_, Lender's address is \_\_\_\_\_.
- (D) "Trustee" is \_\_\_\_\_, Trustee's address is \_\_\_\_\_.
- (E) "I" or "me" means \_\_\_\_\_, the grantor under this Deed of Trust and the person who signed the Note ("Borrower").
- (F) "Loan Agreement" means the Contract, Note, Security Document, Deed of Trust, any other related document, or any combination of those documents, under which Lender has made a loan to me.
- (G) "Deed of Trust" means this document, which is dated \_\_\_\_\_, together with all riders to this document.
- (H) "Note" means the Texas Home Improvement Mechanic's Lien Note signed by me and dated \_\_\_\_\_ and includes all amounts secured by this Contract. The Note states that the amount I owe Lender is \_\_\_\_\_ Dollars (U.S. \$ \_\_\_\_\_) plus interest.
- (I) "Property" means the property at (list address of the property), whose legal description is (list legal description of the Property).
- (J) "Applicable Law" means all controlling applicable federal, state, and local law.
- (L) "Community Association Dues, Fees, and Assessments" means all dues, fees, assessments and other charges that are imposed on me or the Property by a condominium association, homeowners association, or similar organization.
- (M) "Electronic Funds Transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, computer, or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account. The term includes point-of-sale transfers, automated teller machine transactions, transfers initiated by telephone, wire transfers, and automated clearinghouse transfers.
- (N) "Escrow Items" means those items that are described in Section \_\_\_\_ of this Deed of Trust.
- (O) "Miscellaneous Proceeds" means any compensation, settlement, award of damages, or proceeds paid by any third party (other than proceeds paid under my insurance) for: (i) damage or destruction of the Property; (ii) condemnation or other taking of all or any part of the Property; (iii) conveyance instead of condemnation; or (iv) misrepresentations or omissions related to the value or condition of the Property.
- (P) "Periodic Payment" means the regularly scheduled amount due for (i) principal and interest under the Note plus (ii) any amounts under this Deed of Trust.
- (Q) "RESPA" means the Real Estate Settlement Procedures Act (12 U.S.C. §2601 et seq.) and Regulation X (24 C.F.R. Part 3500), as they might be amended from time to time, or any additional or successor legislation or regulation that governs the same subject matter. As used in this Deed of Trust, "RESPA" refers to all requirements and restrictions that are imposed in regard to a "federally related mortgage loan" even if the Loan Agreement does not qualify as a "federally related mortgage loan" under RESPA.
- (R) "Successor in Interest" means any party that has taken title to the Property.
- (S) "Ground Rents" means amounts I owe if I rented the real property under the buildings covered by this Deed of Trust. One of the arrangements usually takes the form of a long-term "ground lease."
- (T) "Contract" means the Texas Home Improvement Mechanic's Lien Contract for Improvement, Power of Sale, and Deed of Trust.
- (U) "Lien" means the Mechanic's and Materialman's lien on the Property that results from the Contract and the Work performed. The Lien includes all existing and future improvements, easements, and rights in the Property.

## TRANSFER OF RIGHTS IN THE PROPERTY

I give the Property to Trustee to ensure Lender is repaid the debt evidenced by my Note dated \_\_\_\_\_ and any renewal or extension, to ensure Lender is repaid any sums (with interest) Lender advances to protect the security of this Deed of Trust, and to guarantee my promises. I give to the Trustee, in trust, with power of sale, the Property located in \_\_\_\_\_ County at *(Street Address) (City) (State) (Zip Code)* and further described as:

(Legal Description)

The security interest in the Property includes existing and future improvements, easements, fixtures, attachments, replacements and additions to the Property, insurance refunds, and proceeds.

I promise that I own the Property and have the right to grant Lender an interest in it. I also promise that the Property is free of any lien, except liens that are publicly recorded. I promise that I will generally defend the title to the Property. I will be responsible for Lender's losses that result from a conflicting ownership right in the Property. Any default under my agreements with Lender will be a default of this Deed of Trust.

