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Instructions for Editing Deed of Trust

Caution: Do not use this form document unless you modify it for your specific situation. This document requires that you edit it before using it.

Form: Deed of Trust

Form Number: Loan-13

Form Date: 10/18/08

Computer File Type: Word 2003

Drafted for State: Arizona. This document is drafted to comply with the laws of Arizona. No part of this form should be used in any state other than Arizona without first being reviewed and modified by an experienced attorney licensed to practice law in the other state.

Purpose: The Deed of Trust is the document that creates a lien on Arizona real property to secure payment of a debt or satisfaction of an obligation. It must be signed by a person, people, entity and/or entities that own the real property to be encumbered. The Deed of Trust is the preferred method of obtaining a lien on Arizona real property. Mortgages can also be used to create a lien on Arizona real property, but the Mortgage is rarely used in Arizona.

Common Usage: When a borrower gives a lender a Promissory Note to evidence a promise to pay money to the lender and the lender wants security for the loan, the Deed of Trust is used frequently to create a lien on Arizona real property to secure the obligations contained in the Promissory Note. If the borrower / debtor defaults on the Promissory Note or other contractual obligation secured by a Deed of Trust, the lender / creditor can foreclose the Deed of Trust and cause the real property that is encumbered by the Deed of Trust to be sold at an auction to the highest bidder for cash.

Caution #1: A lender does not have a lien on any of the borrower's real property simply because the borrower signs a Promissory Note or other document that creates a legal obligation that the lender may enforce. If the lender wants a lien on Arizona real property, the lender must get the owner(s) of the Arizona real property to sign a Deed of Trust (best type of lien) or a Mortgage (rarely used in Arizona).

Caution #2: The lender must record the properly signed and notarized Deed of Trust with the County Recorder of the Arizona county in which the encumbered real property is located.

Caution #3: The Deed of Trust will not be valid unless the owner(s) of the Arizona real property owe a debt or other obligation to the lender / secured party. For example, if Bart Simpson borrows \$10,000 to buy a car and Homer and Marge give the lender a Deed of Trust on their home, the Deed of Trust will not be valid because Homer and Marge do not owe money or any obligation to the lender. If the lender wants to be able to foreclose on Homer and Marge's home if Bart defaults on the loan, the lender must have Homer and Marge sign a Personal Guaranty by which they guaranty Bart's debt and then the Deed of Trust would **secure the satisfaction of Homer and Marge's obligations under the Personal Guaranty**, not under the Promissory Note because they did not sign it.

Signers/Parties:

This document must be signed by every person or entity that claims in ownership interest in all of the real property to be encumbered or the lien will not attach to the interest of an owner who does not sign. If the owner of the real property is married, you must have both the husband and wife sign this Deed of Trust. It is not signed by the lender.

Limitations:

Do not use this document to create a lien on personal property or to create a lien on real property located outside Arizona. Use the Security Agreement to obtain a lien on personal property located in Arizona.

Stand Alone Document:

No. This document creates a lien on Arizona real property to secure repayment of a debt or satisfaction of a contractual obligation. Do not use this document unless the borrower (called a trustor in the Deed of Trust) owes money or has a legal obligation to be secured. The most common use of the Deed of Trust is to secure repayment of a debt evidenced by a Promissory Note. If you need a Promissory Note, you can

purchase the form at www.keytlaw.com/forms.

Notary Required:

Yes. Arizona County Recorders will not accept the Deed of Trust for recording unless the signatures of the signers are acknowledged before a notary public.

Recording Warning:

The signed and notarized Deed of Trust must be recorded with the County Recorder of the Arizona county in which the real property encumbered by the Deed of Trust is located. If the Deed of Trust is not properly recorded, the lender's lien may lose priority and become subject to other liens, title matters and even changes of ownership of the real property. Failure to record the Deed of Trust could prevent a future foreclosure of the Deed of Trust or could cause the Deed of Trust to become a second lien, a third lien, a fourth lien or perhaps worse.

You must mail or deliver the signed and notarized Deed of Trust to the County Recorder of the Arizona county in which the real property is located and pay the applicable recording fee. For information on Arizona County Recorders, recording fees and where to mail or deliver the Deed of Trust for recording, see www.keytlaw.com/forms/countyrecorder.htm.

Separate Property Warning:

If the owner of the real property to be encumbered by this Deed of Trust is married and if the owner claims he or she has a separate property ownership interest in the real property, you must prepare a Disclaimer Deed and do the following: (i) have the non-owner spouse sign the Disclaimer Deed in front of a notary and have the signature acknowledged and notarized, and (ii) immediately after recording the Deed of Trust record the Disclaimer Deed in the county where the real property is located in Arizona.

Warning: The Disclaimer Deed contains language by which the non-owner spouse disclaims any ownership interest in the real property. Without a valid Disclaimer Deed recorded with the Deed of Trust, the non-owner spouse might claim that he or she had a community property ownership in the encumbered real property and therefor a foreclosure would only affect the one half interest in the real property owned by the spouse who signed the Deed of Trust.

If you need a Disclaimer Deed, you can purchase the form at www.keytlaw.com/forms.

