

DEED OF TRUST

CITY OF GILROY

LOW AND/OR MODERATE-INCOME OWNER

ADMINISTRATIVE COVER SHEET

(Remove Upon Completion)

BLANK LINES: CHECKLIST

_____ Date of Document, p. 1, first paragraph

_____ Borrower's Name, p. 1, first paragraph

_____ Date of Promissory Note, Amount of City Loan, p.2, second paragraph

_____ Signatures, p. 9

Recording Requested and
When Recorded Mail To:
City of Gilroy
7351 Rosanna Street
Gilroy, California 95020
Attn: HCD Grant Coordinator

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

DEED OF TRUST
AND SECURITY AGREEMENT

THIS DEED OF TRUST AND SECURITY AGREEMENT (“Deed of Trust”) made as of this _____ day of _____, 200____, among _____ (“Borrower”) as trustor, and **TITLE COMPANY NAME** (“Trustee”), and the City of Gilroy, a municipal corporation (the “City”), as “Beneficiary.”

Any capitalized term not defined in this Deed of Trust shall have the meaning set forth in the Property Restriction Agreement.

The Borrower, in consideration of the promises herein recited and the trust herein created, irrevocably grants, transfers, conveys and assigns to the Trustee, in trust, with power of sale, the property located in the City of Gilroy, State of California, described in the attached Exhibit “A” (the “Property”).

TOGETHER with all the improvements now or hereafter erected on the property, and all easements, rights, appurtenances, and all fixtures now or hereafter attached to the property, all of which, including replacements and additions thereto, shall be deemed to be and remain a part of the property covered by this Deed of Trust; and

TOGETHER with all articles of personal property or fixtures now or hereafter attached to or used in and about the building or buildings now erected or hereafter to be erected on the Property which are necessary to the complete and comfortable use and occupancy of such building or buildings for the purposes for which they were or are to be erected, including all other goods and chattels and personal property as are ever used or furnished in operating a building, or the activities conducted therein, similar to the one herein described and referred to, and all renewals or replacements thereof or articles in substitution therefore, whether or not the same are, or shall be attached to said building or buildings in any manner; and all of the foregoing, together with the Property, is herein referred to as the “Security”;

To have and to hold the Security together with acquittances to the Trustee, its successors and assigns forever;

TO SECURE to the Beneficiary the performance of the covenants and agreements of Borrower obtained in that certain Property Restriction Agreement and Option to Purchase of even date herewith and between the City and Borrower, and recorded on the same date as this Deed of Trust (the "Property Restriction Agreement") and to secure the payment of the City's Equity Share (as defined in the Property Restriction Agreement) that may become due by Borrower to City;

TO SECURE to the City the repayment of the City's Equity Share evidenced by a promissory note executed by the Borrower to the City dated _____, 200____ (the "Promissory Note");

TO SECURE to the City 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 the Borrower herein contained; and

TO SECURE the performance of any obligations of Borrower in any other agreements with respect to the financing of the Property or the Security the failure of which would adversely affect Beneficiary, whether or not Beneficiary is a party to such agreements.

BORROWER AND BENEFICIARY 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 Security, that other than this Deed of Trust, the Security is encumbered only by: (a) those deeds of trust executed by Borrower in connection with a loan made to Borrower by Guild Mortgage (the "Senior Lender Deed of Trust") and the City of Gilroy, securing respectively, a promissory note executed by Borrower in favor of the Guild Mortgage (the "Senior Lender Note"), and a promissory note executed by Borrower in favor of the City of Gilroy (the "First-Time Homebuyer Promissory Note"), to assist in the purchase of the Property; and (b) the Property Restriction Agreement. The Borrower agrees to warrant and defend generally the title to the Security 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 the Beneficiary's interest in the Security.

2. Repayment of Equity Share. The Borrower will promptly repay, when due, the Equity Share amount required by the Promissory Note and under the Property Restriction Agreement.

