

*****NOTE: Standard terms and conditions in this form do not conform to City's standard and will not be updated when we make revisions to City's standard terms and conditions.*****

[DP – delete note above when completing this form.]

RECORDING REQUESTED BY AND
PLEASE RETURN TO:

Community Development Department
City Property Tax Rebate Program
City of Mountain View
P.O. Box 7540
Mountain View, CA 94039-7540
Attn: Housing and Neighborhood
Services Manager

EXEMPT FROM RECORDING FEES PER
GOVERNMENT CODE §§ 6103, 27383

SPACE ABOVE THIS LINE FOR RECORDER'S USE

Escrow No.: _____

Property Address: _____

APN: _____

**PERFORMANCE DEED OF TRUST, ASSIGNMENT OF RENTS,
AND SECURITY AGREEMENT**

(City of Mountain View – Below-Market-Rate Units)

THIS PERFORMANCE DEED OF TRUST, ASSIGNMENT OF RENTS AND SECURITY AGREEMENT (“**Deed of Trust**”) is entered into as of _____, 20__, by _____ and _____ (collectively, “**Trustor**”) as Trustor, to [_____ Title Company] and [the City of Mountain View, a California charter city and municipal corporation] (“**Trustee**”) as Trustee, for the benefit of the City of Mountain View, a California charter city and municipal corporation (the “**City**”) as Beneficiary, (Trustor, Trustee, and City hereinafter collectively “**Parties**” or individually “**Party**”).

Trustor, in consideration of the indebtedness and promises herein recited, and the trust herein created, irrevocably and unconditionally grants, transfers, conveys, and assigns to Trustee, in trust for the benefit of City, with power of sale and right of entry and possession, all of Trustor’s right, title, and interest now held or hereafter acquired in and to the property located in the City of Mountain View, County of Santa Clara, State of California, described in the attached Exhibit A and more commonly known as: _____, Mountain View, California (the “**Property**”);

TOGETHER with the rents, issues, and profits of such Property, subject, however, to the right, power, and authority granted and conferred on City in this Deed of Trust to collect and apply the rents, issues, and profits; and

TOGETHER with all the improvements now or hereafter erected on the Property, and all easements, rights-of-way, and appurtenances thereto, 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;

All of the foregoing, together with the Property, is herein collectively 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 City the payment of the sums, and the performance of the covenants and agreements of Trustor evidenced by: (i) that certain Affordable Housing Resale Restriction Agreement and Option to Purchase executed by and between Trustor and City, dated as of the date hereof and recorded substantially concurrently herewith (the "**Resale Restriction Agreement**"); and (ii) that certain Secured Promissory Note (the "**City Note**") dated as of the date hereof and executed by Trustor for the benefit of City, pursuant to which Trustor is obligated to pay to City Excess Sales Proceeds as defined in the Resale Restriction Agreement, and all extensions, modifications, or renewals of the City Note and the Resale Restriction Agreement. The City Note and the Resale Restriction Agreement are incorporated herein by this reference; and

TO SECURE 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 Trustor herein contained.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is agreed as follows:

1. **Trustor's Estate.** Trustor represents and warrants that Trustor is lawfully seized of the estate hereby conveyed, has the right to grant and convey the Security, and that other than this Deed of Trust, the Security is encumbered only by: (1) that certain deed of trust executed by Trustor and recorded against the Property substantially concurrently herewith to secure repayment of a loan made by _____ (the "**First Mortgage Lender**") to assist Trustor in the purchase of the Property and evidenced by a promissory note executed by Trustor in favor of the First Mortgage Lender in the original principal amount of _____ Dollars (\$_____) (the "**First Mortgage Note**"), and (2) the Resale Restriction Agreement.

Trustor 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 City's interest in the Security, and Trustor shall pay all costs and expenses, including cost of evidence of title and attorneys' fees in a reasonable sum, in any such action or proceeding in which City or Trustee may appear, and in any suit brought by City to foreclose this Deed of Trust. As used in this Deed of Trust, the term "First Mortgage Lender" shall include all successors and assigns of the First Mortgage Lender with respect to the First Mortgage Note.

2. **City Note and Resale Restriction Agreement.** Trustor will promptly pay when due all sums payable pursuant to the City Note and shall perform all of Trustor's covenants and obligations under the City Note, the Resale Restriction Agreement, and this Deed of Trust.

