

**Prepared By:**

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
Telephone Number: \_\_\_\_\_

**After Recording Return To:**

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

Space above this line for recorder's use only

## SOUTH DAKOTA DEED OF TRUST

THIS DEED OF TRUST (the "Deed") dated \_\_\_\_\_ (mm/dd/yyyy), is made by and between:

**Borrower:** \_\_\_\_\_ (Borrower Name(s)) of  
\_\_\_\_\_ (Address(es)),  
(hereinafter the "Borrower")

**Lender:** \_\_\_\_\_ (Lender Name) of  
\_\_\_\_\_ (Address),  
(hereinafter the "Lender")

**Trustee:** \_\_\_\_\_ (Trustee Name) of  
\_\_\_\_\_ (Address),  
(hereinafter the "Trustee"), of the \_\_\_\_\_ (Trust Name)

**Guarantor (Optional):** \_\_\_\_\_ (Guarantor Name) of  
\_\_\_\_\_ (Address),  
(hereinafter the "Guarantor")

WITNESSETH, THAT FOR AND IN CONSIDERATION OF the sum lent to the Borrower by the Lender, in the amount of \$\_\_\_\_\_ (the "Principal Amount") as evidenced by the promissory note (the "Note") dated \_\_\_\_\_ (mm/dd/yyyy), the receipt of which the Borrower does hereby acknowledge itself indebted, the Borrower IRREVOCABLY GRANTS, TRANSFERS, AND ASSIGNS to the TRUSTEE, the following described real property (the "Property"), located at \_\_\_\_\_

(Property Address) in the County of \_\_\_\_\_, State of South Dakota, with the following legal description:

*[WRITE LEGAL DESCRIPTION HERE OR ATTACH EXHIBIT A]*

TOGETHER WITH all the improvements now or hereafter erected on the Property, and all easements, appurtenances, and fixtures now or hereafter a part of the Property. All replacements and additions will also be covered by this Deed.

THE BORROWER COVENANTS that the Borrower is the legal owner of the estate hereby conveyed and has the right to grant and convey the Property and that the Property is unencumbered, except for encumbrances of record. The Borrower further warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

IN CONSIDERATION of promises and other good and valuable consideration and to protect the security of this Deed, the parties agree to the following provisions (the "Provisions"):

- 1. PROMISE TO PAY.** The Borrower, for value received, promises to pay to the Lender the Principal Amount, interest, and all fees and costs on the terms outlined in this Deed or in any amendment, extension, or renewal of the Deed and any additional amounts secured by this Deed on the terms elsewhere provided for such debts and liabilities.
- 2. INTEREST.** The Borrower agrees to pay the Principal Amount with interest before and after maturity and before and after default at the rate of \_\_\_\_\_ percent (the "Interest Rate").

The Interest Rate will be calculated from the date this Deed begins on \_\_\_\_\_ (mm/dd/yyyy) (the "Adjustment Date") and accrues until the whole of the Principal Amount is paid.

- 3. PAYMENT.** The Principal Amount with interest will be repaid in \_\_\_\_\_ (e.g., weekly, monthly, quarterly, etc.) installments of \$\_\_\_\_\_.

The balance, if any, of the Principal Amount and any interest thereon and any other moneys owed under this Deed will be due and payable on \_\_\_\_\_ (mm/dd/yyyy) (the "Due Date").

**4. PAYMENT INSTRUCTIONS.** The Borrower is required to make payments to the Lender under the following instructions: \_\_\_\_\_.

**5. PREPAYMENT.** When not in default, the Borrower:

- MAY Prepay. The Borrower can prepay without penalty all or a portion of the Principal Amount and interest earlier than it is due. Partial prepayment will not postpone the Due Date of any subsequent payment or change the payment amount unless the Lender otherwise agrees in writing. Prepayments will first be applied to the interest calculated at the Interest Rate, and second to the Principal Amount.

- May NOT Prepay.

