



## *Program Bulletin*

January 30, 2001

Program Bulletin #2001-04

To: CHFA Approved Lenders and Servicers

### **ACCEPTANCE OF MORTGAGE ELECTRONIC REGISTRATION SYSTEM (MERS)**

At the request of many Lenders, CHFA has agreed to accept for purchase loans with Deeds of Trust for which Mortgage Electronic Registration Systems, Inc. ("MERS") has been designated beneficiary (as nominee). Effective February 1, 2001, ***loans originated on FHA, VA or CHFA approved MERS Deed of Trust Documents are eligible for purchase.*** Once a Lender begins originating CHFA loans with MERS as nominee, all loans (including second Deeds of Trust, i. e., CHFA Housing Assistance Program (CHAP), and California Homebuyer's Downpayment Assistance Program (CHDAP)) originated thereafter shall be registered with MERS.

Under this procedure, title companies may certify copies of the proposed recording of CHFA and MERS approved FHA, VA or CHFA conventional or subordinate loans (CHAP or CHDAP) MERS Deeds of Trust identified with the 18-digit MERS Mortgage Identification Number (MIN). Deeds of Trust (other than FHA or VA) shall bear CHFA's name on the form, located on the front bottom left portion.

### **CHFA Deed of Trust Forms for use with MERS as Beneficiary**

CHFA's Deed of Trust (TD) forms may be accessed from the Internet site located at: [www.chfa.ca.gov](http://www.chfa.ca.gov), under "Quick Access", select "Bulletins, Forms", select Homeownership Program Forms, and then select either the CHFA Conventional Loan Documents (if you are not using MERS) or the Mortgage Electronic Registration Systems, Inc. (MERS) Documents for the specific applicable forms.

- 1<sup>st</sup> TD: MERS Conventional - Deed of Trust (for use with Conventional & Rural Housing Service (RHS))
2. 2<sup>nd</sup> TD: MERS CHAP Deed of Trust (for use with CHFA Housing Assistance Program)

3. 2<sup>nd</sup> TD: MERS CHDAP Deed of Trust (for use with California Homebuyer's Downpayment Assistance Program)
4. Assignment: MERS Assignment of Deed of Trust (for use on non-MERS CHFA Deeds of Trust)

### **FHA and VA Deed of Trust Forms for use with MERS as Beneficiary**

Use only approved MERS Deed of Trust documents for FHA and VA loans. Forms are available from the following sources: 1) VMP Mortgage Forms 1-(800) 512-7291, 2) The Compliance Source, Inc. [www.compliancesource.com](http://www.compliancesource.com) 3) Greatland 1-(800) 530-9393, and 4) "Pierson and Patterson 1-(972) 720-3263".

- MERS FHA Deed of Trust: "FHA California Security Instrument"

Note: Place the MERS MIN directly below the box labeled FHA Case No. as "MIN:   (18-digit MIN)".

- MERS VA Deed of Trust

The originating Lender shall electronically register the loan with MERS naming California Housing Finance Agency as beneficiary *prior to delivery for purchase*.

Other than the modifications discussed above, any modifications to the Deed of Trust *require CHFA's prior approval*.

By delivering a title company certified copy of a MERS-registered Deed of Trust for purchase to CHFA, the Lender warrants that MERS is the beneficiary of record (either by being named in the Deed of Trust as nominee for the Lender or by being named as assignee in a recorded Assignment of the Deed of Trust [CHFA approved MERS Assignment Form]) and has ***properly registered the loan electronically under CHFA's MERS Org ID: 1000645.***

### **Changes to CHFA's Mortgage Submission Voucher Part II**

*The Lender shall report the MERS 18-digit MIN where indicated, on the MSV Part II, revised 5/11/00, data entry form.*

### **Mandatory MERS Program Effective January 1, 2002**

**All loans** submitted to CHFA for purchase (including first, second and other junior lien loans bearing a recording date on or after January 1, 2002 shall be registered with MERS. The following represents two methods for Lender's compliance with this requirement:

1. Be or become a MERS member.
2. Service-release loans to a CHFA Approved MERS Servicer. The originating Lender shall complete the *CHFA approved Assignment form* to MERS, provide the Assignment to the receiving Servicer who would then assign a MERS MIN and record the document. The Servicer would provide the originating Lender with a title company certified copy of the Assignment making the loan eligible for CHFA's purchase.

### **Servicing CHFA Loans**

#### **Service Release to Servicers, Servicing via Lender's Sub-Servicer and Private Label Servicing**

- Effective February 1, 2001, prior to the transfer and servicing of any MERS loan, the receiving Servicer shall be and remain a MERS member.
- For all loans originated on or after January 1, 2002, where a Servicer receives a loan, which has not been recorded and registered with MERS, the receiving Servicer shall enter a MIN in the blank space provided and record the CHFA approved MERS Assignment of Deed of Trust form and register the loan with MERS. The beneficial rights on the MERS System are to be transferred naming California Housing Finance Agency (MERS Org ID 1000645) as the current investor, prior to CHFA's purchase. Servicer shall also comply with CHFA's Servicing Guide, Section 1, page 17, P-Servicing Rights Assignment, to provide the Servicing Transfer Report (Exhibit H in the Servicer's Guide) to be completed by each Servicer by the fifth (5<sup>th</sup>) working day of each month.
- Upon the transfer of Servicing Rights, the transferring Servicer shall pay all costs associated with the transfer, including, but not limited to, any fees charged by MERS.

#### **Pre-existing Loans Originated and Sold to CHFA with MERS as Nominee**

Lenders that have delivered MERS-registered loans to CHFA prior to this Bulletin shall transfer the beneficial rights on the MERS System to California Housing Finance Agency (MERS Org ID: 1000645) as the current investor, but not later than ninety (90) days from the date of this bulletin.

In addition, within ninety (90) days of CHFA's purchase of the loan, Lender shall provide CHFA (Attn: Portfolio Manager) with a listing of those loans which have been previously assigned to CHFA through MERS and this list shall include the following:

- a) Servicer's Loan Number
- b) CHFA's Permanent Loan Number
- c) MERS 18-digit MIN
- d) Borrower Name(s)
- e) Property Address

### **Foreclosure Procedures for MERS Registered Loans**

Foreclosures shall be commenced in the name of MERS. Until the time of sale, the foreclosure is handled in the same manner as non-MERS foreclosures. At the time of sale, if the property reverts, the Trustee's Deed Upon Sale will follow a different procedure: Since MERS acts as nominee for the true beneficiary, it is important that the Trustee's Deed Upon Sale be made in the name of the true beneficiary, California Housing Finance Agency, and not MERS. The Trustee's Deed Upon Sale shall be recorded in the name of California Housing Finance Agency. Title companies have indicated that they will insure subsequent title when these procedures are followed.

### **Bankruptcy Procedures**

Should a borrower file for protection in bankruptcy court, all filings and appearances shall be in California Housing Finance Agency's name, and otherwise comply with the requirements of the CHFA Servicer's Guide. It is recommended that Servicers that have not already done so, develop standard declarations explaining MERS, to be filed in court in conjunction with motions for relief and other motions. Servicers are advised to promptly notify CHFA and MERS of any problems encountered following this procedure.

### **MERS' Interest in the Deed of Trust**

MERS will have no beneficial interest in the Deed of Trust even when it is named as the nominee for the beneficiary in the Deed of Trust. All actions MERS takes with respect to a Deed of Trust will be based only on instructions initiated by the originating Lender, the Servicer or CHFA.

### **Indemnity for MERS Errors**

Servicers and Lenders shall be responsible to reimburse CHFA, or repurchase the loan, in accordance with the Mortgage Purchase and Servicing Agreement (MP&SA) or Servicing Agreement (SA) in the event CHFA suffers any loss due to errors within MERS. CHFA will assist the Lender or Servicer in any endeavor to

seek indemnity from MERS, including assigning to the Lender or Servicer, CHFA's indemnity rights against MERS.

### **Conflict Between Agreements**

Where a conflict exists between MERS procedures and requirements and the procedures and requirements set out in CHFA's MP&SA or SA, including all CHFA Guides and Bulletins incorporated therein, CHFA requirements shall prevail. Servicers shall promptly advise CHFA in writing of any conflicts between MERS and CHFA requirements that arise subsequent to the date of this bulletin.

### **Effective Date of Bulletin**

This bulletin amends CHFA's Servicer's Guide effective February 1, 2001.

### **MERS CONTACT**

Lenders and Servicers not currently members of MERS can obtain information through the MERS website at [www.mersinc.org](http://www.mersinc.org), or by calling Robert S. Pathman, Western Region Director, MERS at 1-(818)932-9800, corporate number 1-(800) 646-MERS.

