

RD:MDC

Recording Requested By  
And  
When Recorded Return to:  
City of San Jose, Housing Department  
200 E. Santa Clara Street,  
12th Floor Tower  
San Jose, CA 95113  
Attn: Loan Management  
Re: Loan #  
APN:

SPACE ABOVE THIS LINE FOR RECORDER'S USE

TO BE RECORDED WITHOUT FEE PER GOVERNMENT CODE SECTIONS 6103 AND 27383  
AND HEALTH AND SAFETY CODE SECTION 33334.3 (f) 2

### **DEED OF TRUST**

This Deed of Trust, made this \_\_\_ day of \_\_\_\_\_, 200\_\_, \_\_\_\_\_ a \_\_\_\_\_, herein called TRUSTOR, \_\_\_\_\_ Title, herein called TRUSTEE, and CITY OF SAN JOSE, a municipal corporation herein called BENEFICIARY, Witnesseth: That Trustor grants, transfers and assigns to Trustee in Trust with Power of Sale that property located in the City of San Jose, Santa Clara County, California at (address), as further described as: See **EXHIBIT A** attached hereto.

TOGETHER WITH the rents, issues and profits thereof, SUBJECT, HOWEVER, to the right, power and authority given to and conferred upon Beneficiary by paragraph 3.J. below to collect and apply such rents, issues and profits.

1. For the Purpose of Securing:
  - A. Performance of each agreement of Trustor incorporated by reference or contained herein.
  - B. Payment of the indebtedness evidenced by one promissory note of even date herewith, and any extension or renewal thereof, in the principal sum of \$XX,000.00 executed by Trustor in favor of Beneficiary or order.
  - C. Payment of such further sums as the then record owner of said property hereafter may borrow from Beneficiary, when evidenced by another note (or notes) reciting it is so secured.
2. To Protect the Security of This Deed or Trust, Trustor Agrees: By the execution and delivery of this Deed of Trust and the note secured hereby, Trustor Agrees:
  - A. To keep said property in good condition and repair; not to remove or demolish any building thereon; to complete or restore promptly and in good and workmanlike manner any building which may be constructed, damaged or destroyed thereon and to pay when due all claims for labor performed and materials furnished therefor; to comply with all laws affecting said property or requiring any alterations or improvements to be made thereon; not to commit or permit waste thereof; not to commit, suffer or permit any act upon said property in violation of law; to cultivate, irrigate, fertilize, fumigate, prune and do all other acts which from the character or use of said property may be reasonably necessary, the specific enumeration herein not excluding the general.
  - B. To provide, maintain and deliver to Beneficiary fire insurance satisfactory to and with loss payable to Beneficiary. The amount collected under any fire or Beneficiary may apply other insurance policy upon any indebtedness secured hereby and in such order as Beneficiary may determine, or at option of Beneficiary the entire amount so collected or any part thereof may be released to Trustor. Such

application or release shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

- C. To appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; and to pay all costs and expenses, including cost of evidence of title and attorney's fees in a reasonable sum, in any such action or proceeding in which Beneficiary or Trustee may appear, and in any suit brought by Beneficiary to foreclose this Deed.
- D. To pay: at least ten days before delinquency all taxes and assessments affecting said property, including assessments on appurtenant water stock; when due, all encumbrances, charges and liens, with interest, on said property or any part thereof, which appear to be prior or superior hereto; all costs, fees and expenses of this Trust.

Should Trustor fail to make any payment or to do any act as herein provided, then Beneficiary or Trustee, but without obligation so to do and without notice to or demand upon Trustor and without releasing Trustor from any obligation hereof, may: make or do the same in such manner and to such extent as either may deem necessary to protect the security hereof, Beneficiary or Trustee being authorized to enter upon said property for such purposes; appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; pay, purchase, contest or compromise any in cumbrance, charge or lien which in the judgment of either appears to be prior or superior hereto; and, in exercising any such powers, pay necessary expenses, employ counsel and pay his reasonable fees.