LENDER AND I PROMISE:

## PAYMENT OF LATE CHARGES AND PREPAYMENT

I will timely pay the principal, interest, and any other amounts due under the Loan Agreement. I will comply with the requirements of my escrow account under the Loan Agreement. I will make payments in U.S. currency. If any check is returned to Lender unpaid, Lender may select the form of future payments including:

- a. cash;
- b. money order;
- c. certified check, bank check, treasurer's check or cashier's check drawn upon an institution whose deposits are federally insured; or
- d. Electronic Funds Transfer.

I will make payments to the location as Lender directs. Lender will apply my payments against the Loan Agreement only when they are received at the designated location. Lender may change the location for payments if Lender gives me notice.

Lender may return any partial payment that does not bring the account current. Lender may accept any payment or partial payment that does not bring the account current without losing Lender's rights to refuse full or partial payments in the future. I will not use any offset or claim against Lender to relieve me from my duty to make payments under the Loan Agreement.

## FUNDS FOR ESCROW ITEMS

I will pay Lender an amount ("Funds") for:

- a. taxes and assessments and other items that can take priority over Lender's security interest in the Property under the Loan Agreement;
- b. leasehold payments or Ground Rents on the Property, if any; and
- c. premiums for any insurance Lender requires under the Loan Agreement.

These items are called "Escrow Items." At any time during the term of the Loan Agreement, Lender may require me to pay Community Association Dues, Fees, and Assessments, if any, as an Escrow Item.

I will promptly give Lender all notices of amounts to be paid. I will pay Lender the Funds for Escrow Items unless Lender, at any time, waives my duty to pay Lender. Any escrow waiver must be in writing. If Lender waives my duty to pay Lender the Funds, I will pay, at Lender's direction, the amounts due for waived Escrow Items. If Lender requires, I will give Lender receipts showing timely payment. My duty to make Escrow Item payments and to provide receipts is an independent promise in the Loan Agreement.

If Lender grants me an escrow waiver, Lender may require me to pay the waived Escrow Items. If I fail to directly pay the waived Escrow Items, Lender may use any right given to Lender in the Loan Agreement. Lender may pay waived Escrow Items and require me to repay Lender. Lender may cancel the waiver for Escrow Items at any time by a notice that complies with the Loan Agreement. If Lender cancels the waiver, I will pay Lender all Funds that are then required under this Section.

At any time Lender may collect and hold Funds in an amount:

- a. to permit Lender to apply the Funds at the time specified under RESPA, and
- b. not to exceed the maximum amount Lender may require under RESPA.

Lender will estimate the amount of Funds due on the basis of current data and reasonable estimates of future expenses for Escrow Items or otherwise, according to Applicable Law. The Funds will be held in an institution whose deposits are federally insured (including Lender, if Lender's deposits are insured) or in any Federal Home Loan Bank.

Lender will timely pay Escrow Items as required by RESPA. Lender will not charge me a fee for maintaining or handling my escrow account. Lender is not required to pay me any interest on the amounts in my escrow account. Lender will give me an annual accounting of the Funds as required by RESPA. If there is a surplus in my escrow account, Lender will follow RESPA. If there is a shortage or deficiency, as defined by RESPA, Lender will notify me, and I will pay Lender the amount necessary to make up the shortage or deficiency. I will repay the shortage or deficiency in no more than twelve monthly payments. Lender will promptly return to me any Funds after I paid the Loan Agreement in full.

## **CHARGES AND LIENS**

I will timely pay all taxes, assessments, charges, and fines relating to the Property that can take priority over this Deed of Trust. I also will timely pay leasehold payments or Ground Rents on the Property, if any, and Community Association Dues, Fees, and Assessments, if any. If these items are Escrow Items, I will pay them as required by the Loan Agreement. I will promptly satisfy any lien that has priority over this Deed of Trust unless I:

- a. agree in writing to pay the amount secured by the lien in a manner acceptable to Lender and only so long as I comply with my agreement;
- b. contest the lien in good faith by stopping the enforcement of the lien through legal proceedings (this contest must be satisfactory to Lender); or
- c. obtain an agreement from the holder of the lien that is satisfactory to Lender.

If Lender determines that any part of the Property is subject to a lien that can take priority over this Deed of Trust, Lender may give me a notice identifying the lien. I will satisfy the lien or take one or more of the actions described above in this section within 10 days of the date of the notice.