Warning – Deed of Trust Does Not Create a Lien on Personal Property:

A Promissory Note can also be secured by a lien on personal property owned by the borrower. The Deed of Trust does not create a lien on personal property. To create a lien on personal property, the property owner must sign a Security Agreement that states it secures payment of the borrower's debt. If you need a Security Agreement, you can purchase the form at www.keytlaw.com/forms.

Disclaimer:

KEYTLaw, LLC, prepared this document and sold it to the purchaser solely as a do-it-yourself form. The sale of this form to the purchaser does not create an attorney client relationship between the purchaser or any user of the form (collectively "User") and the law firm of KEYTLaw, LLC, or any of its attorneys (collectively the "Firm"). The Firm has no obligation to advise or consult with the User with respect to the form. The User may become a client of the Firm only if the User and the Firm enter into a written engagement agreement signed by the User and an authorized representative of the Firm. Because this document can create legal rights and obligations, the Firm advises the User to consult with an experienced Arizona attorney before using the form.

Use License:

© Richard Keyt, 2008. This form is copyrighted by Richard Keyt, who retains all rights to this form. The User who purchased this form is granted a nonexclusive, nontransferable license to use and modify this form solely in connection with a transaction in which the User is a party. No other party may copy or use this form or any portion of it without the prior written consent of Richard Keyt.

**GENERAL INSTRUCTIONS & EDITING INSTRUCTIONS
READ THESE INSTRUCTIONS BEFORE USING THIS FORM**

1. You must read and edit the entire text of the form before presenting it to a borrower / real property owner for signature. The document is in Word 2003 format. You may add to, edit or delete any text in the form, but we are not responsible for any change you make to the form.
2. **Important Instructions & Information:** Text that is **[inside brackets]** and in red is important. You must read and follow the instructions inside the brackets.
3. **Delete Text Inside Brackets:** DELETE THE BRACKETS AND ALL TEXT INSIDE THE BRACKETS BEFORE YOU PRINT THE FINAL DOCUMENT FOR SIGNING.
4. **Bracket Check:** Before you print the document, search for [then search for] to make sure you have deleted all brackets and all text inside the brackets. In Word,

press F7 to search then type the symbol to be searched.

5. **Text You Must Edit:** Look for text throughout the document that is inside caret symbols that look like this: <name of borrower>. Every place you find text within the carets < > you must do the following:
 - A. replace the text inside the carets with the correct text
 - B. delete the beginning caret < and the end caret >
6. **Caret Check:** Before you print the document, search for < then search for > to make sure you have replaced all text inside the carets and deleted all caret symbols. In Word, press F7 to search then type the symbol to be searched.
7. **<Language Inside Caret Symbols>:** Throughout the form you will see language inside caret symbols such as <principal amount of note in numbers>. Every place you see text inside carets, you must replace the text with the text that is appropriate for your Security Agreement and delete the caret symbols.
8. **Sample Deed of Trust:** Before you edit the Deed of Trust, refer to the sample Deed of Trust to see what a final Deed of Trust looks like.
9. **<name of lender>:** Insert the name of the lender(s). Follow the naming guidelines in the preceding section.
10. **Date:** Replace <effective date of the Deed of Trust> with the actual effective date. This date is usually the date of the Promissory Note secured by the Deed of Trust.
11. **Trustor <name of borrower>:** Trustor is the legal name of every person who signs the Deed of Trust to create a lien on that person's Arizona real property. Replace <name of borrower> with the name(s) of the owner(s) of the real property to be encumbered. You must also insert the mailing address in place of <street address, city, state and zip code where notices to Borrower are to be mailed>. Edit the first paragraphs and the signature block at the end to name every person or entity that has an ownership interest in the real property that is to be encumbered by the Deed of Trust. Consider the following examples for naming the borrower(s) in the Deed of Trust:

An unmarried borrower:

Homer X. Simpson, a single man

A married borrower who owns the real property as sole and separate property, not community property:

Homer X. Simpson, a married man dealing with his sole and separate property

A married couple who are borrowers:

Homer X. Simpson and Marge B. Simpson, husband and wife

An entity borrower: Worldwidgets, an Arizona limited liability company

Signature block for an entity: Worldwidgets, an Arizona limited liability company

By: _____
Homer X. Simpson, Manager

Note: When a party is an entity such as a corporation or a limited liability company, that party should always be referred to in a contract by its exact legal name, the type of entity (such as LLC, inc., corporation, corp.), the state in which the entity was formed, and the specific type of entity. For example: (i) WorldWidgets, LLC, an Arizona limited liability company, or (ii) WorldWidgets, Inc., a New York corporation.

12. **Beneficiary <name of lender>:** Replace <name of lender> with the name(s) of all people and/or entities to whom the debt is owed for which this Deed of Trust will be security. Insert the mailing address of the lender(s) in place of <street address, city, state and zip code where notices to Lender are to be mailed>.