- E. To pay immediately and without demand all sums so expended by Beneficiary or Trustee, with interest from date of expenditure at the amount allowed by law in effect at the date hereof, and to pay for any statement provided for by law in effect at the date here or regarding the obligation secured hereby any amount demanded by the Beneficiary not to exceed the maximum allowed by law at the time when said statement is demanded.
- F. That any award of damages in connection with any condemnation for public use of or injury to said property or any part thereof is hereby assigned and shall be paid to beneficiary who may apply or release such moneys received by him in the same manner and with the same effect as above provided for disposition of proceeds of fire or other insurance.
- G. That by accepting payment of any sum secured hereby after its due date, Beneficiary does not waive his right either to require prompt payment when due of all other sums so secured or to declare default for failure so to pay.
- H. That at any time or from time to time, without liability therefor and without notice, upon written request of Beneficiary and presentation of this Deed and said note for endorsement, and without affecting the personal liability of any person for payment of the indebtedness secured hereby, Trustee may: reconvey any part of said property; consent to the making of any map or plat thereof, join in granting any easement thereon; or join in any extension agreement or any agreement subordinating the lien or charge hereof.
- I. That upon written request of Beneficiary stating that all sums secured hereby have been paid, and upon surrender of this Deed and said note to Trustee for cancellation and retention and upon payment of its fees, Trustee shall reconvey, without warranty, the property then held hereunder. The recitals in such reconveyance of any matters or facts shall be conclusive proof of the truthfulness thereof. The Grantee in such reconveyance may be described as "the person or persons legally entitled thereto." Five years after issuance of such full reconveyance, Trustee may destroy said note and this Deed (unless directed in such request to retain them).

- J. That as additional security, Trustor hereby gives to and confers upon Beneficiary the right, power and authority, during the continuance of these Trusts, to collect the rents, issues and profits of said property, reserving unto Trustor the right, prior to any default by Trustor in payment of any indebtedness secured hereby or in performance of any agreement hereunder, to collect and retain such rents, issues and profits as they become due and payable. Upon any such default, Beneficiary may at any time without notice, either in person, by agent, or by a receiver to be appointed by a court, and without regard to the adequacy of any security for the indebtedness hereby secured, enter upon and take possession of said property or any part thereof, in his own name sue for or otherwise collect such rents, issues and profits, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorney's fees, upon any indebtedness secured hereby, and in such order as Beneficiary may determine. The entering upon and taking possession of said property, the collection of such rents, issues and profits and the application thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.
- K. That upon default by Trustor in payment of any indebtedness secured hereby or in performance of any agreement hereunder, Beneficiary may declare all sums secured hereby immediately due and payable by delivery to Trustee of written declaration or default and demand for sale and of written notice of default and of election to cause to be sold said property, which notice Trustee shall cause to be filed for record. Beneficiary also shall deposit with Trustee this Deed, said note and all documents evidencing expenditures secured hereby.

After the lapse of such time as may then be required by law following the recordation or said notice of default, and notice of sale having been given as then required by law, Trustee, without demand on Trustor, shall sell said property at the time and place fixed by it in said notice of sale, either as a whole or in separate parcels, and in such order as it may determine, at public auction to the highest bidder for cash in lawful money of the United States, payable at time of sale. Trustee may postpone sale of all or any portion of said 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 fixed by the preceding postponement. Trustee shall deliver to such purchaser its deed conveying the property so sold, but without any covenant or warranty, express or implied. The recitals in such deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including Trustor, Trustee, or Beneficiary as hereinafter defined, may purchase at such sale.

After deducting all costs, fees and expenses of Trustee and of this Trust, including cost of evidence of title in connection with sale, Trustee shall apply the proceeds of sale to payment of all sums expended under the terms hereof, not then repaid, with accrued interest at the amount allowed by law in effect at the date hereof; all other sums then secured hereby; and the remainder, if any, to the person or persons legally entitled thereto.