**6. FUNDS FOR ESCROW ITEMS.** The Borrower will pay the Lender, on the day periodic payments are due, until the Principal Amount is paid in full, a sum (the "Funds") to pay for any:

- a. Taxes, assessments, or other items that can take priority over this Deed as a lien or encumbrance on the Property;
- b. Lease payments on the Property, if any; and
- c. Premiums for any and all insurance, including mortgage insurance required by the Lender. These items are called "Escrow Items."

The Borrower must notify the Lender of the amounts to be paid under this provision. If the Borrower is late on payments, the Lender can, at its discretion, pay for any and all past due payments for Escrow Items and the Borrower will be obligated to repay the Lender such amount.

**7. PAYMENT APPLICATION.** All payments paid by the Borrower and received by the Lender will first be applied in payment of the interest calculated at the Interest Rate, and second in payment of the Principal Amount. Such payments will be applied in the order in which they became due. However, if the Borrower defaults on payment, then the Lender will have the right to apply any payments received while in default as the Lender so chooses.

**8. ADDITIONAL CHARGES AND ENCUMBRANCES.** The Borrower must pay all taxes, assessments, charges, fines, and all other impositions attributable to the Property and all trusts, liens, and other encumbrances on the Property. To the extent that these items are Escrow Items, the Borrower will pay them in the manner provided in Section 6.

**9. RELEASE AND RECONVEYANCE.** Upon payment of all sums secured by this Deed, including the Principal Amount and interest, the Lender will request the Trustee to reconvey the Property and must surrender this Deed and the Note evidencing debt secured by this Deed to the Trustee. The Trustee must reconvey the Property without warranty to the

person or persons legally entitled to it. Such person or persons will pay any recordation costs. The Lender may charge such person or persons a fee for reconveying the Property, but only if the fee is paid to a third party (such as the Trustee) for services rendered and the charging of the fee is permitted under applicable law.

- 10. NO SALE WITHOUT CONSENT.** The Trustee will not sell, transfer, assign, or otherwise dispose of all or part of the Property or any interest in the Property without the Borrower's and Lender's written consent.
- 11. PROPERTY INSURANCE.** The Borrower must keep the improvements now existing or hereafter erected on the Property insured against loss by fire, hazards included within the term "extended coverage," and any other hazards including, but not limited to, earthquakes and floods, for which the Lender requires insurance. The insurance carrier providing the insurance will be chosen by the Borrower. However, the Lender retains the right to disapprove the Borrower's choice so long as the reason for disapproving is reasonable.
- 12. OCCUPANCY, MAINTENANCE, AND REPAIR.** The Borrower will occupy, establish, and use the Property as the Borrower's principal residence after the execution of this Deed. The Borrower will not allow the Property to become vacant without the written consent of the Lender. The Borrower will not destroy, damage, or impair the Property, allow the Property to deteriorate, or commit waste on the Property. Whether or not the Borrower is residing at the Property, the Borrower will maintain the Property in order to prevent the Property from deteriorating or decreasing in value due to its condition. Unless repair or restoration is not economically feasible, the Borrower will promptly make all necessary repairs, replacements, and improvements to avoid any further deterioration or damage. The Lender may, whenever necessary, make reasonable entries upon and inspections of the Property. If the Borrower neglects to maintain the Property in good condition or allows the Property to deteriorate resulting in decreased property value, the Lender will have the right to make such repairs and improvements as it considers necessary to maintain the Property.
- 13. HAZARDOUS SUBSTANCES.** The Borrower will not cause or permit the presence, use, disposal, storage, or release of any hazardous substances on the Property. Hazardous substances include pollutants, wastes, and those substances defined as toxic or hazardous substances by environmental law, as well as 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. Furthermore, the Borrower will not do, nor allow anyone else to do, anything affecting the Property involving any hazardous substances that would materially affect the value of the Property. The Borrower will promptly take all necessary remedial actions under federal, state, and local laws regarding hazardous substances.
- 14. GUARANTEE.** Each person or entity signing or joining in this Deed as a Guarantor, Covenantor, or Co-signer agrees to the following terms:

- a. The Guarantor covenants and agrees that all obligations and liability under this Deed will be joint and several. Additionally, where there is more than one Guarantor, each Guarantor will be jointly and severally liable to the other Guarantor and Borrower;
- b. The Guarantor is bound to fulfill the terms and conditions of this Deed, provided the Borrower, as principal debtor, fails to do so;
- c. The Guarantor guarantees full performance and release of all the Borrower's obligations under this Deed;
- d. If the Guarantor assumes the Borrower's obligations under this Deed, the Guarantor will also obtain all of the Borrower's rights and benefits under this Deed;
- e. The Guarantor must indemnify and hold harmless the Lender against all claims, damages, and payments, or loss which might arise or have arisen from the failure of the Borrower and/or Guarantor to pay the amounts owed under this Deed;
- f. The Lender will have the choice to proceed against the Guarantor before proceeding against the Borrower to enforce any obligations due under this Deed in the event of default. Furthermore, any enforcement against such obligations can take place before, after, or during any enforcement of the Borrowers debts and/or obligations under this Deed;
- g. The Lender can, without the consent or approval of the Guarantor, modify and/or amend the Interest Rate, the Principal Amount and any other term of the Deed or any obligation secured under this Deed. Furthermore, any amendment or modification of the Deed will not release or lessen the liability of the Guarantor;
- h. The Guarantor will be bound and subject to any and all changes, modifications, variations, and amendments made to this Deed, regardless of whether such changes were made with or without the consent or approval of the Guarantor;
- i. The Guarantor has read this Deed and is aware of and fully agrees with its terms and in particular, the terms of this Provision; and
- j. The Lender will serve notice to the Guarantor and any notice will be provided in the same manner as provided in the Notice provision as outlined in this Deed.

**15. DEFAULT.** The Borrower will be considered in default under the terms of this Deed if any of the following conditions are met:

- a. The Borrower fails to pay the sum of the Principal Amount, interest, or any other amounts due under this Deed.
- b. The Borrower fails to perform or comply with any of the terms and conditions or any obligations or responsibilities due under this Deed.
- c. The Borrower has given or made, at any time during the loan process, any materially false, misleading, or inaccurate information or statements to the Lender or any other party under this Deed in connection with the loan.
- d. If any action or proceeding, whether civil or criminal, is begun that, in the Lender's judgment, could result in forfeiture of the Property or other material impairment of the Lender's interest in the Property or rights under this Deed.

- e. If a lien is registered against the Property, or if default occurs under any other lien or encumbrance existing against the Property.
- f. The Borrower abandons or fails to occupy the Property.
- g. The Property or any material part of the Property is expropriated.

**16. ACCELERATION.** If at any time the Borrower should be in default under this Deed, the Lender must give notice to the Borrower. The notice must specify: (a) the default; (b) the required action to cure the default, as permitted by law; (c) a date, not less than 30 days from the date of the notice, by which the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Deed and sale of the Property. If the default is not curable or if the default is not cured on or before the date specified in the notice, the Lender at its option may require immediate payment in full of all sums, including the Principal Amount, interest, and all other amounts secured by this Deed. If the default is cured, the Deed will be reinstated. If the default is not cured, the Lender may invoke the power of sale and begin foreclosure proceedings.

The Lender will at all times retain the right to require immediate payment in full in the event of default. Any forbearance on the part of the Lender upon default, which includes but is not limited to acceptance of late payment, acceptance of payment from third parties, or acceptance of payments less than the amount due, will not constitute a waiver to enforce acceleration on default.

**17. PROTECTION OF LENDER'S INTEREST.** If at any time the Borrower fails to perform the covenants and agreements under this Deed, or if there is a legal proceeding that significantly affects the Lender's interest in the Property, or if the Borrower has abandoned the Property, then the Lender may do and pay for whatever is reasonable or appropriate to protect the Lender's interest in the Property and rights under this Deed, which includes, but is not limited to:

- a. Paying any sums secured by a lien which has priority over this Deed;
- b. Appearing in court;
- c. Paying reasonable attorneys' fees to protect its interest in the Property and/or rights under this Deed; and
- d. Paying for reasonable costs to repair and maintain the Property.