## **PROPERTY INSURANCE**

I WILL INSURE THE CURRENT AND FUTURE IMPROVEMENTS TO THE PROPERTY AGAINST LOSS BY FIRE, HAZARDS INCLUDED WITHIN THE TERM "EXTENDED COVERAGE," AND ANY OTHER HAZARDS INCLUDING EARTHQUAKES AND FLOODS, AS LENDER MAY REQUIRE. I WILL KEEP THIS INSURANCE IN THE AMOUNTS (INCLUDING DEDUCTIBLE LEVELS) AND FOR THE PERIODS THAT LENDER REQUIRES. LENDER MAY CHANGE THESE INSURANCE REQUIREMENTS DURING THE TERM OF THE LOAN AGREEMENT. I HAVE THE RIGHT TO CHOOSE AN INSURANCE CARRIER THAT IS ACCEPTABLE TO LENDER. LENDER WILL EXERCISE LENDER'S RIGHT TO DISAPPROVE REASONABLY. I MAY PROVIDE ANY INSURANCE REQUIRED BY THIS DEED OF TRUST EITHER THROUGH EXISTING POLICIES OWNED OR CONTROLLED BY BORROWER OR THROUGH EQUIVALENT COVERAGE FROM ANY INSURANCE COMPANY AUTHORIZED TO TRANSACT BUSINESS IN TEXAS.

I will pay any fee charged by the Federal Emergency Management Agency for the review of any flood zone determination. Lender may require me to pay either:

- a. a one-time charge for flood zone determination, certification and tracking services; or
- b. a one-time charge for flood zone determination and certification services; and subsequent charges each time re-mappings or similar changes occur that reasonably might affect the determination or certification.

If I do not keep any required insurance, Lender may obtain insurance at Lender's option and at my expense. Lender is not required to purchase any type or amount of insurance. Any insurance Lender buys will always protect Lender, but may not protect me, my equity in the Property, my contents in the Property or protect me from certain hazards or liability. I understand that this insurance may cost significantly more than insurance I can purchase. I will owe Lender for the cost of any insurance that Lender buys under this section. Interest will be charged on this amount at the interest rate used by the Note. The interest will be charged from the date Lender made the payment. Lender will give me notice of the amounts I owe under this Section.

Lender may disapprove any insurance policy or renewal. Any insurance policy must include a standard mortgage clause, and must name Lender as mortgagee or a loss payee. I will give Lender all insurance premium receipts and renewal notices, if Lender requests. If I obtain any optional insurance to cover damage or destruction of the Property, I will name Lender as a loss payee. In the event of loss, I will give notice to Lender and the insurance company. Lender may file a claim if I do not file one promptly. Lender will apply insurance proceeds to repair or restore the Property unless Lender's interest will be reduced or it will be economically unreasonable to perform the Work. Lender may hold the insurance proceeds until Lender has had an opportunity to inspect the Work and Lender considers the Work to be acceptable. The insurance proceeds may be given in a single payment or multiple payments as the Work is completed. Lender will not pay any interest on the insurance proceeds. If I hire a public adjuster or other third party, I am responsible for the fee. It will not be paid from the insurance proceeds. The insurance proceeds will be applied to the amount I owe if Lender's interest will be reduced or if the Work will be economically unreasonable to perform. Lender will pay me any excess insurance proceeds. Lender will apply insurance proceeds in the order provided by the Loan Agreement.

If I abandon the Property Lender may file, negotiate, and settle any insurance claim. If the insurance company offers to settle a claim and I do not respond within thirty days to a notice from Lender, then Lender may settle the claim. The 30-day period will begin when the notice is given. If I abandon the Property, fail to respond to the offer of settlement, or Lender forecloses on the Property, I assign to Lender:

- a. my rights to any insurance proceeds in an amount not greater than what I owe; and
- b. any of my other rights under insurance policies covering the Property.

Lender may apply the proceeds to repair or restore the Property or to the amount that I owe.