### **CHFA CONTACT**

Questions by Servicers regarding CHFA's policy on the MERS program should be directed to CHFA, Single Family Programs, 1121 L Street, 7<sup>th</sup> Floor, Sacramento, CA 95814; by phone 1-(916) 324-8088; or by fax 1-(916) 324-6589. You may access and print copies of all CHFA forms from our web site at the following address: [www.chfa.ca.gov](http://www.chfa.ca.gov).

WHEN RECORDED RETURN TO:

(For Recorder's Use Only)

NOTE TO BORROWER:  
THIS DEED OF TRUST CONTAINS  
PROVISIONS RESTRICTING ASSUMPTIONS

DEED OF TRUST

Loan No. \_\_\_\_\_  
Min No. \_\_\_\_\_

DEFINITIONS

(A) "Lender" is \_\_\_\_\_ Lender is a \_\_\_\_\_ organized and existing under the laws of \_\_\_\_\_. Lender's address is \_\_\_\_\_.

The word "Lender" includes the present Lender, or any future owner or holder, including pledgee, of the indebtedness secured hereby.

(B) "MERS" is Mortgage Electronic Registration Systems, Inc. MERS is a separate corporation that is acting solely as a nominee for Lender and Lender's successors and assigns. MERS is the beneficiary under this Deed of Trust. MERS is organized and existing under the laws of Delaware, and has an address and telephone number of P.O. Box 2026, Flint, MI 48501-2026, tel. (888) 679-MERS.

This Deed of Trust is made on \_\_\_\_\_, \_\_\_\_\_, by \_\_\_\_\_ (the "Borrower") to \_\_\_\_\_ (the "Trustee"), whose business address is \_\_\_\_\_ in favor of MERS (solely as nominee for Lender and Lender's successors and assigns) and the successors and assigns of MERS.

1. BORROWER, IN CONSIDERATION OF THE INDEBTEDNESS HEREIN RECITED AND THE TRUST HEREIN CREATED, HEREBY IRREVOCABLY GRANTS, TRANSFERS AND ASSIGNS to Trustee in trust, with power of sale and right of entry and possession, all of Borrower's right, title and interest now held or hereafter acquired in and to the following: (a) all of the certain real property (the "Property") located in the County of \_\_\_\_\_, State of California, described below or in Exhibit "A" attached hereto and made a part hereof by this reference:

[This property is/is not (strike inappropriate reference) in a "Targeted Area" as described in the California Housing Finance Agency Program Manual at the date of recording this Deed of Trust]

Which property address is \_\_\_\_\_ which is incorporated herein by this reference; and (b) all buildings, improvements and fixtures now or hereafter erected thereon, and all

appurtenances, easements, and articles of property now or hereafter affixed to, placed upon or used in connection with the Property, together with all additions to, substitutions for, changes in or replacements of the whole or any part of said articles of property (all of which real and personal property are sometimes referred to as the "Property"); all of which are hereby pledged and assigned, transferred, and set over unto Trustee, and for purposes of this Deed of Trust declared to be part of the realty; provided, however, that furniture and other personal property of Borrower now or hereafter situated on said real property are not intended to be included as part of the Property. Borrower understands and agrees that MERS holds only legal title to the interests granted by Borrower in this Deed of Trust, but, if necessary to comply with law or custom, MERS (as nominee for Lender and Lender's successors and assigns) has the right to exercise any and all of those interests, including, but not limited to, the right to foreclose and sell the property, and to take any action required of Lender including, but not limited to, releasing and canceling this Deed of Trust.

TO SECURE to Lender the repayment of the indebtedness evidenced by Borrower's Promissory Note dated \_\_\_\_\_, \_\_\_\_\_, ("Note"), in the principal sum of \_\_\_\_\_ Dollars (\$\_\_\_\_\_) with interest thereon, providing for monthly installments of principal and interest with the balance of the indebtedness, if not sooner paid, due and payable on \_\_\_\_\_, 20\_\_\_\_; the payment of all other sums, with interest thereon, advanced in accordance herewith to protect the security of this Deed of Trust; and the performance of the covenants and agreements of Borrower herein contained.

**BORROWER AND LENDER COVENANT AND AGREE AS FOLLOWS:**

1. *Borrower's Estate.* That Borrower is lawfully seized of the estate hereby conveyed and has the right to grant and convey the property, that the property is unencumbered, and that Borrower will warrant and defend generally the title to the Property against all claims and demands, subject to any declarations, easements or restrictions listed in a schedule of exceptions to coverage in any title insurance policy insuring Lender's interest in the Property.

2. *Payment of Principal and Interest.* Borrower will promptly pay when due the principal of and interest on the indebtedness evidenced by the Note and late charges as provided by the Note.

3. *Tax Covenants.* Borrower is aware that the Note bears an interest rate below market interest rates because Lender intends to transfer the loan evidenced by the Note to the California Housing Finance Agency, a public instrumentality and political subdivision of the State of California ("Agency"). The Agency's acquisition of said loan and Note will be with funds from the sale of tax exempt municipal securities. Therefore, upon transfer of the Note to the Agency, the Note, the indebtedness evidenced thereby, the Property and this Deed of Trust shall become subject to the applicable Internal Revenue Code Sections ("Tax Code").

Borrower also understands that the Agency and the Tax Code require that Borrowers of funds originated by the sale of said tax exempt municipal securities, and the property securing said loans, meet certain specific criteria. Borrower acknowledges that Lender has explained the requirements of the Tax Code and the requirements of the Agency, and that Borrower has made certain representations regarding Borrower's, and the Property's compliance therewith. (See paragraph number 21 requirements which are also applicable to Borrower.) Borrower covenants that said representations were and are true and correct. UPON DISCOVERY BY LENDER OR THE AGENCY OF ANY MISSTATEMENT MADE BY BORROWER PURSUANT TO SAID REPRESENTATIONS, BORROWER MAY BE SUBJECT TO THE FOLLOWING ACTIONS:

(A) Acceleration of the indebtedness and the exercise of the power of sale as stated in paragraph 22 of this Deed of Trust; or

(B) Upon the sale or other disposition of the Note by the Agency, the interest on the unpaid principal balance may be adjusted to the then current market rate permitted by law. Such interest rate adjustment will be effective immediately upon the sale or disposition of the Note by the Agency.

4. *Funds for Taxes and Insurance.* Subject to applicable law, Lender shall establish an impound account ("Funds") on behalf of Borrower to pay taxes and assessments (which may attain priority over this Deed of Trust), hazard insurance premiums, and mortgage insurance premiums (hereinafter collectively referred to as "Charges"). This account will be funded by Borrower with monthly payments due to Lender on the same day the monthly installment of principal and interest is payable under the Note, until such Note is paid in full. The monthly impound amount shall be the sum equal to one-twelfth of the estimated total annual amounts anticipated to be payable for the above listed charges. The Lender from time to time may adjust such monthly impound amounts due on the basis of actual assessments and bills, and reasonable estimates thereof.

The funds shall be held in an institution the deposits or accounts of which are insured by the Federal Deposit Insurance Corporation ("FDIC"). Lender shall apply the Funds to pay said taxes, assessments, and insurance premiums. Lender may not charge Borrower for so holding and applying the Funds, analyzing said account or verifying and compiling said assessments and bills. Interest on Funds as required by law will be paid to Borrower.

On an annual basis (i.e. the "Account Computation Year"), Lender shall analyze the funds to (i) determine the appropriate target balance (i.e. the estimated month end balance in the impound account that is sufficient to cover the remaining anticipated disbursements from impound Account in the Computation Year), (ii) compute the Borrower's monthly payments for the next Account Computation Year which will be necessary to cover estimated charges, and (iii) determine whether shortages, deficiencies or surpluses exist.

An annual impound account statement shall be provided to the Borrower within 30 days of completion of the analysis of the Funds for the Account Computation Year. If it is determined that there is a surplus greater than or equal to \$50, and so long as Borrower is not in arrears on any payment due to Lender, the surplus amount shall be refunded to Borrower within 30 days. If it is determined that there is a shortage or deficiency of Funds in an amount less than one month's impound payment, the Borrower shall pay to the Lender the amount necessary to make up the deficiency within 30 days from the date a notice is mailed by the Lender to the Borrower requesting payment thereof. If the shortage or deficiency is an amount equal to or in excess of one month's impound payment, the Borrower shall repay the deficient amount in equal monthly payments over the next 12 month period.

The Funds are pledged as additional security for the sums secured by this Deed of Trust. Upon payment in full of all sums secured by this Deed of Trust, Lender will promptly refund to Borrower any funds held by Lender. If the property is sold or the property is otherwise acquired by the Lender, Lender will apply, no later than immediately prior to the sale of the Property or its acquisition by Lender, any Funds held by Lender at the time of application, as a credit against sums secured by this Deed of Trust.

5. *Application of Payments.* Unless applicable law provides otherwise, all payments received by Lender under the Note and payments of Funds will be applied by Lender first in payment of taxes, assessments and insurance premiums, then to interest payable on the Note, and then to the principal of the Note.