3. Assumption of Promissory Note. The Promissory Note contains the following provisions concerning repayment of the loan under certain conditions:

“Borrower(s) acknowledge(s) that this Promissory Note is given in connection with the purchase of the Home as part of an effort by the City to assist in the purchase of homes by low or moderate-income households. Consequently, this Note is assumable only by the spouse or domestic partner of Owner who inherits the Home from Owner (and who occupies the Home), Inheriting Owners, and Non-Relative Inheriting Owners pursuant to Section 6 of the Property Restriction Agreement. The Equity Share shall be due from Borrower upon notice from the City. The Promissory Note is due in full upon all Repayment Transfers.

In order to evidence the assumption of the Owner's obligations under the Promissory Note, Deed of Trust and the Agreement, the City may, at its sole discretion and authority, require the Inheriting Owner or Non-Relative Inheriting Owner that assumes this Note to execute (i) a new note, which shall be in an amount equal to the Equity Share owed by Borrower, (ii) a new deed of trust to be recorded in the same position as the existing Deed of Trust and (iii) a new Property Restriction Agreement with a new thirty (30) year term in forms provided by the City.

Similarly before a spouse or domestic partner of Borrower who inherits the Home from Borrower (and who occupies the Home) assumes this Promissory Note, the City may in its sole and absolute discretion require such persons to execute (i) a new note, which shall be in an amount equal to the Equity Share owed by Borrower, (ii) a new deed of trust to be recorded in the same position as the existing Deed of Trust and (iii) a new Property Restriction Agreement and Option to Purchase with a term that is equal to the remaining number of years in the term of the Borrower's Property Restriction Agreement.Property Restriction Agreement. Borrower will observe and perform all of the covenants and agreements of the Property Restriction Agreement.”

4. Senior Lender Loan. The Borrower will observe and perform the Senior Lender Deed of Trust, and the Senior Lender Note.

5. Charges; Liens. The Borrower will pay all taxes, assessments and other charges, fines and impositions attributable to the Security which may attain a priority over this Deed of Trust, by the Borrower making any payment, when due, directly to the payee thereof. The Borrower will promptly furnish to the Beneficiary all notices of amounts due under this paragraph, and in the event the Borrower makes payment directly, the Borrower will promptly discharge any lien which has priority over this Deed of Trust; provided, that the Borrower will not be required to discharge the lien of the Senior Lender Deed of Trust and the Property Restriction Agreement or any other lien described in this paragraph so long as the Borrower will agree in writing to the payment or performance of the obligation secured by such lien in a manner acceptable to the Beneficiary, or will, in good faith, contest such lien by, or defend enforcement of such lien in, legal proceedings which operate to prevent the enforcement of the lien or forfeiture of the Security or any part thereof.

6. Hazard Insurance. The Borrower will keep the Security insured by a standard fire and extended coverage insurance policy in at least such amounts and for such periods as the Beneficiary may require, which amounts shall be the lesser of (1) the sum of the loan amount under the Promissory Note and the Senior Lender Note, or (2) the replacement cost of the Security, but in

no event less than (3) the amount necessary to prevent the Borrower from becoming a co-insurer under the terms of the policy.

The insurance carrier providing this insurance shall be licensed to do business in the State of California and be chosen by the Borrower subject to approval by the Beneficiary; provided, that such approval will not be withheld if the insurer is also approved by the beneficiaries of the Senior Lender Deed of trust (the "Senior Lender"), the Federal Home Loan Mortgage Corporation ("FHLMC"), the Federal National Mortgage Association ("FNMA"), the United States Department of Housing and Urban Development ("HUD"), the United States Department of Veterans Affairs (the "VA"), the California Housing Finance Agency or successors thereto.

All insurance policies and renewals thereof will be in a form acceptable to the Beneficiary and will include a standard mortgagee clause with standard lender's endorsement in favor of the holder of the Senior Lender Note and the Beneficiary as their interests may appear and in a form acceptable to the Beneficiary. The Beneficiary shall have the right to hold, or cause its designated agent to hold, the policies and renewals thereof, and the Borrower shall promptly furnish to the Beneficiary, or its designated agent, the original insurance policies or certificates of insurance, all renewal notices and all receipts of paid premiums. In the event of loss, the Borrower will give prompt notice to the insurance carrier and the Beneficiary or its designated agent. The Beneficiary, or its designated agent, may make proof of loss if not made promptly by the Borrower. The Beneficiary shall receive thirty days advance notice of cancellation of any insurance policies required under this Section.