3. **Charges and Liens.** Trustor will promptly pay when due, the interest, principal, and all other charges accruing under any deed of trust, mortgage, or other instrument encumbering the Property, and will pay when due directly to the payee thereof all taxes, assessments and other charges, fines, and impositions affecting the Property. Upon request by the City, Trustor will promptly furnish to the City copies of all notices of amounts due described in this section and evidence of payment of such amounts. Trustor shall pay when due each obligation secured by or reducible to a lien, charge, or encumbrance which now does or later may encumber or appear to encumber all or part of the Property or any interest therein, whether or not such lien, charge, or encumbrance is or would be senior or subordinate to this Deed of Trust; provided, however, Trustor will not be required to discharge the lien of the deed of trust securing the First Mortgage Note (the "**First Mortgage Deed of Trust**"), and Trustor will not be required to pay any tax, charge, lien, or assessment described in this section so long as Trustor is actively contesting its validity in good faith and by appropriate legal proceedings that will operate to prevent the enforcement of the lien or forfeiture of the Property or any part thereof. Trustor shall post security for the payment of such contested claims as may be requested by City.

4. **Protection of Security.** If Trustor fails to perform any of the covenants and agreements set forth in this Deed of Trust, or if any action or proceeding is commenced that materially affects City's interest in the Property, including, but not limited to, default under any senior lienholder document, eminent domain, insolvency, code enforcement, arrangements, or proceedings involving a bankrupt or decedent, foreclosure of any mortgage secured by the Property, or sale of the Property under a power of sale of any instrument secured by the Property, City, at its option, without releasing Trustor from any obligation hereunder, may, upon notice to Trustor, make such appearance, disburse such sums, and take such action as is necessary to protect City's interest, including, but not limited to, the purchase of insurance, disbursement of reasonable attorneys' fees, and

entry upon the Property to make repairs. Any amounts disbursed by City pursuant to this section, with interest thereon, shall become additional indebtedness of Trustor secured by this Deed of Trust. Unless Trustor and City agree to other terms of payment, such amounts shall be payable upon notice from City to Trustor requesting payment thereof, and shall bear interest from the date of disbursement lesser of twelve percent (12%) per annum or the highest rate permissible under applicable law. Nothing contained in this section shall require City to incur any expense or take any action hereunder.

5. **Inspection.** City may make, or cause to be made, reasonable entries upon the Property and inspections of the Security; provided that City will give Trustor reasonable notice of inspection.

6. **Title Insurance.** At Trustor's expense, Trustor shall purchase a CLTA lender's policy of title insurance for the benefit of City, insuring this Deed of Trust as a secondary lien on the Property, with no delinquent taxes or assessment liens appearing as exceptions to title.

7. **Hazard Insurance.** Trustor shall keep the Property insured by a standard all-risk property insurance policy with endorsements for vandalism, malicious mischief, and special extended perils, in the full replacement value of the improvements, and with endorsements for increases in costs due to changes in code and inflation, with loss payable to City and any superior trust deed holder, as their interests may appear, and any other insurance required by City.

The insurance carrier providing such insurance shall be licensed to do business in the State of California and may be chosen by Trustor, subject to approval by City. All insurance policies and renewals thereof shall be in a form acceptable to City, and shall include a standard mortgagee clause with standard lender's endorsement in favor of the holder of any senior lien and City as their interests may appear and in a form acceptable to the City. Trustor shall provide City with copies of all policies and renewals thereof, certificates of insurance, all renewal notices, and all receipts of paid premiums. In the event of loss, Trustor shall give prompt notice to the insurance carrier and City or its designated agent. City, or its designated agent, may make proof of loss if not made promptly by Trustor. The policies shall include an endorsement providing that City shall receive thirty (30) days' advance written notice of the cancellation, expiration, or termination or any material change in the coverage afforded by any of the insurance policies required under this Section.

If the Property is acquired by City, all right, title, and interest of Trustor in and to any insurance policy and in and to the proceeds thereof resulting from damage to the Property prior to the sale or acquisition will pass to City 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 holder of any senior lien.

Renewal policies and any replacement policies, together with premium receipts satisfactory to City, shall be delivered to City at least thirty (30) days prior to the expiration of existing policies. Neither Trustee nor City 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. The application of proceeds pursuant to this section shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

8. **Awards and Damages.** Subject to the rights of senior lienholders, 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 applied to the restoration or repair of the Property (if applicable) or paid to City. City 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 City shall determine at its option. City 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 City may be released to Trustor upon such conditions as City may impose for its disposition. Application of all or any part of the amounts collected and received by City or the release thereof shall not cure or waive any default under this Deed of Trust. If the Property is abandoned by Trustor, or if, after notice by City or its designated agent to Trustor that the condemnor or insurer offers to make an award or settle a claim for damages, Trustor fails to respond to City within thirty (30) days after the date such notice is mailed, City or its designated agent is authorized to collect and apply the proceeds, at City's option, either to restoration or repair of the Property or to the sums secured by this Deed of Trust.