The Lender retains their right to exercise action under this provision at all times. It is agreed that the Lender will not incur any liability for not taking any or all actions to perform such tasks. Furthermore, any amounts paid by the Lender will become additional debt of the Borrower secured by this Deed.

**18. POWER OF SALE.** If at any time the Borrower is in default under this Deed, the Lender will have the right and authority to foreclose and force the sale of the Property without any judicial proceeding. Any delay in the exercising of this right will not constitute a waiver to exercise this right at a later date should the Borrower remain in default or subsequently default again in the future.

**19. REMEDIES.** The Lender will have the right to invoke all remedies permitted under applicable law, whether or not such remedies are expressly granted in this Deed, including but not limited to any foreclosure proceedings.

If the Lender invokes the power of sale, the Trustee will execute a written notice of the occurrence of an event of default and of the Lender's decision to sell the Property. The Lender or Trustee will mail copies of the notice to the Borrower and Guarantor and will also give public notice of sale in the manner provided by applicable law. After the time required by applicable law, the Trustee will sell the Property at a public auction to the highest bidder at the time and place and under the terms designated by the Trustee in the notice of sale. The Trustee may postpone sale of the Property by public announcement at the time and place of any previously scheduled sale. Furthermore, the Lender or its designee may purchase the Property at any sale.

**20. GOVERNING LAW.** This Deed is governed by the laws of the state of South Dakota.

**21. SEVERABILITY.** This Deed shall remain in effect in the event that any of the Provisions under this Deed, or the application thereof, are deemed unenforceable or invalid by a court of relevant jurisdiction. In such event, the remainder of this Deed shall continue in full force as so limited, unless a further court ruling declares any of the remaining Provisions unenforceable or invalid.

**22. JOINT SIGNATURES.** If the Borrower is more than one person or legal entity, each Borrower who signs this Deed will be jointly and severally bound to comply with all the obligations and liabilities of the other Borrower(s).

**23. SUBSTITUTE TRUSTEE.** The Lender may, at its option, from time to time appoint a successor trustee by an instrument executed and acknowledged by Lender and recorded in the office of the Recorder of the county in which the property is located. The instrument will contain the name of the original Lender, Trustee, and Borrower, the book and page where this Deed is recorded, and the name and address of the successor Trustee. Without conveyance of the Property, the successor Trustee will succeed to all the title, powers, and duties of the Trustee.

**24. NOTICE.** All notice given by either party in connection with this Deed must be in writing. Delivery of notice will be considered sufficient when mailed by first class or certified mail to the address of the recipient. The recipient's address will be the property address as stated

under this Deed unless another address has been designated. If there is a change of address by any party, that party must promptly notify all parties under this Deed of the change of address. Any notice will be considered effective on the same day that it was sent, unless the day falls on a national holiday, Saturday, or Sunday, in which case the next business day will be considered as the day of receipt.

**25. SIGNATURES.** In witness whereof, this Deed has been executed by the Borrower and Guarantor in the manner prescribed by law.

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**Borrower's Signature**

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Borrower's Name

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Street Address

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City, State & ZIP

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**Borrower's Signature**

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Borrower's Name

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Street Address

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City, State & ZIP

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**Guarantor's Signature**

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Guarantor's Name

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Street Address

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City, State & ZIP

In Witness Whereof,

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**Witness's Signature**

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Witness's Name

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Street Address

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City, State & ZIP



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

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that \_\_\_\_\_ whose names are signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, they executed the same voluntarily on the day the same bears date.

Given under my hand this \_\_\_\_\_ (mm/dd/yyyy).

\_\_\_\_\_  
**Notary Public Signature**

My Commission Expires: \_\_\_\_\_