Unless the Beneficiary and the Borrower otherwise agree in writing, insurance proceeds, subject to the rights of the Senior Lender, will be applied to restoration or repair of the Security 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 will be used, subject to the rights of the Senior Lender, to repay the Promissory Note and pay all sums secured by this Deed of Trust, with the excess, if any, paid to the Borrower. If the Security is abandoned by the Borrower, or if the Borrower fails to respond to the Beneficiary, or its designated agent, within thirty (30) days from the date notice is mailed by either of them to the Borrower that the insurance carrier offers to settle a claim for insurance benefits, the Beneficiary, or its designated agent, is authorized, subject to the rights of the Senior Lender, to collect and apply the insurance proceeds at the Beneficiary's option either to restoration or repair of the Security or to repay the Promissory Note and all sums secured by this Deed of Trust.

If the Security is acquired by the Beneficiary, all right, title and interest of the Borrower in and to any insurance policy and in and to the proceeds thereof resulting from damage to the Security prior to the sale or acquisition will pass to the Beneficiary to the extent of the sums secured by this Deed of Trust immediately prior to such sale or acquisition, subject to the rights of the Senior Lender.

7. Preservation and Maintenance of Security. The Borrower will keep the Security in good repair and will not commit waste or permit impairment or deterioration of the Security.

8. Protection of the Beneficiary's Security. If the Borrower fails to perform the covenants and agreements contained in this Deed of Trust, the Senior Lender Note, the Senior Lender Deed of Trust, or the Property Restriction Agreement, or if any action or proceeding is commenced which materially affects the Beneficiary's interest in the Security, including, but not limited to, default under any Senior Lender Deed of Trust, any Senior Lender Note, the Property Restriction Agreement, or any other deed of trust encumbering the Property, eminent domain, insolvency, code enforcement, or arrangements or proceedings involving a bankrupt or decedent, then the Beneficiary, at the Beneficiary's option, upon notice to the Borrower, may make such appearances, disburse such sums and take such action as it determines necessary to protect the Beneficiary's interest, including but not limited to, disbursement of reasonable attorneys' fees and entry upon the Security to make repairs.

Any amounts disbursed by the Beneficiary pursuant to this paragraph, with interest thereon, will become an indebtedness of the Borrower secured by this Deed of Trust. Unless the Borrower and Beneficiary agree in writing to other terms of payment, such amount will be payable upon notice from the Beneficiary to the Borrower requesting payment thereof, and will bear interest from the date of disbursement at the rate payable from time to time under the Promissory Note following default, 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 the Beneficiary to insure any expense or take any action hereunder.

9. Inspection. The Beneficiary may make or cause to be made reasonable entries upon and inspections of the Security; provided that the Beneficiary will give the Borrower reasonable notice of inspection.

10. Forbearance by the Beneficiary Not a Waiver. Any forbearance by the Beneficiary in exercising any right or remedy will not be a waiver of the exercise of any such right or remedy. The procurement of insurance or the payment of taxes or other liens or charges by the Beneficiary will not be a waiver of the Beneficiary's right to accelerate the maturity of the indebtedness secured by this Deed of Trust.

11. 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 any other document, or afforded by law or equity, and may be exercised concurrently, independently or successively.

12. 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 the Beneficiary and the Borrower subject to the provisions of this Deed of Trust.

13. Joint and Several Liability. All covenants and agreements of the Borrower shall be joint and several.

14. Notice. Except for any notice required under applicable law to be given in another manner, all notices required in this Deed of Trust shall be sent by certified mail, return receipt requested or express delivery service with a delivery receipt, or personally delivered with a delivery receipt obtained, and shall be deemed to be effective as of the date shown on the delivery receipt as

the date of delivery, the date delivery was refused, or the date the notice was returned as undeliverable as follows:

To the Owner:

At the address of the Residence.

To the City:

City of Gilroy
7351 Rosanna Street
Gilroy, California 95020
Attn: HCD Grant Coordinator

The parties may subsequently change addresses by providing written notice of the change in address to the other parties in accordance with this Section.