6. *Junior Encumbrances.* Any subsequent encumbrancer of the Property is hereby notified that upon exercise of any power of sale or foreclosure by such encumbrancer, such encumbrancer shall take title to the Property subject to this Deed of Trust, and more specifically, subject to paragraph 21 of this Deed of Trust requiring that all successors in interest to Borrower (including successors in interest through involuntary sale) meet certain eligibility requirements of the Agency.

7. *Charges; Lien.* Borrower will pay all taxes, assessments and other charges, fines and impositions attributable to the Property which may attain a priority over this Deed of Trust, in the manner provided above or, if not required to be paid in such manner, by Borrower making payment, when due, directly to the payee thereof. Borrower will promptly furnish to Lender all notices of amounts due under this paragraph, and in the event Borrower makes payment directly. Borrower will promptly furnish to Lender receipts evidencing such payments. Borrower will promptly discharge any Lien which has priority over this Deed of Trust; provided, that Borrower will not be required to discharge any such lien so long as Borrower will agree in writing to the payment of the obligation secured by such lien in a manner acceptable to Lender, or will in good faith contest such lien by, or defend enforcement of such lien in, legal proceedings which operated to prevent the enforcement of the lien or forfeiture of the Property or any part thereof.

8. *Hazard Insurance.* Borrower will keep the improvements now existing or hereafter erected on the Property Insured in such amounts and for such periods as Lender may require, which amounts shall be the greater of (1) the outstanding principal balance of the Note, (2) the amount required by the mortgage guaranty insurance carrier, (3) the amount, in Lender's determination, necessary to prevent Borrower from becoming a co-insurer, or (4) the amount of the replacement cost of the Property.

The insurance carrier providing this insurance shall be licensed to do business in the State of California and be chosen by Borrower subject to approval by Lender; provided, that such approval will not be unreasonably withheld. All premiums on insurance policies will be paid in the manner provided in paragraph 4 above.

All insurance policies and renewals thereof will be in a form acceptable to Lender and will include a standard mortgage clause with standard mortgagee loss payee endorsement e.g. number 438BFU in favor of and in a form acceptable to Lender. Lender will have the right to hold the policies and renewals thereof, and Borrower will promptly furnish to Lender all



renewal notices and all receipts of paid premiums. In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower.

Unless Lender and Borrower otherwise agree in writing, insurance proceeds will be applied to restoration or repair of the Property damaged, provided such restoration or repair is economically feasible and the security of this Deed of Trust is not thereby impaired. If such restoration or repair is not economically feasible or if the security of this Deed of Trust would be impaired, the insurance proceeds shall be applied to the sums secured by this Deed of Trust, with the excess, if any, paid to Borrower. If the Property is abandoned by Borrower, or if Borrower fails to respond to Lender within thirty (30) days from the date notice is mailed by Lender to Borrower that the insurance carrier offers to settle a claim for insurance benefits, Lender is authorized to collect and apply the insurance proceeds at Lender's option either to restoration or repair of the Property or to the sums secured by this Deed of Trust.

Unless Lender and Borrower otherwise agree in writing, any such application of proceeds to principal will not extend or postpone the due date of the monthly installments referred to above or change the amount of such installments. If the Property is acquired by Lender, all right, title and interest of Borrower in and to any insurance policies and in and to the proceeds thereof resulting from damage to the Property prior to the sale or acquisition will pass to Lender to the extent of the sums secured by this Deed of Trust immediately prior to such sale or acquisition.

9. *Preservation and Maintenance of Property, Condominiums; Planned Unit Developments.* Borrower will keep the Property in good repair and will not commit waste or permit impairment or deterioration of the Property. If this Deed of trust is on a unit in a condominium or a planned unit development, Borrower will perform all of Borrower's obligations under the declaration or covenants creating or governing the condominium or planned unit development, the by-laws and regulations of the condominium or planned unit development, and constituent documents. Borrower will not, without Lender's prior written consent, agree to the abandonment or termination of the condominium or planned unit development, any change in the percentage interest of owners in the common areas and facilities of the condominium or planned unit development, or the termination of professional management, and assumption of self-management of the condominium or planned unit development. If a condominium or planned unit development rider is executed by Borrower and recorded together with this Deed of Trust, the covenants and agreements of such rider are incorporated herein by this reference.

10. *Protection of Lender's Security.* If Borrower fails to perform the covenants and agreements contained in this Deed of Trust, or if any action or proceeding is commenced which materially affects Lender's interest in the Property, including, but not limited to, eminent domain, insolvency, code enforcement, or arrangements or proceedings involving bankruptcy or decedent, then Lender at Lender's option, upon notice to Borrower, may make such appearances, disburse such sums and take such action as is necessary to protect Lender's interest, including, but not limited to, disbursement of reasonable attorney's fees and entry upon the Property to make repairs.

Any amounts disbursed by Lender pursuant to this paragraph, with interest thereon, will become additional indebtedness of Borrower secured by this Deed of Trust. Unless Borrower and Lender agree to other terms of payment, such amounts will be payable upon notice from Lender to Borrower requesting payment thereof, and will bear interest from the date of disbursement at the rate payable from time to time on outstanding principal under the Note unless payment of interest at such rate would be contrary to applicable law, in which event such amounts will bear interest at the highest rate permissible under applicable law. Nothing contained in this paragraph will require Lender to incur any expense or take action hereunder.

11. *Inspection.* Lender may make or cause to be made reasonable entries upon and inspections of the Property, provided that Lender will give Borrower reasonable notice of inspection.

12. *Condemnation.* The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of the Property, or part thereof, or for conveyance in lieu of condemnation, are hereby assigned and shall be paid to Lender.

In the event of a total taking of the Property, the proceeds will be applied to the sums secured by this Deed of Trust, with the excess, if any, paid to the Borrower. In the event of a partial taking of the Property, unless Borrower and Lender otherwise agree in writing, there will be applied to the sums secured by this Deed of Trust such proportion of the proceeds as is equal to that proportion which the amount of the sums secured by this Deed of Trust immediately prior to the date of taking bears to the fair market value of the Property immediately prior to the date of taking, with the balance of the proceeds paid to Borrower.

If the Property is abandoned by Borrower, or if, after notice by Lender to Borrower that the condemnor offers to make an award or settle a claim for damages, Borrower fails to respond to Lender within thirty (30) days after the date such notice is

mailed, Lender is authorized to collect and apply the proceeds, at Lender's option, either to restoration or repair of the Property or to the sums secured by this Deed of Trust.

Unless Lender and Borrower otherwise agree in writing, any such application of proceeds to principal will not extend or postpone the due date of the monthly installments referred to the above or change the amount of such installments.

13. *Forbearance by Lender Not a Waiver.* Any forbearance by Lender in exercising any right or remedy will not be a waiver of the exercise of any such right or remedy. Neither the acceptance of a payment after knowledge of a Borrower default, nor the procurement of insurance or the payment of taxes or other liens or charges by Lender will be a waiver of Lender's right to accelerate the maturity of the indebtedness secured by this Deed of Trust.

14. *Remedies Cumulative.* All remedies provided in this Deed of Trust are distinct and cumulative to any other right or remedy under this Deed of Trust or afforded by law or equity, and may be exercised concurrently, independently or successively.

15. *Successors and Assigns Bound.* The covenants and agreements herein contained shall bind, and the rights hereunder shall inure to, the respective successors and assigns of Lender and Borrower subject to the provisions of this Deed of Trust.

16. *Joint and Several Liability.* All covenants and agreements of Borrower shall be joint and several.

17. *Notice.* Except for any notice required under applicable law to be given in another manner, (a) any notice to Borrower provided for in this Deed of Trust will be given by certified mail, addressed to Borrower at the Property address or such other address as Borrower may designate by notice to Lender as provided herein, and (b) any notice to Lender will be given by certified mail, return receipt requested, to Lender's address stated above or to such other address as Lender may designate by notice to Borrower as provided above.

18. *Governing Law.* This Deed of Trust shall be governed by the laws of the State of California.

19. *Severability.* In the event that any provision or clause of this Deed of Trust or the Note conflicts with applicable law, such conflict will not affect other provisions of this Deed of Trust or the Note which can be given effect without the conflicting provision, and to this end the provisions of the Deed of Trust and the Note are declared to be severable.

20. *Captions.* The captions and headings in this Deed of Trust are for convenience only and are not to be used to interpret or define the provisions hereof.

21. *Transfer of Property; Assumptions.* The PROPERTY WILL NOT BE TRANSFERABLE WITHOUT WRITTEN APPROVAL OF THE AGENCY.

Wherein Agency administered Funds continued to be used in financing the purchase of said property, "Transfer" means any sale, assignment or transfer, voluntary or involuntary, or by operation of Law, of any interest in this Property, including but not limited to a fee simple interest, a joint tenancy interest, a life estate, leasehold interest, or an interest evidenced by a land contract by which possession of the Property is transferred and Borrower retains title, whether or not any such transfer is made subject to this Deed of Trust. Any such transfer without the Agency's written approval is a "Prohibited Transfer".