13. **Trustee <name of trustee>:** The Deed of Trust must have a trustee. Replace <name of trustee> with the name of the trustee you select. Insert the mailing address of the trustee in place of <street address, city, state and zip code where notices to the trustee are to be mailed>. You cannot name just anybody to be the trustee. [Arizona Revised Statutes Section 33-803](#) expressly states the qualifications of who can be a trustee of a Deed of Trust that encumbers Arizona real property. Section 33-803 states:

A. Except as provided in subsection B, the trustee of a trust deed shall be:

1. An association or corporation doing business under the laws of this state as a bank, trust company, savings and loan association, credit union, insurance company, escrow agent or consumer lender.

2. A person who is a member of the state bar of Arizona.

3. A person who is a licensed real estate broker under the laws of this state.

4. A person who is a licensed insurance producer under the laws of this state.

5. An association or corporation that is licensed, chartered or regulated by the federal deposit insurance corporation, the comptroller of the currency, the federal home loan bank, the national credit union administration, the farm credit administration, the federal reserve board or any successors.

6. The parent corporation of any association or corporation referred to in this subsection or any corporation all the stock of which is owned by or held solely for the benefit of any such association or corporation referred to in this subsection.

B. An individual trustee of a trust deed who qualifies under subsection A shall not be the beneficiary of the trust, but such restriction shall not preclude a corporate or association trustee that qualifies under subsection A and while acting in good faith from being the beneficiary, or after appointment from acquiring the interest of the beneficiary by succession, conveyance, grant, descent or devise.

C. A trustee of a trust deed who qualifies under subsection A shall not lend or delegate the trustee's name or corporate capacity to any individual or entity that does not qualify as a trustee of a trust deed. An individual, company, association or corporation shall not circumvent the requirements of subsection A by acting in concert with a nonqualifying trustee.

14. **Hire Richard Keyt to be the Trustee:** Section 33-803.A.2 authorizes a member of the Arizona Bar to be a trustee under a deed of trust. If you need a trustee for your Deed of Trust, you can hire Arizona attorney Richard Keyt to be the trustee for an annual fee of \$100 paid in advance. To hire Richard Keyt, you must purchase this service from the KEYTLaw, LLC online store found at www.keytlaw.com/store.

If you hire Richard Keyt to be your Trustee, use the following for his name and mailing address of the Trustee: Richard Keyt, 5025 North Central, #467, Phoenix, Arizona 85012.

15. **County:** In the first paragraph, insert the county in which the real property is located.
16. **Legal Description:** Insert the exact legal description of the real property to be encumbered by this Deed of Trust inside the carets < >. You must get the legal description from the deed by which the borrower acquired title to the real property (the "Vesting Deed") and copy the legal description on that deed into this area. The legal description this Deed of Trust must match exactly the legal description on the Vesting Deed.> **Warning: IF THE LEGAL DESCRIPTION OF THE ARIZONA REAL PROPERTY TO BE ENCUMBERED BY THE DEED OF TRUST IS INCORRECT, THE DEED OF TRUST MAY BE INVALID.**
17. **Due on Sale Clause:** The last Section of the Deed of Trust (Section 18) contains four paragraphs that create what is commonly called a "Due on Sale" clause. A due on sale clause is a provision that gives the lender an option to call the loan if the owner of the real property encumbered by the Deed of Trust transfers ownership. If the lender wants to be able to approve a transfer of the real estate to a new owner and accelerate the balance owed under the Promissory Note if there is a transfer not approved by the lender, include the entire four paragraphs in Section 18. If the

owner of the property should be able to transfer ownership without giving the lender an option to call the loan, delete all four paragraphs in Section 18.

18. **Signature Lines:** Replace <name of 1st borrower> and <name of 2nd borrower> with the name(s) of the borrower(s) if the borrower(s) are people. You must make a signature line for every owner of the real property, people and entities. Delete any unused signature blocks for people and the company. Insert the name(s) of the borrower(s) here. The name(s) in the signature block should be identical to name(s) on page one of the Deed of Trust.
19. **Acknowledgement Before a Notary:** The owner(s) of the real property being encumbered by the Deed of Trust must sign their names in front of a notary public. The notary public must properly complete the notary information at the end of the Deed of Trust. If the Deed of Trust is not properly notarized, the County Recorder may refuse to record the document.
20. **Recording the Deed of Trust:** After the Deed of Trust has been properly signed and notarized, the document must be recorded in the official records of the Arizona county in which the real property is located. You must mail or deliver the signed and notarized Deed of Trust to the County Recorder of the Arizona county in which the real property is located and pay the applicable recording fee. For information on each Arizona County Recorder, recording fees and where to mail or deliver the Deed of Trust for recording, see www.keytlaw.com/forms/countyrecorder.htm.

SIGNING INSTRUCTIONS

1. **Before Printing:** After you make all edits and changes, run your spell checker and correct any typos.
2. **Print the Document:** Print the document.
3. **Discard Informational Pages:** The actual form begins on the page following page labeled viii at the bottom. The actual form begins on the 9th page. Discard the first eight pages and do not use any of them because they are not part of the actual Deed of Trust.
4. **Copies of Signed Document:** Make at least one copy of the fully signed document for your records. .

**The Actual Form Begins on the Next Page
Do Not Use Any Text From Above**