15. Controlling Law. This Deed of Trust shall be construed in accordance with and be governed by the laws of the State of California.

16. Invalid Provisions. If any one or more of the provisions contained in this Deed of Trust or the Promissory Note shall for any reason be held to be invalid, illegal or unenforceable in any respect, then such provision or provisions shall be deemed severable from the remaining provisions, and this Deed of Trust and the Promissory Note shall be construed as if such invalid, illegal or unenforceable provision had never been contained in this Deed of Trust or the Promissory Note.

17. 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.

18. Indemnity. Borrower agrees to defend, indemnify, and hold the City and its board members, officers, agents and employees harmless from all losses, damages, liabilities, claims, actions judgments, costs and reasonable attorney's fees that City and its board members, officers, agents and employees may incur as a direct or indirect consequence of:

- a. the making of the loan evidenced by the Promissory Note to Borrower;
- b. Borrower's failure to perform any obligations as and when required by the Promissory Note and Deed of Trust; or
- c. the failure at any time of any Borrower's certifications, representations, or warranties to be true and correct.

19. Default; Remedies. Upon the Borrower's breach of any covenant or agreement of the 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, the Beneficiary, prior to acceleration, will send, in the manner

set forth in Section 15 of this Deed of Trust, notice to the 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 effective as set forth in Section 15 of this Deed of Trust, 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 the Security. The notice will also inform the Borrower of the 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 the Borrower to acceleration and sale. If the breach is not cured on or before the date specified in the notice, the Beneficiary, at the Beneficiary's option, may: (a) 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; (b) either in person or by agent, with or without bringing any action or proceeding, or by a receiver appointed by a court, and without regard to the adequacy of its security, enter upon the Security and take possession thereof (or any part thereof) and of any of the Security, in its own name or in the name of the Trustee, and do any acts which it deems necessary or desirable to preserve the value or marketability of the Security, or part thereof or interest therein, increase the income therefrom or protect the security thereof. The entering upon and taking possession of the Security shall not cure or waive any breach hereunder or invalidate any act done in response to such breach and, notwithstanding the continuance in possession of the Security, the Beneficiary shall be entitled to exercise every right provided for in this Deed of Trust, or by law upon occurrence of any uncured breach, including the right to exercise the power of sale; (c) commence an action to foreclose this Deed of Trust as a mortgage, appoint a receiver, or specifically enforce any of the covenants hereof; (d) deliver to the Trustee a written declaration of default and demand for sale, pursuant to the provisions for notice of sale found at California Civil Code Sections 2924, et seq., as amended from time to time; or (e) exercise all other rights and remedies provided herein, in the instruments by which the Borrower acquires title to any Security, or in any other document or agreement now or hereafter evidencing, creating or securing all or any portion of the obligations secured hereby, or provided by law.

The Beneficiary shall be entitled to collect all reasonable costs and expenses incurred in pursuing the remedies provided in this paragraph, including, but not limited to, reasonable attorneys' fees.

20. Acceleration. Upon the occurrence of a default under the Promissory Note or this Deed of Trust, the Beneficiary shall have the right to declare the full amount of the principal along with any interest under the Promissory Note immediately due and payable. Any failure by the Beneficiary to pursue its legal and equitable remedies upon default shall not constitute a waiver of the Beneficiary's right to declare a default and exercise all of its rights under the Promissory Note and this Deed of Trust. Nor shall acceptance by the Beneficiary of any payment provided for in the Promissory Note constitute a waiver of the Beneficiary's right to require prompt payment of any remaining principal and interest owed.