The Agency's approval will not be given unless Borrower's successor(s) in interest ("Purchaser") meets all of the following conditions:

- (a) Purchaser occupies the residence at the Property address as Purchaser's principal place of residence within sixty (60) days after the date of transfer, and continues to so occupy the Property until the Note is paid in full or purchaser properly transfers to a successor in interest meeting all of the requirements of the Tax Code, and requirements of the Agency;
- (b) Purchaser has not had an ownership interest in a principal residence at any time during the three years preceding the date of transfer unless at the time of transfer the Agency gives written approval that the Property is in a "Targeted Area" or this Deed of Trust indicates the Property was in a "Targeted Area" at the time of recording this Deed of Trust;

- (c) Purchaser has a household income within the income limits established at the time of transfer.
- (d) Purchaser has purchased the Property at a purchase price within the price limits established.
- (e) Purchaser's indebtedness is eligible for mortgage guaranty insurance covering a loss of up to fifty percent (50%) of the outstanding principal amount of the Note, issued by an issuer licensed to do business in the State of California, and approved by the Agency;
- (f) Purchaser meets all other conditions applicable to the Agency's financing in effect at the time of transfer including, but not limited to, the Agency's loan underwriting standards; and
- (g) Purchaser meets the conditions of the Tax Code and regulations thereunder, both as amended from time to time.

If written approval of the Agency is not given for any transfer of the Property, the transfer will be a "Prohibited Transfer" and Lender may, at Lender's option, declare all the sums secured by this Deed of Trust to be immediately due and payable. Lender will exercise this option by noticing Borrower of Lender's decision pursuant to paragraph 17 above. The notice must provide a period of not less than thirty (30) days from the date the notice is mailed within which Borrower may pay the amounts due or cure the Prohibited Transfer by transferring to a Purchaser meeting the above stated conditions. If Borrower fails to cure the Prohibited Transfer or pay the amounts due within said period Lender may then invoke any remedies permitted by this Deed of Trust or California law, including, but not limited to, the exercise of the power of sale as described in this Deed of Trust.

22. *Acceleration; Remedies.* Except as provided in paragraph 21 hereof, upon Borrower's breach of any covenant or agreement of Borrower in this Deed of Trust, including but not limited to the covenants to pay when due any sums secured by this Deed of Trust, and the covenants as to the truth of representations made by Borrower found in paragraph 3 above, Lender, prior to acceleration, will mail notice to Borrower specifying: (1) the breach; (2) the action required to cure such breach; (3) a date, not less than thirty (30) days from the date the notice is mailed to Borrower, by which such breach is to be cured; and (4) that failure to cure such breach on or before the date specified in the notice may result in acceleration of the sums secured by this Deed of Trust and sale of this Property. The notice will also inform Borrower of Borrower's right to reinstate after acceleration and the right to bring a court action to assert the nonexistence of default or any other defense of Borrower to acceleration and sale. If the breach is not cured on or before the date specified in the notice, Lender at Lender's option may declare all of the sums secured by this Deed of Trust to be immediately due and payable without further demand and may invoke the power of sale and any other remedies permitted by California law. Lender will be entitled to collect all reasonable costs and expenses incurred in pursuing the remedies provided in this paragraph, including, but not limited to, reasonable attorney's fees. If Lender invokes the power of sale, Lender will do so pursuant to the provisions for notice of sale and sale found at California Civil Code Sections 2924, et. Seq., as amended from time to time.

IF LENDER EXERCISES THE POWER OF SALE, LENDER COVENANTS THAT ANY PURCHASER THEREUNDER SHALL MEET THE CONDITIONS LISTED IN PARAGRAPH 21 FOR BORROWER'S SUCCESSORS IN INTEREST.

23. *Borrower's Right to Reinstate.* Notwithstanding Lender's acceleration of the sums secured by this Deed of Trust, Borrower will have the right to have any proceedings begun by Lender to enforce this Deed of Trust discontinued at any time prior to five (5) days before the sale of the Property pursuant to the power of sale contained in this Deed of Trust or at any time prior to entry of the judgement enforcing this Deed of Trust if: (a) Borrower pays Lender all sums which would be then due under this Deed of Trust, and the Note, had no acceleration occurred; (b) Borrower cures all breaches of any other covenants or agreements of Borrower contained in this Deed of Trust; (c) Borrower pays all reasonable expenses incurred by Lender and Trustee in enforcing the covenants and agreements of Borrower contained in this Deed of Trust, and in enforcing Lender's and Trustee's remedies including, but not limited to, reasonable attorney's fees; and (d) Borrower takes such action as Lender may reasonably require to assure that the lien of this Deed of Trust, Lender's interest in the Property and Borrower's obligation to pay the sums secured by this Deed of Trust shall continue unimpaired. Upon such payment and cure by Borrower, this Deed of Trust and the obligations secured hereby will remain in full force and effect as if no acceleration had occurred.

24. *Reconveyance.* Upon payment of all sums secured by this Deed of Trust, Lender will request Trustee to reconvey the Property and will surrender this Deed of Trust and the Note evidencing the indebtedness secured by this Deed of Trust to Trustee. Trustee shall reconvey the Property without warranty and without charge to the person or persons legally entitled thereto. Such person or persons will pay all costs of recordation, if any.

25. *Substitute Trustee.* Lender, at Lender's option, may from time to time remove Trustee and appoint a successor trustee to any Trustee appointed hereunder. Without conveyance of the Property, the successor trustee will succeed to all the title, power and duties conferred upon the Trustee herein and by applicable law.

26. *Request for Notice.* Borrower requests that copies of the notice of default and notice of sale be sent to Borrower's address which is the Property address.

IN WITNESS WHEREOF, BORROWER HAS EXECUTED THIS DEED OF TRUST.

\_\_\_\_\_  
Borrower

\_\_\_\_\_  
Borrower

\_\_\_\_\_  
Borrower

\_\_\_\_\_  
Borrower

\_\_\_\_\_  
Borrower

\_\_\_\_\_  
Borrower

STATE OF CALIFORNIA  
COUNTY OF \_\_\_\_\_

On \_\_\_\_\_ before me, \_\_\_\_\_, notary public, personally  
DATE NAME, TITLE OF OFFICER

appeared \_\_\_\_\_  
NAME OF SIGNOR(S)

personally known to me - OR -  proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS  
My hand and official seal.

\_\_\_\_\_  
Signature of Notary

\_\_\_\_\_  
\_\_\_\_\_  
Property Address

Recording requested by and )  
when recorded return to: )  
 )  
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(Space above this line for Recorder's use)

**PERMANENT DEED OF TRUST WITH ASSIGNMENT OF RENTS,  
SECURITY AGREEMENT AND FIXTURE FILING  
(CHFA Housing Assistance Program)**

**NOTICE TO BORROWER  
THIS DEED OF TRUST CONTAINS  
PROVISIONS RESTRICTING ASSUMPTIONS**

MIN: \_\_\_\_\_

**DEFINITIONS**

**(A)** "Lender" is \_\_\_\_\_ Lender is a \_\_\_\_\_ organized and existing under the laws of \_\_\_\_\_. Lender's address is \_\_\_\_\_.

The word "Lender" includes the present Lender, or any future owner or holder, including pledgee, of the indebtedness secured hereby.

**(B)** "MERS" is Mortgage Electronic Registration Systems, Inc. MERS is a separate corporation that is acting solely as a nominee for Lender and Lender's successors and assigns. MERS is the beneficiary under this Deed of Trust. MERS is organized and existing under the laws of Delaware, and has an address and telephone number of P.O. Box 2026, Flint, MI 48501-2026, Tel. (888) 679-MERS.

This Deed of Trust is made on \_\_\_\_\_, \_\_\_\_\_, by \_\_\_\_\_ (the "Borrower"), to \_\_\_\_\_ (the "Trustee"), whose business address is \_\_\_\_\_ in favor of MERS (solely as nominee for Lender and Lender's successors and assigns) and the successors and assigns of MERS.

1. **BORROWER, IN CONSIDERATION OF THE INDEBTEDNESS HEREIN RECITED AND THE TRUST HEREIN CREATED HEREBY IRREVOCABLY GRANTS, TRANSFERS AND ASSIGNS** to Trustee in trust, with power of sale and right of entry and possession, all of Borrower's right, title and interest now held or hereafter acquired in and to the following: (a) all of that certain real property (the "Property")

located in the County of \_\_\_\_\_, State of California, described below as:

which property address is \_\_\_\_\_ and (b) all buildings, improvements and fixtures now or hereafter erected thereon, and all appurtenances, easements, and articles of property now or hereafter affixed to, placed upon or used in connection with the Property, together with all additions to, substitutions for, changes in or replacements of the whole or any part of said articles of property (all of which real and personal property are sometimes referred to as the "Property"); all of which are hereby pledged and assigned, transferred, and set over onto Trustee, and for purposes of this Deed of Trust declared to be part of the realty; provided, however, that furniture and other personal property of Borrower now or hereafter situated on said real property are not intended to be included as part of the Property. Borrower understands and agrees that MERS holds only legal title to the interests granted by Borrower in this Deed of Trust, but, if necessary to comply with law or custom, MERS (as nominee for Lender and Lender's successors and assigns) has the right to exercise any or all of those interests, including, but not limited to, the right to foreclose and sell the property, and to take any action required of lender, including, but not limited to, releasing and canceling this Deed of Trust.