## **PRESERVATION, MAINTENANCE, PROTECTION, AND INSPECTION OF THE PROPERTY**

I will not destroy, damage, or impair the Property, allow it to deteriorate, or commit waste. Whether or not I live in the Property, I will maintain it in order to prevent it from deteriorating or decreasing in value due to its condition. I will promptly repair the damage to the Property to avoid further deterioration or damage unless Lender and I agree in writing that it is economically unreasonable. I will be responsible for repairing or restoring the Property only if Lender releases the insurance or condemnation proceeds for the damage to or the taking of the Property. Lender may release proceeds for the repairs and restoration in a single payment or in a series of payments as the Work is completed. I still am obligated to complete repairs or restoration of the Property even if there are not enough proceeds to complete the Work. If this Deed of Trust secures a unit in a condominium or planned unit development, I will perform all of my obligations under the declaration or covenants creating or governing the condominium or planned unit development, and any other relevant document. Lender or Lender's agent may inspect the Property. Lender may inspect the interior of the Property with reasonable cause. Lender will give me notice stating reasonable cause when or before the interior inspection occurs.

## **PROTECTION OF LENDER'S INTEREST IN THE PROPERTY AND RIGHTS UNDER THE DEED OF TRUST**

Lender may do whatever is reasonable to protect Lender's interest in the Property, including protecting or assessing the value of the Property, and securing or repairing the Property. Lender may do this when:

- a. I fail to perform the promises and agreements contained in the Loan Agreement;
- b. a legal proceeding might significantly affect Lender's interest in the Property or rights under the Loan Agreement (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture, for enforcement of a lien which may have priority over the Loan Agreement or to enforce laws or regulations); or
- c. I abandon the Property.

In order to protect Lender's interest in the Property, Lender may:

- a. pay amounts that are secured by a lien on the Property which has or will have priority over the Loan Agreement;
- b. appear in court; or
- c. pay reasonable attorneys' fees.

Lender may enter the Property to secure it. To secure the Property, Lender may make repairs, change locks, replace or board up doors and windows, drain water from pipes, eliminate building or other code violations or dangerous conditions, and have utilities turned on or off. Lender has no duty to secure the Property. Lender is not liable for failing to take any action listed in this Section. Any amounts Lender pays under this Section will become my additional debt secured by the Loan Agreement. These amounts will earn interest at the rate specified in the Loan Agreement. The interest will begin on the date the amounts are paid. Lender will give me notice requesting payment of these amounts. If the Loan Agreement is on a leasehold, I will comply with the lease.

#### **ASSIGNMENT OF MISCELLANEOUS PROCEEDS AND FORFEITURE**

Any Miscellaneous Proceeds will be assigned and paid to Lender. If the Property is damaged, Miscellaneous Proceeds will be applied to restore or repair the Property. Lender will only do this if Lender's interest in the Property will not be reduced and if the work will be economically reasonable to perform. Lender will have the right to hold Miscellaneous Proceeds until Lender inspects the Property to ensure the work has been completed to Lender's satisfaction. Lender must make the inspection promptly. Lender may release proceeds for the work in a single payment or in multiple payments as the work is completed. Lender is not required to pay me any interest on the Miscellaneous Proceeds. The Miscellaneous Proceeds will be applied to the amount I owe if Lender's interest in the Property will be reduced or the work will be economically unreasonable to perform. Lender will pay me any excess Miscellaneous Proceeds. Lender will apply Miscellaneous Proceeds in the order provided by the Loan Agreement.

Lender will apply all Miscellaneous Proceeds to the amount I owe in the event of a total taking, destruction, or loss in value of the Property. Lender will apply the Miscellaneous Proceeds even if all payments are current. Lender will give any excess Miscellaneous Proceeds to me.

A partial loss can include a taking, destruction, or loss in value. In the event of a partial loss, the Miscellaneous Proceeds will be applied in one of two ways:

- a. If the fair market value of the Property immediately before the partial loss is less than the amount I owe immediately before the partial loss, then Lender will apply all Miscellaneous Proceeds to the amount I owe even if all payments are current.
- b. If the fair market value of the Property immediately before the partial loss is equal to or greater than the amount I owe immediately before the partial loss, then Lender will apply Miscellaneous Proceeds to the amount I owe in the following manner:
  1. The amount of Miscellaneous Proceeds multiplied by the result of,
  2. The amount I owe immediately before the partial loss divided by the fair market value of the Property immediately before the partial loss.