21. Borrower's Right to Reinstate. Notwithstanding the Beneficiary's acceleration of the sums secured by this Deed of Trust, the Borrower will have the right to have any proceedings begun by the Beneficiary to enforce this Deed of Trust discontinued at any time prior to five (5) days before sale of the Security pursuant to the power of sale contained in this Deed of Trust or at any time prior to entry of a judgment enforcing this Deed of Trust if: (a) the Borrower pays Beneficiary all sums which would be then due under this Deed of Trust and no acceleration under the

Promissory Note has occurred; (b) the Borrower cures all breaches of any other covenants or agreements of the Borrower contained in this Deed of Trust; (c) the Borrower pays all reasonable expenses incurred by Beneficiary and the Trustee in enforcing the covenants and agreements of the Borrower contained in this Deed of Trust, and in enforcing the Beneficiary's and the Trustee's remedies, including, but not limited to, reasonable attorney's fees; and (d) the Borrower takes such action as Beneficiary may reasonably require to assure that the lien of this Deed of Trust, Beneficiary's interest in the Security and the Borrower's obligation to pay the sums secured by this Deed of Trust shall continue unimpaired. Upon such payment and cure by the Borrower, this Deed of Trust and the obligations secured hereby will remain in full force and effect as if no acceleration had occurred.

22. Reconveyance. Upon payment or forgiveness of all sums secured by this Deed of Trust and upon the expiration of the term of the Property Restriction Agreement, if the Borrower owns and occupies the Property and is not in violation of any provisions of the Note, this Deed of Trust or the Property Restriction Agreement, the Beneficiary will request Trustee to reconvey the Security and will surrender this Deed of Trust and the Property Restriction Agreement to Trustee. Trustee will reconvey the Security 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.

23. Substitute Trustee. The Beneficiary, at the Beneficiary's option, may from time to time remove the Trustee and appoint a successor trustee to any trustee appointed hereunder. The successor trustee will succeed to all the title, power and duties conferred upon the Trustee herein and by applicable law.

24. Subordination to Senior Lender Deeds of Trust. Notwithstanding any other provision hereof, the provisions of this Deed of Trust shall be subordinate to the lien of the Senior Lender Deed of trust and shall not impair the rights of the Senior Lender, or the Senior Lender's successors or assigns, to exercise remedies under the Senior Lender Deed of trust in the event of default under the Senior Lender Deed of trust by the Borrower. Such remedies under the Senior Lender Deed of trust include the right of foreclosure or acceptance of a deed or assignment in lieu of foreclosure. After such foreclosure or acceptance of a deed or assignment in lieu of foreclosure, this Deed of Trust shall be forever terminated and shall have no further effect as to the Property or any transferee thereafter; provided, however, if the holder of such Senior Lender Deed of trust acquired title to the Property pursuant to a deed or assignment in lieu of foreclosure, this Deed of Trust shall automatically terminate upon such acquisition of title, only if either a notice of default was recorded under the applicable Senior Lender Deed of Trust, or, if no notice of default was recorded, (i) the Beneficiary has been given written notice of default under such Senior Lender Deed of trust (which requirement shall be satisfied by notice of default required by California Civil Code Section 2924) and (ii) the Beneficiary shall not have cured the default within the period provided by law. Borrower agrees to record any necessary documents to effect such termination, if applicable.

25. Attorney's Fees. If any action or proceeding is brought to enforce this Deed of Trust or any provision of this Deed of Trust, or the Promissory Note, the prevailing party shall be entitled to its attorneys' fees and the cost of such action or proceeding.

26. Nonliability. Borrower acknowledges, understands and agrees that the relationship between Borrower and the Beneficiary is solely that of an Borrower and the administrator of an

affordable housing program, and that the Beneficiary does not undertake or assume any responsibility for or duty to Borrower to select, review, inspect, supervise, pass judgment on, or inform Borrower of the quality, adequacy or suitability of the Security or any other matter. The Beneficiary owes no duty of care to protect Borrower against negligent, faulty, inadequate or defective building or construction or any condition of the Security and Borrower agrees that neither Borrower, or Borrower's heirs, successors or assigns shall ever claim, have or assert any right or action against the Beneficiary for any loss, damage or other matter arising out of or resulting from any condition of the Security and will hold Beneficiary harmless from any liability, loss or damage for these things.

27. Exhibits. Any exhibits referred to in this Deed of Trust are incorporated by such reference.

IN WITNESS WHEREOF, the Borrower has executed this Deed of Trust as of the date first written above.

Borrower

(Print Name)

Borrower

(Print Name)

EXHIBIT A
Property Description

All that certain Real Property in the County of Santa Clara, State of California, described as follows:

