

## NORTH CAROLINA DEED OF TRUST

Mail/Box to:	
Prepared by:	
Brief description for the Index:	

THIS DEED OF TRUST (“Deed of Trust”) is made on the \_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_, by and between:

GRANTOR	TRUSTEE	BENEFICIARY

*Enter in the appropriate block for each Grantor, Trustee, and Beneficiary their name, mailing address, and, if appropriate, state of organization and character of entity, e.g. North Carolina or other corporate entity or partnership. Grantor, Trustee, and Beneficiary includes the above parties and their respective heirs, substitutes or successors, and assigns, whether singular, plural, masculine, feminine or neuter, as required by context.*

Grantor [and/or the following persons if other than Grantor: \_\_\_\_\_] are indebted to Beneficiary in the principal sum of \_\_\_\_\_ DOLLARS (\$ \_\_\_\_\_), as evidenced by a Promissory Note (“Note”) and/or other debt or security instrument(s) dated the same as above (together with the Note, the “Secured Obligations”), the terms of which are incorporated to this Deed of Trust by reference. The terms of this Deed of Trust shall control any conflict with the terms of the Secured Obligations.

If this Deed of Trust is intended as a **Purchase Money Deed of Trust** check one or both of the following as applicable:

- a.  The Note and this Deed of Trust evidence and secure the balance of the purchase price between Grantor as purchaser of the Property and Beneficiary as seller of the Property (N.C.G.S. §45-21.38).
- b.  The Note and this Deed of Trust evidence and secure all or a portion of the purchase price for the Property and are executed, delivered, and recorded with the deed to the Property as

part of the same transaction, and the proceeds of the Note are actually used for purchase of the Property and not for future improvements (N.C.G.S. §39-13).

The final due date for payment of the Secured Obligations, if not sooner paid, is the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_.

As security for the Secured Obligations, including advancements (if indicated below) and other sums expended by Beneficiary pursuant to this Deed of Trust and costs of collection (including attorney fees as provided in the Note) and other valuable consideration, the receipt and legal sufficiency of which is by this Deed of Trust acknowledged, Grantor has bargained, sold, given and conveyed and does by this Deed of Trust bargain, sell, give, grant and convey to Trustee, all that certain lot, parcel of land or condominium unit in the City of \_\_\_\_\_, \_\_\_\_\_ Township, \_\_\_\_\_ County, North Carolina and more particularly described as follows (including the Personal Property referenced below, the "Property"):

TO HAVE AND TO HOLD the Property with all privileges and appurtenances thereunto belonging, to Trustee and to the heirs, successors, and assigns of Trustee forever, upon the trusts, terms and conditions, and for the uses set forth in this Deed of Trust. Grantor covenants with Trustee and Beneficiary that Grantor is seized of the Property in fee simple, Grantor has the right to convey the Property in fee simple, title to the Property is marketable and free and clear of all encumbrances, and Grantor shall warrant and defend the title against the lawful claims of all persons whomsoever, other than the following exceptions:

If Grantor pays the Secured Obligations and any renewals or extensions in whole or in part thereof in accordance with their terms, together with interest thereon, and pays all other sums and complies with all of the covenants, terms and conditions of this Deed of Trust, then this conveyance shall be null and void and must be canceled of record at the request and the expense of Grantor, including but not limited to any assignment of rents or financing statement filed in connection with this Deed of Trust or any of the Secured Obligations.

If, however, there shall be any default (a) in the payment of any sums due this Deed of Trust or any of the Secured Obligations and such default is not cured within ten (10) days from the due date, or (b) in the performance of any of the other covenants, terms or conditions of this Deed of Trust or any of the Secured Obligations, and such default is not cured within fifteen (15) days after written notice, then and in any of such events, without further notice, it shall be lawful for and the duty of Trustee, upon request of Beneficiary, to sell the Property at public auction for cash, after having first giving such notice of hearing as to commencement of foreclosure proceedings and obtained such findings or leave of court as may then be required by law and giving such notice and advertising the time and place of such sale in such manner as may then be provided by law, and upon such sale and any resales and upon compliance with the law then relating to foreclosure proceedings under power of sale to convey title to the purchaser in as full and ample manner as Trustee is empowered. Trustee shall be authorized to retain and be represented by an attorney in such proceedings.