Lender and I can agree otherwise in writing. Lender will give any excess Miscellaneous Proceeds to me.

If I abandon the Property, Lender may apply Miscellaneous Proceeds either to restore or repair the Property, or to the amount I owe.

Damage to the Property caused by a third party may result in a civil proceeding. If Lender gives me notice that the third party offers to settle a claim for damages to the Property and I fail to respond to Lender within thirty days, Lender may accept the offer and apply the Miscellaneous Proceeds either to restore or repair the Property or to the amount I owe. If the proceeding results in an award of damages, Lender will apply the Miscellaneous Proceeds according to this Section.

#### **FORBEARANCE NOT A WAIVER**

If Lender doesn't enforce Lender's rights every time, Lender can still enforce them later.

#### **JOINT AND SEVERAL LIABILITY, DEED OF TRUST EXECUTION, SUCCESSORS OBLIGATED**

I understand that Lender may seek payment from only me without first looking to any other Borrower.

Any person who signs this Deed of Trust, but not the Note:

- a. will not have to repay the Note;
- b. is not a surety or guarantor; and,
- c. only gives a security interest in the Property under this Deed of Trust.

The Lien against the Property is voluntary. Each owner and each owner's spouse consent to the Lien. Lender and I may modify the Loan Agreement in writing. Lender must approve my successor in writing. My successor will receive all of my rights and benefits under the Loan Agreement. I still will be responsible under the Loan Agreement unless Lender releases me in writing. The Loan Agreement will extend to Lender's assigns or successors.

#### **USURY SAVINGS CLAUSE**

I do not have to pay interest or other amounts that are more than Applicable Law allows.

## **MAILING OF NOTICES TO BORROWER**

Lender or I may mail or deliver any notice to the address above. Lender or I may change the notice address by giving written notice. Lender's duty to give me notice will be satisfied when Lender mails it.

## **APPLICATION OF LAW**

Federal law and Texas law apply to this Loan Agreement.

## **RULES OF CONSTRUCTION**

As used in the Loan Agreement:

- a. words in the singular will mean and include the plural and vice versa; and
- b. the word "may" gives discretion without imposing any duty to take action.

## **LOAN AGREEMENT COPIES**

At the time the Loan Agreement is made, Lender will give me copies of all documents I sign.

## **DUE ON SALE CLAUSE, NOTICE OF INTENT TO ACCELERATE, AND NOTICE OF ACCELERATION**

If all or any interest in the Property is sold or transferred without Lender's prior written consent, Lender may require immediate payment in full of all that I owe under this Loan Agreement. Lender will not exercise this option if Applicable Law prohibits.

If Lender exercises this option, Lender will give me notice that Lender is demanding payment of all that I owe. This notice will give me a period of not less than twenty-one days from the date of the notice within which I must pay all that I owe under this Loan Agreement. If I fail to pay all that I owe before the end of this period, Lender may use any remedy allowed by the Loan Agreement.

LENDER, CONTRACTOR, AND I PROMISE AND AGREE:

## **ACCELERATION AND REMEDIES**

Lender will give me notice prior to acceleration if I am in default under the Loan Agreement. The notice will specify:

- a. the default;
- b. the action required to cure the default;
- c. a date, not less than 21 days from the date Lender gives me notice, to cure the default; and
- d. that my failure to cure the default on or before the specified date will result in acceleration of all that I owe under the Loan Agreement and sale of the Property.

Lender will inform me of my right to reinstate after acceleration. If the default is not cured before the specified date, Lender has the option to require immediate payment in full of all I owe. If Lender is not paid all I owe, Lender may sell the Property or seek other remedies allowed by Applicable Law without further notice. Lender may collect Lender's reasonable expenses incurred in seeking the remedies provided in this Section. These expenses may include court costs, attorneys' fees, and costs of title search.

I understand the power of sale is not a confession of judgment or a power of attorney to confess judgment or an appearance by me in a judicial proceeding. If the Property is sold under this section I or my successors will immediately give possession of the Property to the purchaser. If I do not, I or anyone residing on the Property may be removed by writ of possession.