9. **Maintenance.** Trustor shall maintain the Property and all structures and landscaping thereon in good condition and repair. Trustor agrees to complete installation of landscaping as approved by City, and to diligently maintain and care for installed landscaping, using generally accepted methods of cultivation and watering. Trustor shall not remove or demolish any building located on the Property, and agrees 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, and to comply with all laws affecting the

Property or requiring any alterations or improvements to be made thereon. Trustor shall not commit or permit waste thereof, and shall not commit or permit any act upon the Property in violation of applicable laws. Trustor will comply with all applicable laws, ordinances, and governmental regulations affecting the Property or requiring any alteration or improvement thereof, and will not suffer or permit any violations of any such law, ordinance, or governmental regulation, nor of any covenant, condition, or restriction affecting the Property. If there arises a condition in contravention of this section, and if Trustor has not cured such condition within thirty (30) days after receiving a notice from City of such a condition, then, in addition to any other rights available to City, City shall have the right (but not the obligation) to perform all acts necessary to cure such condition, and to establish or enforce a lien or other encumbrance against the Property to recover its cost of cure.

10. **Occupancy.** Trustor shall occupy the Property as Trustor's primary residence, and the Property shall be used as the primary residence of Trustor and Trustor's household and for no other purpose. The Property shall not be leased or rented by Trustor to any person or entity other than as expressly permitted by the Resale Restriction Agreement. City shall have the right to monitor whether the Property is owner-occupied by requesting that Trustor provide City with a written certification under penalty of perjury that the Property is owner-occupied, accompanied by supporting documentation reasonably satisfactory to City as further described in Exhibit B to the Resale Restriction Agreement.

11. **Transfer.** Trustor shall not transfer, lease, sell, assign, refinance, encumber, or convey any interest in the Property without complying with all requirements of the Resale Restriction Agreement.

12. **Assignment of Rents.** Trustor hereby irrevocably, absolutely, presently and unconditionally assigns to City the rents, issues, revenue, and profits of the Property. This is an absolute assignment and not an assignment for security only. Subject to the limitations on lease or rental of the Property as set forth herein and in the Resale Restriction Agreement, City hereby confers upon Trustor a license to collect and retain such rents, issues, revenue, and profits, as they become due and payable prior to any Default hereunder. Upon the occurrence of any such Default, City may terminate such license without notice to or demand upon Trustor and without regard to the adequacy of any security for the indebtedness hereby secured, and may either in person, by agent, or by a receiver to be appointed by a court, enter upon and take possession of the Property or any part thereof, and 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 attorneys' fees, to any indebtedness secured hereby, and in such order as City may determine. City's right to the rents, issues, revenue, and profits of the Property does not depend upon whether or not City takes possession of the Property. The entering upon and taking possession of the Property, the

collection of such rents, issues, revenue, 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. If a Default occurs while City is in possession of all or part of the Property and/or is collecting and applying rents as permitted under this Deed of Trust, City, Trustee, and any receiver shall nevertheless be entitled to exercise and invoke every right and remedy afforded any of them under this Deed of Trust and at law or in equity, including the right to exercise the power of sale granted hereunder. Regardless of whether or not City, in person or by agent, takes actual possession of the Property, City shall not be deemed to be a "mortgagee in possession," shall not be responsible for performing any obligation of the lessor under any lease, shall not be liable in any manner for the Property, or the use, occupancy, enjoyment, or operation of any part of it, and unless due solely to the willful misconduct or gross negligence of City, shall not be responsible for any dangerous or defective condition of the Property or any negligence in the management, repair, or control of the Property.