The proceeds of sale remaining after the Trustee's commission and any reasonable attorneys' fees incurred by Trustee in such proceedings shall be applied to the costs of sale, including, but not limited to, costs

of collection, taxes, assessments, costs of recording, service fees and incidental expenditures, the amount due on the Secured Obligations and advancements and other sums expended by Beneficiary according to the provisions of this Deed of Trust and otherwise as required by the then existing law relating to foreclosures. Trustee's commission shall be five percent (5%) of the gross proceeds of the sale or the minimum sum of \$ \_\_\_\_\_, whichever is greater, for a completed foreclosure. If foreclosure is commenced, but not completed, Grantor shall pay all expenses incurred by Trustee, including reasonable attorney fees, and a partial commission computed on five per cent (5%) of the outstanding indebtedness secured by this Deed of Trust or the above stated minimum sum, whichever is greater, in accordance with the following schedule: one-fourth (¼) before Trustee issues a notice of hearing on the right to foreclosure; one-half (½) after issuance of said notice, three-fourths (¾) thereof after such hearing; and the greater of the full commission or minimum sum after the initial sale.

And Grantor does by this Deed of Trust further covenant and agree with Trustee as follows:

1. **INSURANCE.** Grantor shall keep all present and future improvements to the Property constantly insured for the benefit of Beneficiary against loss by fire, windstorm and such other casualties and contingencies, in such manner and in such companies and for such amounts, not less than that amount necessary to pay the Secured Obligations, and including such endorsements, as may be reasonably satisfactory to Beneficiary. Grantor shall purchase such insurance and shall name Beneficiary as an additional insured, timely pay all policy premiums, and promptly deliver evidence of coverage to Beneficiary in the form of the actual policy or an ACORD certificate of coverage or equivalent which is reasonably satisfactory to Beneficiary, as long as any of the Secured Obligations remain unpaid. If Grantor fails to purchase such insurance, pay the premiums and deliver evidence of coverage as provided in this Deed of Trust, then Beneficiary may, but shall not be obligated to, purchase such insurance. Such amounts paid by Beneficiary shall be added to the principal of the Note or otherwise added to the Secured Obligations and shall be due and payable upon demand of Beneficiary. All proceeds from any insurance so maintained shall at the option of Beneficiary be applied to the Secured Obligations and if payable in installments, applied in the inverse order of maturity of such installments or to the repair or reconstruction of any improvements located upon the Property.

2. **TAXES, ASSESSMENTS, CHARGES.** Grantor shall pay all taxes, assessments and charges as may be lawfully levied against the Property on or before the due date. If that Grantor fails to so pay all taxes, assessments and charges as herein required, then Beneficiary may but shall be under no obligation to pay the same and the amounts so paid shall be added to the principal of the Note or otherwise added to the Secured Obligations, and shall be due and payable upon demand of Beneficiary.

3. **ASSIGNMENTS OF RENTS AND PROFITS.** Grantor hereby assigns to Beneficiary all rents and profits from the Property and authorizes Beneficiary, in the event of default of any of the covenants or obligations in this Deed of Trust or in any other instrument given as additional security for the Secured Obligations, to enter upon and take possession of all or any portion of the Property and to rent the same at any reasonable rate of rent determined by Beneficiary and, after deducting from any such rents the cost of reletting and collection, apply the remainder to the Secured Obligations.

4. **PARTIAL RELEASE.** Grantor shall not be entitled to the partial release of any of the Property unless specifically provided for in this Deed of Trust and Grantor is not in default and is in full compliance with all of the terms and provisions of the Secured Obligations and this Deed of Trust. If a partial release provision is included in this Deed of Trust, Grantor must strictly comply with its terms.

5. **WASTE.** Grantor covenants to keep the Property in at least as good order, repair and condition as it now is, reasonable wear and tear excepted, to comply with all governmental requirements respecting the Property or its use, and not to commit or permit any waste.

6. **CONDEMNATION.** If any or all of the Property shall be condemned and taken under the power of eminent domain, Grantor shall give immediate written notice to Beneficiary and Beneficiary shall have the right to receive and collect all damages awarded by reason of such taking, and the right to such damages is assigned to Beneficiary who shall have the discretion to apply the amount so received, or any part thereof, to the Secured Obligations, if payable in installments then to be applied in the inverse order of maturity of such installments, or to any alteration, repair or restoration of the Property by Grantor.

IF THE BLOCK TO THE LEFT MARGIN OF THIS SENTENCE IS MARKED AND/OR INITIALED THE PROPERTY INCLUDES FIXTURES AND THIS INSTRUMENT IS TO BE FILED AND SHALL SERVE AS A FIXTURE FILING ACCORDING TO N.C.G.S. §25-9-502.

IF THE BLOCK TO THE LEFT MARGIN OF THIS SENTENCE IS MARKED AND/OR INITIALED THIS DEED OF TRUST SECURES AN OBLIGATION FOR THE CONSTRUCTION OF AN IMPROVEMENT ON THE PROPERTY AND IS TO BE CONSTRUED AS A CONSTRUCTION MORTGAGE UNDER N.C.G.S. §25-9-334(h).