## **POWER OF SALE**

Lender has a fully enforceable lien on the Property. Lender's remedies for my default include an efficient means of foreclosure under the law. Lender and the Trustee have all powers to conduct a foreclosure. If Lender chooses to use the power of sale, Lender will give me notice of the time, place and terms of the sale by posting and filing notice at least 21 days before the sale as provided by law. Lender will give me notice by mail as required by law. Failure to cure default on or before the date in the notice may result in acceleration of the amount that I owe under this Loan Agreement. The notice will inform me of my right to reinstate after acceleration and assert in court that I am not in default or any other defense to acceleration or sale. If I do not cure the default on or before the date in the notice, Lender, at Lender's option, may declare all that I owe under this Loan Agreement to be immediately due and payable and may invoke the power of sale and any other remedies permitted by Applicable Law. The sale will be conducted at a public place. The sale will be held:

- a. on the first Tuesday of a month;
- b. at a time stated in the notice or no later than 3 hours after the time; and
- c. between 10:00 a.m. and 4:00 p.m.

I allow the Trustee to sell the Property to the highest bidder for cash in one or more pieces and in any order the Trustee determines. Lender may purchase the Property at any sale.

Trustee will give a Trustee's deed to the foreclosure sale purchaser. A Trustee's deed will convey:

- a. good title to the Property; and
- b. title with promises of general warranty from me.

I will defend the purchaser's title to the Property against all claims and demands. The description of facts contained in the Trustee's deed will be sufficient to legally prove the truth of the statements made in the deed. Trustee will apply the proceeds of the sale in the following order:

- a. to all expenses of the sale, including court costs and reasonable Trustee's and attorneys' fees;
- b. what I owe; and
- c. any excess to the person or persons legally entitled to it.

If the Property is sold through a foreclosure sale governed by this Section, I or any person in possession of the Property through me, will give up possession of the Property without delay. A person who does not give up possession is a holdover and may be removed by a court order.

#### **BORROWER'S RIGHT TO REINSTATE AFTER ACCELERATION**

I have the right to stop Lender from enforcing the Loan Agreement any time before the earliest of:

- a. 5 days before sale of the Property under any power of sale included in the Loan Agreement;
- b. the day required by Applicable Law for the termination of my right to reinstate; or
- c. the entry of a judgment enforcing the Loan Agreement.

I can stop the enforcement of the Loan Agreement and reinstate the Loan Agreement if all the following conditions are met:

- a. Lender is paid what I owe under the Loan Agreement as if no acceleration had occurred;
- b. I cure any default of any promise or agreement;
- c. Lender is paid all expenses allowed by Applicable Law, including reasonable attorneys' fees and other fees incurred for the purpose of protecting Lender's interest in the Property and rights under the Loan Agreement;
- d. I comply with any reasonable requirement to assure Lender that Lender's interest in the Property will remain intact; and
- e. I comply with any reasonable requirement to assure Lender that my ability to pay what I owe will remain intact.

Lender may require me to pay for the reinstatement in one or more of the following forms:

- a. cash;
- b. money order;
- c. certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are federally insured; or
- d. Electronic Funds Transfer.

Upon reinstatement, the Loan Agreement will remain effective as if no acceleration had occurred. However, this right to reinstate will not apply if I sell or transfer any interest in the Property without Lender's permission.

#### **ASSIGNMENT OF RENTS, APPOINTMENT OF RECEIVER, LENDER IN POSSESSION**

As additional security, I assign to you the rents of the Property, provided that you have the right, prior to acceleration or abandonment of the Property, to collect and retain the rents as they become due. Upon acceleration or abandonment, you, by agent or by court-appointed receiver, will be entitled to enter, take possession, manage the Property, and collect due and past due rents. All rents you or the court-appointed receiver collect will be applied first to payment of the cost of management of the Property and collection of rents, including receiver's fees, premiums on receiver's bonds, and reasonable attorneys' fees, and then to the sums secured by this Deed of Trust. You and the receiver will be liable to account only for rents received.

#### **RELEASE**

Lender will cancel and return the Note to me and give me, in recordable form, a release of lien securing the Loan Agreement or a copy of any endorsement of the Note and assignment of the Lien to a Lender that is refinancing the Loan Agreement. I will pay only the cost of recording the release of lien.