2. Payment of Principal and Interest. Borrower shall promptly pay when due the principal of and interest on the indebtedness evidenced by the Note and late charges as provided by the Note, as defined below.

3. Application of Payments. Unless applicable law provides otherwise, all payments received by Lender under the Note will be applied by Lender first to interest payable on the Note, and then to the outstanding principal of the Note.

BORROWER HEREBY ABSOLUTELY, UNCONDITIONALLY AND IRREVOCABLY ASSIGNS to Lender all rents, royalties, issues, accounts and profits of or relating to the Property. This assignment is absolute, primary and direct and is not intended to be a separate or secondary pledge, or other form of additional security, and no further act or step is or shall be required of Lender to perfect this assignment. This assignment shall not impose upon Lender any duty to cause the Property to produce rents nor shall Lender be deemed to be a mortgagee in possession by reason thereof for any purpose.

4. THE ABOVE GRANT, TRANSFER, AND ASSIGNMENTS ARE FOR THE PURPOSE OF SECURING:

Payment of the indebtedness evidenced by that certain promissory note of Borrower of even date herewith and titled "Promissory Note (CHFA Housing Assistance Program)" (the "Note") of Borrower in the face amount of \_\_\_\_\_ Dollars, (\$ \_\_\_\_\_), together with interest on such indebtedness according to the terms of the Note, and any and all amendments, modifications, extensions or renewals of the Note.

5. TO PROTECT THE SECURITY OF THIS DEED OF TRUST, BORROWER AGREES:

5.1 Maintenance of the Property. (a) To keep the Property in a decent, safe, sanitary, tenantable condition and repair and permit no waste thereof; (b) not to commit or suffer to be done or exist on or about the

Property any condition causing the Property to become less valuable; (c) not to remove, demolish or structurally alter any buildings and improvements now or hereinafter located on the Property; (d) to repair, restore or rebuild promptly any buildings or improvements on the Property that may become damaged or be destroyed while subject to the lien of this Deed of Trust; (e) to comply with all applicable laws, ordinances and governmental regulations affecting the Property or requiring any alteration or improvement thereof, and not to suffer or permit any violations of any such law, ordinance or governmental regulation, nor of any covenant, condition or restriction affecting the Property; (f) not to initiate or acquiesce in any change in any zoning or other land use or legal classification which affects any of the Property without Lender's written consent; and (g) not to alter the use of all or any part of the Property without the prior written consent of Lender.

5.2 Insurance. To keep the Property insured, with loss payable to Lender, against loss or damage by fire and such other hazards, casualties and contingencies and by such companies, on such forms and in the amount of the replacement cost of the buildings or improvements on the Property, and to deliver the original of all such policies to Lender, together with receipts satisfactory to Lender evidencing payment of the premiums. All such policies shall provide that Lender shall be given thirty (30) days advance written notice of the cancellation, expiration or termination of any such policy or any material change in the coverage afforded by it. Renewal policies and any replacement policies, together with premium receipts satisfactory to Lender, shall be delivered to Lender at least thirty (30) days prior to the expiration of existing policies. Neither Trustee nor Lender shall by reason of accepting, rejecting, approving or obtaining insurance incur any liability for the existence, nonexistence, form or legal sufficiency of such insurance, or solvency of any insurer for payment of losses.

5.3 Payment of Taxes and Utility Charges. To pay, at least ten (10) days prior to delinquency, all taxes and assessments, both general and special, fines, penalties, levies and charges of every type or nature levied upon or assessed against any part of the Property.

5.4 Payment and Discharge of Liens. Borrower shall pay, when due, all claims of every kind and nature which might or could become a lien on the Property or any part thereof and will not at any time create or allow to exist any lien on the Property or any part thereof of any kind or nature other than this Deed of Trust; provided, however, that the following are excepted from this prohibition: (a) liens for taxes and assessments which are not delinquent although by law are given the status of a lien, and (b) such of the above claims as are, and only during the time they are, being contested by Borrower in good faith and by appropriate legal proceedings, and (c) such deeds of trust as are approved by Lender in writing. Borrower shall post security for the payment of these contested claims as may be requested by Lender. Borrower shall not default in the payment or performance of any obligation secured by a lien, mortgage or deed of trust which is superior to this Deed of Trust.

## 6. IT IS MUTUALLY AGREED THAT:

6.1 Awards and Damages. All judgments, awards of damages, settlements and compensation made in connection with or in lieu of (a) taking of all or any part of or any interest in the Property by or under assertion of the power of eminent domain, (b) any damage to or destruction of the Property or any part thereof by insured casualty, and (c) any other injury or damage to all or any part of the Property, are hereby assigned to and shall be paid to Lender. Lender is authorized and empowered (but not required) to collect and receive any such sums and is authorized to apply them in whole or in part upon any indebtedness or obligation secured hereby, in such order and manner as Lender shall determine at its option. Lender shall be entitled to settle and adjust all claims under insurance policies provided under this Deed of Trust and may deduct and retain from the proceeds of such insurance the amount of all expenses incurred by it in connection with any such settlement or adjustment. All

or any part of the amounts so collected and recovered by Lender may be released to Borrower upon such conditions as Lender may impose for its disposition. Application of all or any part of the amounts collected and received by Lender or the release thereof shall not cure or waive any default under this Deed of Trust. If the Property is abandoned by Borrower, or if, after notice by Lender to Borrower that the condemnor offers to make an award or settle a claim for damages, Borrower fails to respond to Lender within thirty (30) days after the date such notice is mailed, Lender is authorized to collect and apply the proceeds, at Lender's option, either to restoration or repair of the Property or to the sum secured by this Deed of Trust.

6.2 Prohibition on Transfer of Interests. Borrower shall not make any sale, lease, conveyance or other transfer of the Property in any form, or any part thereof or interest therein, without the prior written consent of Lender. Lender may decline to give such consent in its sole discretion.

6.3 Sale or Forbearance. No sale of the Property, forbearances on the part of Lender or extension of the time for payment of the indebtedness hereby secured shall operate to release, discharge, waive, modify, change or affect the liability of Borrower either in whole or in part.

6.4 Lender's Rights to Release. Without affecting the liability of any person for payment of any indebtedness hereby secured (other than any person released pursuant hereto), including without limitation any one or more endorsers or guarantors, and without affecting the lien hereof upon any of the Property not released pursuant hereto, at any time and from time to time without notice: (a) Lender may, at its sole discretion, (i) release any person now or hereafter liable for payment of any or all such indebtedness, (ii) extend the time for or agree to alter the terms of payment of any or all of such indebtedness, and (iii) release or accept additional security for such indebtedness, or subordinate the lien or charge hereof; and (b) Trustee, acting pursuant to the written request of Lender, may reconvey all or any part of the Property, consent to the making of any map or plat thereof, join in granting any easement thereon, or join in any such agreement of extension or subordination.

6.5 Reconveyance. Upon written request of Lender stating that all sums and obligations secured hereby have been discharged, or otherwise as requested in writing by Lender, and upon surrender of this Deed of Trust and the Note and any additional loan notes to Trustee for cancellation, and upon payment to Trustee of its fees and expenses, Trustee shall reconvey, without warranty, the Property or that part thereof then held hereunder. The recitals in any reconveyance shall be conclusive proof of their truthfulness and the grantee in any such reconveyance may be described "as the person or persons legally entitled thereto." When the Property has been fully reconveyed, the last such reconveyance shall operate as a reassignment of all of the rents, royalties, issues, accounts and profits of the Property to the person or persons legally entitled thereto unless such reconveyance expressly provides to the contrary.

6.6 Occupancy. Borrower shall continuously occupy the Property as Borrower's principal place of residence during the term of the Note.

## 7. EVENTS OF DEFAULT

7.1 Events of Default. Any one or more of the following events shall constitute a default under this Deed of Trust: (a) failure of Borrower to pay the indebtedness secured hereby or any installment thereof, whether principal, interest or otherwise, when and as the same become due and payable, whether at maturity or by acceleration or otherwise; or (b) failure of Borrower to observe or to perform any covenant, condition or agreement to be observed or performed by Borrower pursuant to the Note or this Deed of Trust including but not limited to the



continuous occupancy of Property by Borrower provision; or (c) the occurrence of any event which, under the terms of the Note, shall entitle Lender to exercise the rights or remedies thereunder; or (d) the occurrence of any event which, under the terms of the any superior note or deed of trust on the Property shall entitle Lender to exercise the rights or remedies thereunder.