7. **SECURITY AGREEMENT; FINANCING STATEMENTS.** To further secure the repayment and performance of the Secured Obligations and other obligations secured by this Deed of Trust, Grantor hereby grants to Beneficiary a Uniform Commercial Code security interest in all building materials, building supplies, fixtures, inventory and equipment (other than household goods) now owned or hereafter acquired by Grantor, together with all attachments, accessories and accessions thereto and replacements thereof, located at or upon or intended for use, used, or useable in the construction, occupancy, operation or maintenance of improvements constructed or to be constructed on the Property, and/or other personal property (other than household goods) specifically made subject to the Secured Obligations (together the "Personal Property"), and Trustee and Beneficiary shall have all the rights of a secured creditor under the Uniform Commercial Code as adopted and amended from time to time in the State of North Carolina. Such rights may be exercised by Trustee or Beneficiary either separately or in conjunction with any remedies against the Property. In addition to recording this Deed of Trust, Beneficiary may, at any time and without further authorization from Grantor, file such additional financing statements as Beneficiary deems appropriate to perfect its security interest in the Personal Property.

8. **PLEDGE OF HYPOTHECATED SECURITY.** Each Grantor represents that they will derive a material and direct benefit from the Secured Obligations and agrees that this benefit is legally sufficient consideration to support this Deed of Trust. In the event of default by any borrower under any of the Secured Obligations, regardless of whether or not such borrower is a Grantor of this Deed of Trust, each Grantor expressly acknowledges, covenants, and agrees that Trustee and Beneficiary shall have all rights and remedies provided in the Secured Obligations for default and that any event of default under any of the Secured Obligations shall likewise be deemed an event of default under this Deed of Trust, giving rise to all rights and remedies provided in this Deed of Trust for default. Each Grantor expressly agrees that, upon default, Trustee and Beneficiary may elect to enforce any rights and remedies under this Deed of Trust. The representations and agreements in this Pledge of Hypothecated Security are made by each Grantor as an inducement to Beneficiary to enter into the loan and other transactions represented by the Secured Obligations and this Deed of Trust.

9. **SUBSTITUTION OF TRUSTEE.** Grantor and Trustee covenant and agree to and with Beneficiary that in case Trustee, or any successor Trustee, shall die, become incapable of acting, renounce this trust, or for any reason the holder of the Secured Obligations desires to replace Trustee, then the holder may appoint, in writing, a trustee to take the place of Trustee; and upon the probate and registration of the same, the Trustee thus appointed shall succeed to all rights, powers and duties of Trustee.

THE FOLLOWING PARAGRAPH 10 "SALE OF PROPERTY", SHALL NOT APPLY UNLESS THE BLOCK TO THE LEFT MARGIN OF THIS SENTENCE IS MARKED AND/OR INITIALED.

10. **SALE OF PROPERTY.** Grantor agrees that if the Property or any part thereof or interest therein is sold, assigned, transferred, conveyed or otherwise alienated by Grantor, whether voluntarily or involuntarily or by operation of law [other than: (i) the creation of a lien or other encumbrance subordinate to this Deed of Trust which does not relate to a transfer of rights of occupancy in the Property; (ii) the creation of a security interest for household goods; (iii) a transfer by devise, descent, or operation on the death of a Grantor who is a joint tenant or tenant by the entirety in the Property; (iv) a transfer to a relative of the Grantor resulting from the death of a Grantor; (v) a transfer where Grantor's spouse or children become an owner of the Property; (vi) the grant of a leasehold interest of three (3) years or less not containing an option to purchase the Property; (vii) a transfer resulting from a decree of a dissolution of marriage, legal separation agreement, or from an incidental property settlement agreement by which a Grantor's spouse becomes an owner of the Property; or (viii) a transfer to an inter vivos trust in which Grantor is and remains a beneficiary and which

does not relate to a transfer of rights of occupancy in the Property], without the prior written consent of Beneficiary, Beneficiary, at its own option, may declare the Secured Obligations to be immediately due and payable. Any change in the legal or equitable title of the Property or in the beneficial ownership of the Property not specifically excluded under any of subsections (i) through (viii) above, including the sale, conveyance or disposition of a majority equity interest in Grantor if Grantor is a corporate entity or partnership, whether or not of record and whether or not for consideration, shall be deemed to be the transfer of an interest in the Property.