- L. Beneficiary, or any successor in ownership of any indebtedness secured hereby, may from time to time, by instrument in writing, substitute a successor or successors to any Trustee named herein or acting hereunder, which instrument, executed by the Beneficiary and duly acknowledged and recorded in the office of the recorder of the county or counties where said property is situated, shall be conclusive proof of proper substitution of such successor Trustee or Trustees, who shall, without conveyance from the Trustee predecessor, succeed to all its title, estate, rights, powers and duties. Said instrument must contain the name of the original Trustor, Trustee and Beneficiary hereunder, the book and page where this Deed is recorded and the name and address of the new Trustee.
- M. That this Deed applies to, inures to the benefit of, and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, successors and assigns. The term Beneficiary shall mean the

owner and holder, including pledgees, or the note secured hereby, whether or not named as Beneficiary herein. In this Deed, whenever the context so requires, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural.

- N. That Trustee accepts this Trust when this Deed, duly executed and acknowledged, is made a public record as provided by law. Trustee is not obligated to notify any party hereto of pending sale under any other Deed of Trust or of any action or proceeding in which Trustor, Beneficiary or Trustee shall be a party unless brought by Trustee.
3. Trustor to Give Notice of Potential Deed in Lieu of Foreclosure: Trustor shall give Beneficiary a 30 day notice before any deed in lieu of foreclosure becomes effective, to enable Beneficiary to cure any default or to purchase the Property within the 30 day period.
  4. After-acquired Property: The lien hereof shall automatically attach, without further act or notice, to all right, title and interest of Trustor in and to all options to purchase or lease the Property or any portion thereof or interest therein, and to any and all after-acquired property.
  5. Subordination: Notwithstanding any other provision hereof, the provisions of this Deed of Trust shall be subordinate to the lien of the senior deeds of trust (i.e., recorded senior to any other deeds of trust) and any deed of trust in the name of or held by the California Housing Finance Agency, its successors and assigns ("Senior Deeds of Trust") against the Property, and shall not impair the rights of any institutional lender which is the holder of the loan secured by such senior deeds of trust, or such lender's assignee or successor in interest, to exercise its remedies under the deed of trust in the event of default by Trustor. These remedies include the right to foreclose or exercise a power of foreclosure, sale or acceptance of a deed in lieu of foreclosure. After such a foreclosure, sale or acceptance of a deed in lieu of foreclosure, this Deed of Trust shall be forever terminated and shall have no further effect as to this property or any transferee thereafter; provided, however, if the holder of such deeds of trust acquired title to this property pursuant to a deed or assignment in lieu of foreclosure, this Deed of Trust shall automatically terminate upon such acquisition of title, provided that (a) Beneficiary has been given a 30 day written notice of default (which requirement shall be satisfied by recordation of a notice of default under California Civil Code Section 2924), and (b) Beneficiary shall not have cured the default under such deeds of trust within the 30 day period provided in such notice sent to Beneficiary.
  6. Restrictions on Transfer of the Property or Any Assisted Unit. TRUSTOR UNDERSTANDS THAT THE DETERMINATION OF THE SALES PRICE OF THE ASSISTED UNIT TO AN ELIGIBLE PERSON OR FAMILY CAN BE MADE ONLY AT THE TIME OF THE PROPOSED TRANSFER TAKING INTO CONSIDERATION INTEREST RATES, PROPERTY TAXES AND OTHER FACTORS THAT CANNOT BE ACCURATELY PREDICTED AND THAT THE SALES PRICE PERMITTED HEREUNDER MAY NOT INCREASE OR DECREASE IN THE SAME MANNER AS OTHER SIMILAR REAL PROPERTY WHICH IS NOT ENCUMBERED BY THIS RESTRICTION. OWNER FURTHER ACKNOWLEDGES THAT AT ALL TIMES IN SETTING THE SALES PRICE OF THE ASSISTED UNIT THE PRIMARY OBJECTIVE OF THE BENEFICIARY AND THIS RESTRICTION IS TO PROVIDE HOUSING TO ELIGIBLE PERSONS OR FAMILIES AT AFFORDABLE HOUSING COST. THE SALES PRICE WILL ALMOST CERTAINLY BE LESS THAN OTHER SIMILAR PROPERTIES WHICH HAVE NO RESTRICTIONS.

\_\_\_\_\_  
[initialed by Trustor(s)]

\_\_\_\_\_  
Name of Trustor #1

\_\_\_\_\_  
Name of Trustor #2

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**Exhibit "A"**  
**Legal Description**