#### **TRUSTEES AND TRUSTEE LIABILITY**

One or more Trustees acting alone or together may exercise or perform all rights, remedies and duties of the Trustee under the Loan Agreement. Lender may remove or change any Trustee (e.g., add one or more Trustees or appoint a successor Trustee to any Trustee). This removal or change of Trustee must be in writing and may be:

- a. at Lender's option;
- b. with or without cause; and
- c. by power of attorney or otherwise.

The substitute, additional, or successor Trustee will receive the title, rights, remedies, powers, and duties under the Loan Agreement and Applicable Law.

Trustee may rely upon any notice, request, consent, demand, statement, or other document reasonably believed by Trustee to be valid. Trustee will not be liable for any act or omission unless the act or omission is willful.

## **ASSIGNMENT OF CONTRACTOR'S LIEN, COMMENCEMENT OF WORK**

Contractor and I have entered into the Contract for improvements to be made to the Property. I will perform my duties under the Contract. Under the Contract, I gave Contractor a lien on the Property. Contractor permanently transfers the Lien and any other interest Contractor has in the Property to Lender. As additional security, Contractor also agrees that the Lien created by this Deed of Trust has priority over the Lien. The purpose of the Note is to pay in whole or in part the improvements to be made to the property by the Contractor. Contractor and I agree that the Lien is for Lender's sole benefit. Any other interest Contractor has in the Property will be merged with the Lien, and may be enforced by Lender according to the terms of this Deed of Trust. Contractor and I further agree that no Work was performed or materials delivered before the Contract was executed.

## **SUBROGATION**

If I ask, Lender will use proceeds from the Loan Agreement to pay off all valid outstanding liens against the Property. Lender will then own all rights, superior titles, liens, and interests owned or claimed by any owner or holder of an outstanding lien or debt. Lender owns these things whether the lien or debt is transferred to Lender or whether it is released by the holder upon payment.

## **PARTIAL INVALIDITY**

If any portion of the sums secured by this Deed of Trust cannot be lawfully secured, payments minus those sums will be applied first to the portions not secured. If any charge provided for in this Loan Agreement, separately or together with other charges that are considered part of this Loan Agreement, violates Applicable Law, the charge is reduced to the extent necessary to eliminate the violation. At Lender's option, Lender will refund the amount of interest or other charges paid to Lender in excess of the amount permitted by Applicable Law to reduce the principal of the debt or apply it to reduce the principal of the debt.

## **RENEWAL AND EXTENSION**

The Note secured by this Deed of Trust is renewed and extended, but not in extinguishment of the debt under the Contract identified in the paragraph entitled "Assignment of Contractor's Lien, Commencement of Work" and the Note.

## **SALE OF NOTE, CHANGE OF LOAN SERVICER, NOTICE OF GRIEVANCE, LENDER'S RIGHT TO COMPLY**

A full or partial interest in the Loan Agreement can be sold one or more times without prior notice to me. The sale may result in a change of the company servicing or handling the Loan Agreement. The company servicing or handling the Loan Agreement will collect my monthly payment and will comply with other servicing conditions required by the Loan Agreement or Applicable Law. In some cases, the company servicing or handling the Loan Agreement may change even if the Loan Agreement is not sold. If the company servicing or handling the Loan Agreement is changed, I will be given written notice of the change. The notice will state the name and address of the new company, the address to which my payments should be made, and any other information required by RESPA.

Any notice of acceleration and opportunity to cure under the Loan Agreement will satisfy the notice and opportunity to address the alleged violation provisions of this Section.

No agreement between Lender and me or any third party will limit Lender's ability to comply with Lender's duties under the Loan Agreement and the Applicable Law.

Lender and I are limiting all agreements so that all current or future interest or fees in connection with this Loan Agreement will not be greater than the highest amount allowed by Applicable Law.

Lender and I intend to conform the Loan Agreement to the provisions of Applicable Law. If any part of the Loan Agreement is in conflict with the Applicable Law, then that part will be corrected or removed. This correction will be automatic and will not require any amendment or new document. Lender's right to cure any violation will survive my paying off the Loan Agreement. My right to cure will override any conflicting provision of the Loan Agreement.

Lender's right-to-comply as provided in this section will survive the payoff of the Loan Agreement. The provisions of this section will supersede any inconsistent provision of the Loan Agreement.

## **HAZARDOUS SUBSTANCES**

### **Hazardous Substances**

- a. "Hazardous Substances" means those substances defined as toxic or hazardous substances, pollutants, or wastes by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials;
- b. "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection;
- c. "Environmental Cleanup" includes any response action, remedial action, or removal action, as defined in Environmental Law; and
- d. "Environmental Condition" means a condition that can cause, contribute to, or otherwise trigger an Environmental Cleanup.

I will not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances, or threaten to release any Hazardous Substances, on or in the Property. I will not do, or allow anyone else to do, anything affecting the Property:

- a. that is in violation of any Environmental Law;
- b. that creates an Environmental Condition; or,
- c. that, due to the presence, use, or release of a Hazardous Substance, creates a condition that adversely affects the value of the Property.

The presence, use, or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and for the maintenance of the Property are allowed. This includes Hazardous Substances found in consumer products.

I will promptly give Lender written notice of:

- a. any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which I have actual knowledge;
- b. any Environmental Condition, including any spilling, leaking, discharge, release or threat of release of any Hazardous Substance; and
- c. any condition caused by the presence, use or release of a Hazardous Substance which adversely affects the value of the Property.

If I learn that, or am notified by any governmental or regulatory authority, or any private party that any removal or other remediation of any Hazardous Substance affecting the Property is necessary, I promptly will take all necessary remedial actions in accordance with Environmental Law. Lender will have no obligation for an Environmental Cleanup.

#### LENDER'S RIGHTS AND BORROWER'S RESPONSIBILITIES

Lender is entitled to all rights, superior title, liens, and equities owned or claimed by any grantor or holder of any liens and debts due before the signing of the Loan Agreement. Lender may acquire these rights by assignment or the holder may release them upon payment.

Each person who signs the Deed of Trust is responsible for each promise and duty in the Deed of Trust.

Unless prohibited by Applicable Law, this Section will not:

- a. impair in any way the Loan Agreement or Lender's right to collect all that I owe under the Loan Agreement;
- b. affect Lender's right to any promise or condition of the Loan Agreement.

#### DEFAULT

Any default of my agreements with Lender will be a default of this Deed of Trust.

#### REQUEST FOR NOTICE OF DEFAULT AND FORECLOSURE UNDER SUPERIOR MORTGAGES OR DEEDS OF TRUST

Lender and I request that the holder of any mortgage, deed of trust or other claim with a lien that has priority over this Deed of Trust gives Lender Notice, at Lender's address listed on this Deed of Trust, of any default under the superior claim and of any sale or other foreclosure action.

BY SIGNING BELOW, I accept and agree to the terms and promises contained in the Loan Agreement and in any rider I sign which is recorded with it. (DO NOT SIGN IF THERE ARE BLANKS LEFT TO BE COMPLETED IN THIS DOCUMENT. I MUST RECEIVE A COPY OF ANY DOCUMENT I SIGN.)

IN WITNESS WHEREOF, Borrower and Contractor have executed this Deed of Trust and Assignment of Contractor's Lien.

-Contractor

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

\_\_\_\_\_  
 \_\_\_\_\_ (Seal)  
 -Borrower

Printed Name: \_\_\_\_\_  
 (Please Complete)

\_\_\_\_\_  
 \_\_\_\_\_ (Seal)  
 -Borrower

Printed Name: \_\_\_\_\_  
 (Please Complete)

\_\_\_\_\_  
 \_\_\_\_\_ (Seal)  
 -Borrower

\_\_\_\_\_  
 \_\_\_\_\_ (Seal)



-Borrower

STATE OF TEXAS  
COUNTY OF \_\_\_\_\_

Sworn to and subscribed before me on the \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_ by (name of owner)\_\_\_\_\_.

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

(Seal)

STATE OF TEXAS  
COUNTY OF \_\_\_\_\_

Sworn to and subscribed before me on the \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_ by (name of contractor)\_\_\_\_\_.

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

(Seal)