11. **ADVANCEMENTS UPON DEFAULT.** If Grantor shall fail to perform any of the covenants or obligations contained herein or in any other instrument given as additional security for the Secured Obligations, Beneficiary may, but without obligation, make advances to perform such covenants or obligations, and all such sums so advanced shall be added to the principal sum, shall bear interest at the rate provided in the Secured Obligations for sums due after default and shall be due from Grantor on demand of Beneficiary. No advancement or anything contained in this paragraph shall constitute a waiver by Beneficiary or prevent such failure to perform from constituting an event of default.

12. **INDEMNITY.** If any suit or proceeding be brought against Trustee or Beneficiary or if any suit or proceeding be brought which may affect the value of, or title to, the Property, Grantor shall defend, indemnify and hold harmless and on demand reimburse Trustee or Beneficiary from any loss, cost, damage or expense and any sums expended by Trustee or Beneficiary shall bear interest as provided in the Secured Obligations for sums due after default and shall be due and payable on demand.

13. **WAIVERS.** Grantor waives all rights to require marshaling of assets by Trustee or Beneficiary. No delay or omission of Trustee or Beneficiary in the exercise of any right, power or remedy arising under the Secured Obligations or this Deed of Trust shall be deemed a waiver of any default or acquiescence therein or shall impair or waive the exercise of such right, power or remedy by Trustee or Beneficiary at any other time.

14. **CIVIL ACTION.** If that Trustee is named as a party to any civil action as Trustee in this Deed of Trust, Trustee shall be entitled to employ an attorney at law, including Trustee if Trustee is a licensed attorney, to represent Trustee in said action and the reasonable attorney fees of Trustee in such action shall be paid by Beneficiary and added to the principal of the Secured Obligations and bear interest at the rate provided in the Secured Obligations for sums due after default.

15. **PRIOR LIENS.** Default under the terms of any instrument secured by a lien to which this Deed of Trust is subordinate shall constitute default hereunder.

IF THE BLOCK TO THE LEFT MARGIN OF THIS SENTENCE IS MARKED AND/OR INITIALED THIS DEED OF TRUST IS GIVEN WHOLLY OR PARTLY TO SECURE FUTURE ADVANCES AND THE PROVISIONS OF THE FOLLOWING PARAGRAPH XX "FUTURE ADVANCES" APPLIES.

16. **FUTURE ADVANCES.** If checked, this Deed of Trust given wholly or partially for Secured Obligations which are future advances and/or future obligations that may be made of incurred by Grantor and/or any Obligor. The maximum principal amount which may be secured by this Deed of Trust at any one time is \_\_\_\_\_ DOLLARS (\$ \_\_\_\_\_). The period within which such future advances may be made and future obligations incurred is \_\_\_\_\_ ( ) years from the date of this Deed of Trust, or if this Deed of Trust is not dated, the date it is registered, but in no event shall Beneficiary be obligated to disburse any future loans, obligations or advances to the extent it is not obligated to do so by the terms of any Secured Obligation. The Secured Obligations secured hereby shall not be required to be evidenced by a "written instrument or notation" as described in N.C.G.S. §45-68(2), it being the intent of the parties that the requirements of N.C.G.S. §45-68(2) for a "written instrument or notation" for each advance shall not be applicable to obligations incurred under any Secured Obligation. The Secured Obligations will be advanced from time to time by Beneficiary in accordance with their terms, which are incorporated to this Deed of Trust by reference. From time to time, repayments on account of the Secured Obligations may be made and Beneficiary may thereafter make additional advances including re-advances of sums previously prepaid, to the extent provided in the Secured Obligations, and each and every advance now or subsequently made to Grantor or any Obligor on behalf of Grantor or any Obligor shall be deemed to be an advance made on account

of the Secured Obligations and shall be secured by this Deed of Trust unless otherwise specifically provided in any Secured Obligation or other document evidencing such advance.

17. **OTHER TERMS.** \_\_\_\_\_.

IN WITNESS WHEREOF, Grantor has duly executed this Deed of Trust, if an entity by its duly authorized representative.

\_\_\_\_\_  
Name:

\_\_\_\_\_  
**Entity Name**

\_\_\_\_\_  
Name:

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

Name:

Title:

\_\_\_\_\_  
Name:

\_\_\_\_\_  
Name:

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

Name:

Title:

STATE OF \_\_\_\_\_, COUNTY OF \_\_\_\_\_

I \_\_\_\_\_, a Notary of the above state and county, certify that the following person(s) personally appeared before me on the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_ each acknowledging to me that he or she signed the foregoing document, in the capacity represented and identified therein (if any): \_\_\_\_\_.

Affix Notary Seal/Stamp

\_\_\_\_\_  
Notary Public (Official Signature)

My commission expires: \_\_\_\_\_