## 7.2 Acceleration of Sale.

(a) **Acceleration.** In the event of any default Lender, without demand on Borrower, may declare all sums hereby secured immediately due and payable by notice thereof to Borrower or by executing and recording or by causing Trustee to execute and record a notice of default and election to cause the Property to be sold to satisfy the obligations secured hereby or by the commencement of an appropriate action to foreclose this Deed of Trust or by any other appropriate manner.

(b) **Sale.** After delivery to Trustee of a notice of default and demand for sale and after the expiration of such time and the giving of such notice of default and sale as may then be required by law, and without demand on Borrower, Trustee shall sell the Property at the time and place of sale fixed by it in said notice of sale, at public auction to the highest bidder for cash in lawful money of the United States of America, payable at time of sale. Trustee may postpone sale of all or any portion of the Property by public announcement at such time and place of sale and from time to time thereafter may postpone such sale by public announcement at the time and place fixed by the preceding postponement. Any person, including Borrower, Trustee or Lender, may purchase at such sale. Upon such sale by Trustee it shall deliver to such purchaser its deed conveying the Property so sold, but without any covenant or warranty expressed or implied.

The recitals in such deed of any matters or facts shall be conclusive proof of their truthfulness. Upon sale by Trustee, and after deducting all costs, expenses and fees of Trustee and of this Deed of Trust, Trustee shall apply the proceeds of sale to the payment of the principal indebtedness hereby secured, whether evidenced by the Note or otherwise, or representing advances made or costs or expenses paid or incurred by Lender under this Deed of Trust, or any other instrument evidencing or securing any indebtedness hereby secured and to the payment of all other sums then secured hereby, including interest as provided in this Deed of Trust, or any other instrument evidencing or securing any indebtedness hereby secured, in such order as Lender shall direct; and then the remainder, if any, shall be paid to the person or persons legally entitled thereto.

7.3 Attorney's Fees. If Trustee or Lender shall be made parties to or shall intervene in any action or proceeding affecting the Property or the title thereto or the interest of Trustee or Lender under this Deed of Trust, or if Lender employs an attorney to collect any or all of the indebtedness hereby secured or to foreclose this Deed of Trust, or authorizes Trustee to conduct trustee's sale proceedings hereunder, then Trustee and Lender shall be reimbursed by Borrower, immediately and without demand, for all reasonable costs, charges and attorney's fees incurred by them or either of them in any such case whether or not suit be commenced, and the same, together with interest thereon from the date of payment at the rate of ten percent (10%) per annum, shall be secured hereby as provided in paragraph 7.2(b).

7.4 Exercise of Remedies; Delay. No exercise of any right or remedy by Lender or Trustee hereunder shall constitute a waiver of any other right or remedy herein contained or provided by law, and no delay by Lender or Trustee in exercising any such right or remedy hereunder, nor acceptance of payment after knowledge of a Borrower default shall operate as a waiver of or preclude the exercise of any right or remedy during the continuance of any default hereunder.

7.5 Trustee Substitution. The irrevocable power to appoint a substitute trustee or trustees hereunder is hereby expressly granted to Lender, to be exercised at any time hereafter, without specifying any reason therefor by filing for record in the office where this Deed of Trust is recorded a deed of appointment, and said power of appointment of successor trustee or trustees may be exercised as often as and whenever Lender deems advisable. The exercise of said power of appointment, no matter how often, shall not be deemed an exhaustion thereof, and upon recording of such deed or deeds of appointment, trustee or trustees so appointed shall thereupon, without further act or deed of conveyance, succeed to and become fully vested with identically the same title and estate in and to the Property hereby conveyed and with all the rights, powers, trusts and duties of the predecessor in the trust hereunder, with the like effect as if originally named as trustee or as one of the trustees.

7.6 Remedies Cumulative. No remedy herein contained or conferred upon Lender or Trustee is intended to be exclusive of any other remedy or remedies afforded by law or by the terms hereof to Lender or Trustee, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity.

## 8. MISCELLANEOUS PROVISIONS

8.1 Successors, Assigns, Gender, Number. The covenants and agreements herein contained shall bind, and the benefit and advantages shall inure to, the respective heirs, executors, administrators, successors and assigns of the parties. Wherever used, the singular number shall include the plural, and the plural the singular, and the use of any gender shall be applicable to all genders.

8.2 Headings. The headings are inserted only for convenience of reference and in no way define, limit, or describe the scope or intent of this Deed of Trust, or of any particular provision thereof, or the proper construction thereof.

8.3 Actions on Behalf of Lender. Except as be otherwise specifically provided herein, whenever any approval, notice, direction, consent, request or other action by Lender is required or permitted under this Deed of Trust, such action shall be in writing.

8.4 Obligations of Borrower. If more than one person has executed this Deed of Trust as "Borrower," the obligations of all such persons hereunder shall be joint and several.

8.5 Severability. If any provision of this Deed of Trust shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions hereof shall not in any way be affected or impaired.

8.6 Indemnification. Borrower shall indemnify and hold Lender, its officers and agents harmless against any and all losses, claims, demands, penalties and liabilities which Lender, its officers or agents may sustain or suffer by reason of anything done or omitted in good faith pursuant to or in connection with this Deed of Trust and not assert any claim against Lender, its officers or agents by reason of any action so taken or omitted. Borrower shall, at Borrower's expense, defend, indemnify, save and hold Lender, its officers and agents harmless from any and all claims, demands, losses, expenses, damages (general, punitive or otherwise), causes of action (whether legal or equitable in nature) asserted by any person, firm, corporation or other entity arising out of this Deed of Trust and Borrower shall pay Lender upon demand all claims, judgments, damages, losses or expenses

(including reasonable legal expense) incurred by Lender as a result of any legal action arising out of this Deed of Trust.

8.7 HUD Insurance. Notwithstanding any provision in this Deed of Trust to the contrary, in the event a purchase money deed of trust is insured by HUD, the provisions of said HUD deed of trust shall control to the extent that its provisions conflict with the provisions of this Deed of Trust.

8.8 Subordination. This Deed of Trust is intended to be subject and subordinate to any other concurrently recorded deed of trust to MERS (as nominee of Lender), as beneficiary, encumbering the Property. Except for the aforementioned subordination, this Deed of Trust is intended to be and remain at all times prior and superior to any other deeds of trust on the Property.

IN WITNESS WHEREOF, Borrower has executed this Deed of Trust on the day and year set forth above.

SIGNATURE OF BORROWER (S)

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

State of California )  
 ) S.S.  
County of \_\_\_\_\_ )

On \_\_\_\_\_, before me, the undersigned, a notary public in and for said County and State, personally appeared \_\_\_\_\_

\_\_\_\_\_, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) executed the instrument.

Witness my hand and official seal

Signature \_\_\_\_\_

Recording requested by and )  
when recorded return to: )  
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(Space above this line for Recorder's use)

**PERMANENT DEED OF TRUST WITH ASSIGNMENT OF RENTS,  
SECURITY AGREEMENT AND FIXTURE FILING  
(California Homebuyer's Downpayment Assistance Program)**

**NOTICE TO BORROWER  
THIS DEED OF TRUST CONTAINS  
PROVISIONS RESTRICTING ASSUMPTIONS**

MIN: \_\_\_\_\_

**DEFINITIONS**

**(A)** "Lender" is \_\_\_\_\_ Lender is a \_\_\_\_\_ organized and existing under the laws of \_\_\_\_\_. Lender's address is \_\_\_\_\_.

The word "Lender" includes the present Lender, or any future owner or holder, including pledgee, of the indebtedness secured hereby.

**(B)** "MERS" is Mortgage Electronic Registration Systems, Inc. MERS is a separate corporation that is acting solely as a nominee for Lender and Lender's successors and assigns. MERS is the beneficiary under this Deed of Trust. MERS is organized and existing under the laws of Delaware, and has an address and telephone number of P.O. Box 2026, Flint, MI 48501-2026, Tel. (888) 679-MERS.

This Deed of Trust is made on \_\_\_\_\_, \_\_\_\_\_, by \_\_\_\_\_ (the "Borrower"), to \_\_\_\_\_ (the "Trustee"), whose business address is \_\_\_\_\_ in favor of MERS (solely as nominee for Lender and Lender's successors and assigns) and the successors and assigns of MERS.

