



AGREEMENT TO HYPOTHECATE

Prepared by: Agent _____
Broker _____

Phone _____
Email _____

DATE: _____, 20_____, at _____, California.
Items left blank or unchecked are not applicable.

FACTS:

- 1. Borrower is the holder of a Note dated _____, 20_____, executed by _____, as the Payor, payable to _____, as the Payee, in the face amount of \$_____.
1.1 The Note is current with a remaining principal balance of \$_____, payable \$_____, or more, on the _____ day of each [] consecutive, [] third, [] sixth or [] twelfth month, including interest at _____% per annum, with a final/balloon payment due on _____, 20_____ in the amount of \$_____.
1.2 The Note or its trust deed contains provisions for:
[] Due-on-sale; [] Prepayment penalty of \$_____;
[] Late charge of \$_____ after a _____ day grace period;
[] Impounds for taxes/insurance.
1.3 The Note obligation [] is, or [] is not, subject to the anti-deficiency provisions of California Code of Civil Procedure §580b for seller financing and purchase-assist financing on one-to-four residential units.
2. The Note is secured by a trust deed of same date recorded on _____, as Instrument No. _____, records of _____ County, California, executed by _____, as the Trustor, in which _____ is Beneficiary.
2.1 The real estate securing the Note under the trust deed is referred to as _____ Assessor's parcel number _____.
2.2 The secured real estate [] is, or [] is not, four-or-less residential units; and [] is, or [] is not, owner-occupied.
2.3 Current fair market value of the secured property is \$_____.
2.4 The secured property last sold on _____, for the sales price of \$_____, with a cashdown payment of \$_____.
2.5 [] Borrower's Natural Hazard Disclosure Statement [See ft Form 314] is [] attached, or [] to be handed to Lender on acceptance for Lender's approval within five days after receipt.
a. On disapproval of the statement, Lender may cancel this agreement. [See ft Form 183]
2.6 The Note is additionally secured by a trust deed/UCC-1 on other property referred to as _____.
3. The trust deed securing the Note is subordinate to the following underlying trust deeds and notes:
3.1 A trust deed recorded on _____, as Instrument No. _____, records of _____ County, California, executed by _____, as the Trustor, in which _____ is the Beneficiary, securing a note in the face amount of \$_____ with a present unpaid balance of \$_____, bearing interest at _____%, [] adjustable type _____, payable in monthly installments of \$_____, [] plus impounds.
3.2 A trust deed recorded on _____, as Instrument No. _____, records of _____ County, California, executed by _____, as the Trustor, in which _____ is the Beneficiary; securing a note in the face amount of \$_____ with a present unpaid balance of \$_____, bearing interest at _____%, all due _____, 20_____.

TERMS: This agreement is comprised of three pages and _____ pages of addenda/attachments.

4. Borrower to execute a collateral note and security agreement in favor of Lender in the face amount of \$_____, payable in installments of \$_____, or more, on the _____ day of each _____ month, including interest at _____ % per annum, with a final/balloon payment due on _____, 20_____, in the amount of \$_____. [See **ft** Form 438]
 - 4.1 The collateral note is secured by the Note and trust deed to be transferred to Lender by a collateral assignment. Lender to hold all of Borrower's rights, title and interest in the Note and trust deed until the collateral note is paid in full. [See **ft** Form 446]
 - 4.2 Lender to receive payments due on the Note and trust deed beginning with the payment due on _____, 20_____, and ending with the payment due on _____, 20_____.
 - 4.3 Payments due on the collateral note are _____% of each payment due on the Note and trust deed.
 - a. Lender to receive payments due under the Note and trust deed and remit the excess proceeds to Borrower.
 - 4.4 Lender to place the Note and trust deed on contract collection with a bank, thrift, escrow or broker.
 - a. Any charges for collection up to \$_____ monthly, shall be tendered each month to Lender by Borrower, or added to the principal balance of the collateral note.
 - 4.5 In the event of prepayment or the payment of a final/balloon payment of the Note and trust deed, Lender is to first apply the payment to all sums due under the collateral note, any amounts then remaining to be paid to Borrower.
 - a. Late charges received on the Note and trust deed to be retained by the Lender.
 - 4.6 In the event of prepayment of the collateral note, borrower to pay a prepayment penalty of _____
 - 4.7 Lender to reassign and deliver the Note and trust deed to Borrower upon receipt of all sums due under the collateral note. Borrower is entitled to receive the remaining proceeds due on the Note and trust deed only after the Lender has received all sums due on the collateral note.
5. Lender agrees to fund the collateral note with the principal sum of \$_____.