1. **BORROWER, IN CONSIDERATION OF THE INDEBTEDNESS HEREIN RECITED AND THE TRUST HEREIN CREATED HEREBY IRREVOCABLY GRANTS, TRANSFERS AND ASSIGNS** to Trustee in trust, with power of sale and right of entry and possession, all of Borrower's right, title and interest now held or hereafter acquired in and to the following: (a) all of that certain real property (the "Property")

located in the County of \_\_\_\_\_, State of California, described below as:

which property address is \_\_\_\_\_ and (b) all buildings, improvements and fixtures now or hereafter erected thereon, and all appurtenances, easements, and articles of property now or hereafter affixed to, placed upon or used in connection with the Property, together with all additions to, substitutions for, changes in or replacements of the whole or any part of said articles of property (all of which real and personal property are sometimes referred to as the "Property"); all of which are hereby pledged and assigned, transferred, and set over onto Trustee, and for purposes of this Deed of Trust declared to be part of the realty; provided, however, that furniture and other personal property of Borrower now or hereafter situated on said real property are not intended to be included as part of the Property. Borrower understands and agrees that MERS holds only legal title to the interests granted by Borrower in this Deed of Trust, but, if necessary to comply with law or custom, MERS (as nominee for Lender and Lender's successors and assigns) has the right to exercise any or all of those interests, including, but not limited to, the right to foreclose and sell the property, and to take any action required of lender, including, but not limited to, releasing and canceling this Deed of Trust.

2. Payment of Principal and Interest. Borrower shall promptly pay when due the principal of and interest on the indebtedness evidenced by the Note and late charges as provided by the Note, as defined below.

3. Application of Payments. Unless applicable law provides otherwise, all payments received by Lender under the Note will be applied by Lender first to interest payable on the Note, and then to the outstanding principal of the Note.

BORROWER HEREBY ABSOLUTELY, UNCONDITIONALLY AND IRREVOCABLY ASSIGNS to Lender all rents, royalties, issues, accounts and profits of or relating to the Property. This assignment is absolute, primary and direct and is not intended to be a separate or secondary pledge, or other form of additional security, and no further act or step is or shall be required of Lender to perfect this assignment. This assignment shall not impose upon Lender any duty to cause the Property to produce rents nor shall Lender be deemed to be a mortgagee in possession by reason thereof for any purpose.

4. THE ABOVE GRANT, TRANSFER, AND ASSIGNMENTS ARE FOR THE PURPOSE OF SECURING:

Payment of the indebtedness evidenced by that certain promissory note of Borrower of even date herewith and titled "Promissory Note (*California Homebuyer's Downpayment Assistance Program*)" (the "Note") of Borrower in the face amount of \_\_\_\_\_ Dollars, (\$ \_\_\_\_\_), together with interest on such indebtedness according to the terms of the Note, and any and all amendments, modifications, extensions or renewals of the Note.

5. TO PROTECT THE SECURITY OF THIS DEED OF TRUST, BORROWER AGREES:

5.1 Maintenance of the Property. (a) To keep the Property in a decent, safe, sanitary, tenantable condition and repair and permit no waste thereof; (b) not to commit or suffer to be done or exist on or about the Property any condition causing the Property to become less valuable; (c) not to remove, demolish or structurally alter any buildings and improvements now or hereinafter located on the Property; (d) to repair, restore or rebuild promptly any buildings or improvements on the Property that may become damaged or be destroyed while subject to the lien of this Deed of Trust; (e) to comply with all applicable laws, ordinances and governmental regulations affecting the Property or requiring any alteration or improvement thereof, and not to suffer or permit any violations of any such law, ordinance or governmental regulation, nor of any covenant, condition or restriction affecting the Property; (f) not to initiate or acquiesce in any change in any zoning or other land use or legal classification which affects any of the Property without Lender's written consent; and (g) not to alter the use of all or any part of the Property without the prior written consent of Lender.

5.2 Insurance. To keep the Property insured, with loss payable to Lender, against loss or damage by fire and such other hazards, casualties and contingencies and by such companies, on such forms and in the amount of the replacement cost of the buildings or improvements on the Property, and to deliver the original of all such policies to Lender, together with receipts satisfactory to Lender evidencing payment of the premiums. All such policies shall provide that Lender shall be given thirty (30) days advance written notice of the cancellation, expiration or termination of any such policy or any material change in the coverage afforded by it. Renewal policies and any replacement policies, together with premium receipts satisfactory to Lender, shall be delivered to Lender at least thirty (30) days prior to the expiration of existing policies. Neither Trustee nor Lender shall by reason of accepting, rejecting, approving or obtaining insurance incur any liability for the existence, nonexistence, form or legal sufficiency of such insurance, or solvency of any insurer for payment of losses.

5.3 Payment of Taxes and Utility Charges. To pay, at least ten (10) days prior to delinquency, all taxes and assessments, both general and special, fines, penalties, levies and charges of every type or nature levied upon or assessed against any part of the Property.

5.4 Payment and Discharge of Liens. Borrower shall pay, when due, all claims of every kind and nature which might or could become a lien on the Property or any part thereof and will not at any time create or allow to exist any lien on the Property or any part thereof of any kind or nature other than this Deed of Trust; provided, however, that the following are excepted from this prohibition: (a) liens for taxes and assessments which are not delinquent although by law are given the status of a lien, and (b) such of the above claims as are, and only during the time they are, being contested by Borrower in good faith and by appropriate legal proceedings, and (c) such deeds of trust as are approved by Lender in writing. Borrower shall post security for the payment of these contested claims as may be requested by Lender. Borrower shall not default in the payment or performance of any obligation secured by a lien, mortgage or deed of trust which is superior to this Deed of Trust.

6. IT IS MUTUALLY AGREED THAT:

6.1 Awards and Damages. All judgments, awards of damages, settlements and compensation made in connection with or in lieu of (a) taking of all or any part of or any interest in the Property by or under assertion of the power of eminent domain, (b) any damage to or destruction of the Property or any part thereof by insured casualty, and (c) any other injury or damage to all or any part of the Property, are hereby assigned to and shall be paid to Lender. Lender is authorized and empowered (but not required) to collect and receive any such

sums and is authorized to apply them in whole or in part upon any indebtedness or obligation secured hereby, in such order and manner as Lender shall determine at its option. Lender shall be entitled to settle and adjust all claims under insurance policies provided under this Deed of Trust and may deduct and retain from the proceeds of such insurance the amount of all expenses incurred by it in connection with any such settlement or adjustment. All or any part of the amounts so collected and recovered by Lender may be released to Borrower upon such conditions as Lender may impose for its disposition. Application of all or any part of the amounts collected and received by Lender or the release thereof shall not cure or waive any default under this Deed of Trust. If the Property is abandoned by Borrower, or if, after notice by Lender to Borrower that the condemnor offers to make an award or settle a claim for damages, Borrower fails to respond to Lender within thirty (30) days after the date such notice is mailed, Lender is authorized to collect and apply the proceeds, at Lender's option, either to restoration or repair of the Property or to the sum secured by this Deed of Trust.

6.2 Prohibition on Transfer of Interests. Borrower shall not make any sale, lease, conveyance of the Property in any form, or any part thereof or interest therein, without the prior written consent of Lender. Lender may decline to give such consent in its sole discretion.

6.3 Sale or Forbearance. No sale of the Property, forbearances on the part of Lender or extension of the time for payment of the indebtedness hereby secured shall operate to release, discharge, waive, modify, change or affect the liability of Borrower either in whole or in part.

6.4 Lender's Rights to Release. Without affecting the liability of any person for payment of any indebtedness hereby secured (other than any person released pursuant hereto), including without limitation any one or more endorsers or guarantors, and without affecting the lien hereof upon any of the Property not released pursuant hereto, at any time and from time to time without notice: (a) Lender may, at its sole discretion, (i) release any person now or hereafter liable for payment of any or all such indebtedness, (ii) extend the time for or agree to alter the terms of payment of any or all of such indebtedness, and (iii) release or accept additional security for such indebtedness, or subordinate the lien or charge hereof; and (b) Trustee, acting pursuant to the written request of Lender, may reconvey all or any part of the Property, consent to the making of any map or plat thereof, join in granting any easement thereon, or join in any such agreement of extension or subordination.

6.5 Reconveyance. Upon written request of Lender stating that all sums and obligations secured hereby have been discharged, or otherwise as requested in writing by Lender, and upon surrender of this Deed of Trust and the Note and any additional loan notes to Trustee for cancellation, and upon payment to Trustee of its fees and expenses, Trustee shall reconvey, without warranty, the Property or that part thereof then held hereunder. The recitals in any reconveyance shall be conclusive proof of their truthfulness and the grantee in any such reconveyance may be described "as the person or persons legally entitled thereto." When the Property has been fully reconveyed, the last such reconveyance shall operate as a reassignment of all of the rents, royalties, issues, accounts and profits of the Property to the person or persons legally entitled thereto unless such reconveyance expressly provides to the contrary.