AND IT IS FURTHER AGREED:

6. This offer shall be deemed revoked unless accepted in writing within _____ days after Date, and acceptance is personally delivered to Lender or Lender's Broker within the period.
 - 6.1 Lender to incur no costs or charges under this agreement.
 - 6.2 Should Lender breach this agreement, Lender's liability to Borrower is limited to \$_____.
7. This transaction to be escrowed with _____
 - 7.1 Signed instructions to be delivered to escrow as soon as reasonably possible after acceptance.
8. Within _____ days after the acceptance, all instruments necessary to close escrow to be deposited into escrow.
 - 8.1 Borrower to pay all escrow charges.
9. The assignment of the Note and trust deed are to be insured by _____ Title Insurance Company under:
 - 9.1 A CLTA, or ALTA, lender's form policy of title insurance; or
 - 9.2 An assignment of the existing CLTA, or ALTA, form policy by endorsement;
 - 9.3 Showing title subject to property taxes, CC&Rs, and the underlying trust deeds noted in §3; and
 - 9.4 Paid for by Borrower.
10. Lender to be named as an additional insured on all insurance policies called for under the Note and trust deed.
11. Lender to be provided with a Request for Notice of Default and Delinquency served on the beneficiaries of the underlying trust deeds. [See **ft** Form 412]
12. Borrower to furnish beneficiary statement(s) on underlying encumbrance(s) showing all payments to be current and confirming their terms and unpaid balance(s).
13. Trustor's Offset Statement to be obtained to confirm the condition of the Note and trust deed conform to this agreement to hypothecate.
14. Lender has inspected the secured real estate and its improvements and is satisfied with their condition and value.
15. If Borrower is unable to deliver the Note and trust deed, or if the improvements on the secured real estate are materially damaged prior to closing, Lender may terminate this agreement and demand all instruments and funds be returned to the parties depositing them.
 - 15.1 Borrower is to pay all reasonable escrow charges.

- 16.** Lender may terminate this agreement by written Notice of Cancellation [See **ft** Form 183] based on the Lender's reasonable disapproval delivered to Borrower, Borrower's Broker, or escrow within _____ days of the receipt or occurrence of any of the following checked items:
- 16.1 Income and expense statement, leases and permits on the property securing the Note, to be submitted or made available to Lender on acceptance.
 - 16.2 Inspection of property securing the Note within five days after acceptance.
 - 16.3 An appraisal of the secured property's fair market value to be obtained by Lender, and paid for by Borrower, the cost of which shall not exceed \$_____.
 - 16.4 Financial statement, credit application and credit report, and other credit information on Borrower to be submitted to Lender on acceptance.
 - 16.5 Financial statements, credit application and report, and other credit information held by Borrower on Trustor under the Note and trust deed to be submitted to Lender on acceptance.
 - 16.6 Information held by Borrower on the secured property's condition to be submitted to Lender on acceptance.
- 17.** Before any party to this agreement files an action on a dispute arising out of this agreement which remains unresolved after 30 days of informal negotiations, the parties agree to enter into non-binding mediation administered by a neutral dispute resolution organization and undertake a good faith effort during mediation to settle the dispute.
- 18.** Parties to pay the below mentioned Broker(s) a fee of _____ as follows:
- 18.1 Borrower to pay the brokerage fee on closing. The party wrongfully preventing the closing to pay the brokerage fee.
 - 18.2 Borrower's Broker and the Lender's Broker, respectfully, to share the brokerage fee _____:_____.
- 19.** The Broker(s) make the following disclosures:
- 19.1 See attached Disclosure Statement to Lender/Investor.
 - 19.2 See attached Mortgage Loan Disclosure Statement to Borrower [See **ft** Form 204-2]

Lender's Broker: _____
 Broker's DRE Identification #: _____
 Agent's Name: _____
 Agent's DRE Identification #: _____

Signature: _____
 Is the agent of: Lender exclusively.
 Both Borrower and Lender.

Address: _____

Phone: _____ Cell _____
 Fax: _____
 Email: _____

Borrower's Broker: _____
 Broker's DRE Identification #: _____
 Agent's Name: _____
 Agent's DRE Identification #: _____

Signature: _____
 Is the agent of: Borrower exclusively.
 Both Borrower and Lender.

Address: _____

Phone: _____ Cell _____
 Fax: _____
 Email: _____

I agree to the terms stated above.
 Date: _____, 20_____
 Lender's Name: _____

Signature: _____

I agree to the terms stated above.
 See attached Signature Page Addendum. [**ft** Form 251]
 Date: _____, 20_____
 Borrower's Name: _____

Signature: _____
 Borrower's Name: _____

Signature: _____