## 7. EVENTS OF DEFAULT

7.1 Events of Default. Any one or more of the following events shall constitute a default under this Deed of Trust: (a) failure of Borrower to pay the indebtedness secured hereby or any installment thereof, whether principal, interest or otherwise, when and as the same become due and payable, whether at maturity or by acceleration or otherwise; or (b) failure of Borrower to observe or to perform any covenant, condition or agreement

to be observed or performed by Borrower pursuant to the Note or this Deed of Trust; or (c) the occurrence of any event which, under the terms of the Note, shall entitle Lender to exercise the rights or remedies thereunder; or (d) the occurrence of any event of default under the terms of the any superior note or deed of trust on the Property.

## 7.2 Acceleration of Sale.

(a) **Acceleration.** In the event of any default Lender, without demand on Borrower, may declare all sums hereby secured immediately due and payable by notice thereof to Borrower or by executing and recording or by causing Trustee to execute and record a notice of default and election to cause the Property to be sold to satisfy the obligations secured hereby or by the commencement of an appropriate action to foreclose this Deed of Trust or by any other appropriate manner.

(b) **Sale.** After delivery to Trustee of a notice of default and demand for sale and after the expiration of such time and the giving of such notice of default and sale as may then be required by law, and without demand on Borrower, Trustee shall sell the Property at the time and place of sale fixed by it in said notice of sale, at public auction to the highest bidder for cash in lawful money of the United States of America, payable at time of sale. Trustee may postpone sale of all or any portion of the Property by public announcement at such time and place of sale and from time to time thereafter may postpone such sale by public announcement at the time and place fixed by the preceding postponement. Any person, including Borrower, Trustee or Lender, may purchase at such sale. Upon such sale by Trustee it shall deliver to such purchaser its deed conveying the Property so sold, but without any covenant or warranty expressed or implied.

The recitals in such deed of any matters or facts shall be conclusive proof of their truthfulness. Upon sale by Trustee, and after deducting all costs, expenses and fees of Trustee and of this Deed of Trust, Trustee shall apply the proceeds of sale to the payment of the principal indebtedness hereby secured, whether evidenced by the Note or otherwise, or representing advances made or costs or expenses paid or incurred by Lender under this Deed of Trust, or any other instrument evidencing or securing any indebtedness hereby secured and to the payment of all other sums then secured hereby, including interest as provided in this Deed of Trust, or any other instrument evidencing or securing any indebtedness hereby secured, in such order as Lender shall direct; and then the remainder, if any, shall be paid to the person or persons legally entitled thereto.

7.3 Attorney's Fees. If Trustee or Lender shall be made parties to or shall intervene in any action or proceeding affecting the Property or the title thereto or the interest of Trustee or Lender under this Deed of Trust, or if Lender employs an attorney to collect any or all of the indebtedness hereby secured or to foreclose this Deed of Trust, or authorizes Trustee to conduct trustee's sale proceedings hereunder, then Trustee and Lender shall be reimbursed by Borrower, immediately and without demand, for all reasonable costs, charges and attorney's fees incurred by them or either of them in any such case whether or not suit be commenced, and the same, together with interest thereon from the date of payment at the rate of ten percent (10%) per annum, shall be secured hereby as provided in paragraph 7.2(b).

7.4 Exercise of Remedies; Delay. No exercise of any right or remedy by Lender or Trustee hereunder shall constitute a waiver of any other right or remedy herein contained or provided by law, and no delay by Lender or Trustee in exercising any such right or remedy hereunder, nor acceptance of payment after knowledge of a Borrower default shall operate as a waiver of or preclude the exercise of any right or remedy during the continuance of any default hereunder.



7.5 Trustee Substitution. The irrevocable power to appoint a substitute trustee or trustees hereunder is hereby expressly granted to Lender, to be exercised at any time hereafter, without specifying any reason therefor by filing for record in the office where this Deed of Trust is recorded a deed of appointment, and said power of appointment of successor trustee or trustees may be exercised as often as and whenever Lender deems advisable. The exercise of said power of appointment, no matter how often, shall not be deemed an exhaustion thereof, and upon recording of such deed or deeds of appointment, trustee or trustees so appointed shall thereupon, without further act or deed of conveyance, succeed to and become fully vested with identically the same title and estate in and to the Property hereby conveyed and with all the rights, powers, trusts and duties of the predecessor in the trust hereunder, with the like effect as if originally named as trustee or as one of the trustees.

7.6 Remedies Cumulative. No remedy herein contained or conferred upon Lender or Trustee is intended to be exclusive of any other remedy or remedies afforded by law or by the terms hereof to Lender or Trustee, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity.

## 8. MISCELLANEOUS PROVISIONS

8.1 Successors, Assigns, Gender, Number. The covenants and agreements herein contained shall bind, and the benefit and advantages shall inure to, the respective heirs, executors, administrators, successors and assigns of the parties. Wherever used, the singular number shall include the plural, and the plural the singular, and the use of any gender shall be applicable to all genders.

8.2 Headings. The headings are inserted only for convenience of reference and in no way define, limit, or describe the scope or intent of this Deed of Trust, or of any particular provision thereof, or the proper construction thereof.

8.3 Actions on Behalf of Lender. Except as be otherwise specifically provided herein, whenever any approval, notice, direction, consent, request or other action by Lender is required or permitted under this Deed of Trust, such action shall be in writing.

8.4 Obligations of Borrower. If more than one person has executed this Deed of Trust as "Borrower," the obligations of all such persons hereunder shall be joint and several.

8.5 Severability. If any provision of this Deed of Trust shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions hereof shall not in any way be affected or impaired.

8.6 Indemnification. Borrower shall indemnify and hold Lender, its officers and agents harmless against any and all losses, claims, demands, penalties and liabilities which Lender, its officers or agents may sustain or suffer by reason of anything done or omitted in good faith pursuant to or in connection with this Deed of Trust and not assert any claim against Lender, its officers or agents by reason of any action so taken or omitted. Borrower shall, at Borrower's expense, defend, indemnify, save and hold Lender, its officers and agents harmless from any and all claims, demands, losses, expenses, damages (general, punitive or otherwise), causes of action (whether legal or equitable in nature) asserted by any person, firm, corporation or other entity arising out of this Deed of Trust and Borrower shall pay Lender upon demand all claims, judgments, damages, losses or expenses

(including reasonable legal expense) incurred by Lender as a result of any legal action arising out of this Deed of Trust.

8.7 HUD Insurance. Notwithstanding any provision in this Deed of Trust to the contrary, in the event a purchase money deed of trust is insured by HUD, the provisions of said HUD deed of trust shall control to the extent that its provisions conflict with the provisions of this Deed of Trust.

8.8 Subordination. This Deed of Trust is intended to be subject and subordinate to any other concurrently recorded deed of trust encumbering the Property.

IN WITNESS WHEREOF, Borrower has executed this Deed of Trust on the day and year set forth above.

SIGNATURE OF BORROWER (S)

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

State of California )  
 ) S.S.  
County of \_\_\_\_\_ )

On \_\_\_\_\_, before me, the undersigned, a notary public in and for said County and State, personally appeared \_\_\_\_\_

\_\_\_\_\_, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) executed the instrument.

Witness my hand and official seal

Signature \_\_\_\_\_

**FREE RECORDING REQUESTED PURSUANT TO GOVERNMENT CODE SECTION 27383** )  
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Recording requested by and )  
when recorded return to: )  
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(Space Above this line for Recorder's Use)

**ASSIGNMENT OF DEED OF TRUST**

MIN No.: \_\_\_\_\_

For value received, the undersigned hereby grants, assigns and transfers to MERS (solely as nominee for the California Housing Finance Agency, a public instrumentality and a political subdivision of the State of California ["the Agency"] and for the Agency's successors and assigns), and the successors and assigns of MERS, all its beneficial interest under that certain Deed of Trust dated \_\_\_\_\_, \_\_\_\_\_, executed by \_\_\_\_\_, Trustor, to \_\_\_\_\_, Trustee, and recorded as Instrument No. \_\_\_\_\_, on \_\_\_\_\_, in book \_\_\_\_\_, page \_\_\_\_\_, of Official Records in the County Recorder's Office of \_\_\_\_\_ County, California.

Together with the note or notes therein described or referred to, the money due and to become due thereon with interest, and all rights accrued or to accrue under said Deed of Trust.

"MERS" is Mortgage Electronic Registration Systems, Inc., a corporation organized and existing under the laws of the State of Delaware, and is acting solely as nominee for the Agency and the Agency's successors and assigns. MERS's address is P.O. Box 2026, Flint, MI 48501-2026, and its telephone number is (888) 679-MERS.

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

**ASSIGNOR:**

**By:** \_\_\_\_\_  
**Name:** \_\_\_\_\_  
**Title:** \_\_\_\_\_

State of California )  
) S.S.  
County of \_\_\_\_\_ )

On \_\_\_\_\_, before me, the undersigned, a notary public in and for said County and State, personally appeared \_\_\_\_\_, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) executed the instrument.

Witness my hand and official seal

Signature \_\_\_\_\_