13. **Default.** An event of default ("**Default**") shall arise hereunder upon the occurrence of any one or more of the following and the expiration of any applicable cure period:

- a. Trustor fails to occupy the Property as Trustor's principal residence;
- b. The sale, conveyance, encumbrance, refinance, assignment, or other transfer of the Property, including, without limitation, the lease or rental of the Property in violation of the Resale Restriction Agreement;
- c. An event of default arises under the City Note or the Resale Restriction Agreement and such default remains uncured following the expiration of any applicable cure period;
- d. Trustor fails to pay when due any sum payable pursuant to the City Note, the Resale Restriction Agreement, or this Deed of Trust;
- e. The Property is refinanced or encumbered in violation of the Resale Restriction Agreement or this Deed of Trust;
- f. Trustor fails to maintain insurance on the Property as required by the Resale Restriction Agreement and this Deed of Trust;
- g. Subject to Trustor's right to contest the following charges, Trustor fails to pay prior to delinquency taxes or assessments due on the Property or fails to pay when due any other charge that may result in a lien on the Property, and Trustor fails to cure such default within twenty (20) days of date of delinquency, but in all events upon the imposition of any such tax or other lien;

h. Trustor declares bankruptcy or makes an assignment of assets for the benefit of creditors, or an order for relief is entered under Federal bankruptcy laws as to Trustor, or Trustor is adjudicated as insolvent or bankrupt pursuant to the provisions of any State or Federal insolvency or bankruptcy, or Trustor consents to, acquiesces in, or attempts to secure the appointment of, any receiver for all or any substantial part of the Property;

i. The occurrence of an event of default under any loan secured by the Property and the continuance of such default beyond the expiration of all applicable cure periods such that the holder of such loan has the right to accelerate such loan;

j. Trustor fails to observe or perform any other covenant, condition, or agreement to be observed or performed by Trustor pursuant to City. Note, the Resale Restriction Agreement or this Deed of Trust.

14. **Remedies.** Upon the occurrence of a Default, the giving of notice thereof, and the expiration of any applicable cure period, City may, at its option, exercise any one or more of the following remedies:

a. Declare all of the sums payable under the City Note to be immediately due and payable without further demand.

b. Pursue the exercise of the power of sale provided under this Deed of Trust.

c. Either in person or by agent, with or without bringing any action or proceeding, or by a receiver appointed by a court, enter upon, take possession thereof (or any part thereof) and of any of the Security, in its own name or in the name of Trustee, and do any acts which it deems necessary or desirable to preserve the value or marketability of the Property, 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, City shall be entitled to exercise every right and remedy provided under the City Note, this Deed of Trust, or the Resale Restriction Agreement, or by law upon the occurrence of any uncured breach.

d. Commence an action to foreclose this Deed of Trust as a mortgage, appoint a receiver, or specifically enforce any of the covenants hereof.

e. Exercise its option to purchase the Property pursuant to the Resale Restriction Agreement.

f. Exercise all other rights and remedies provided herein, in the instruments by which Trustor 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.

g. Exercise any other remedy provided by law or in equity.

15. **Acceleration and Sale.**

a. **Notice of Default.** Upon Trustor's breach of any covenant or agreement of Trustor under the City Note, the Resale Restriction Agreement, or this Deed of Trust, City shall mail notice to Trustor as provided in Section 24 hereof specifying: (i) the nature of the breach; (ii) the action required to cure such breach; (iii) a date no less than thirty (30) days from the date the notice is mailed to Trustor by which such breach must be cured or such shorter cure period as may be provided in the City Note, the Resale Restriction Agreement, or this Deed of Trust; and (iv) that failure to cure such breach on or before the date specified in the notice may result in acceleration of the Loan and the sale of the Property. The notice shall further inform Trustor of Trustor's right to reinstate after acceleration and the right to bring a court action to assert the nonexistence of a default or any other defense of Trustor to acceleration and sale. If the breach is not cured on or before the date specified in the notice, City, at City's option, 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/or pursue any other remedy provided herein or available under law. City shall be entitled to collect from Trustor, or from the proceeds of the sale of the Property, all reasonable costs and expenses incurred in pursuing the remedies provided hereunder, including, but not limited to, reasonable attorneys' fees.

If a nonmonetary default is not reasonably capable of being cured within thirty (30) days, City, in its sole and absolute discretion, may grant Trustor or the First Mortgage Lender such additional time as is reasonably necessary to cure the default provided that Trustor or the First Mortgage Lender: (i) initiates corrective action within said period; and (ii) diligently, continually, and in good faith works to effect a cure as soon as possible.

Notwithstanding the cure periods established in this section, in no event shall City be precluded from sooner exercising any remedies if its security becomes or is about to become materially jeopardized by any failure to cure a default or the default is not cured within ninety (90) days after the first notice of default or delinquency is given.

b. **Trustor's Right to Reinstate.** Notwithstanding City's acceleration of the sums secured by this Deed of Trust, Trustor will have the right to have any proceedings

begun by City to enforce this Deed of Trust discontinued at any time prior to five (5) days before 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 judgment enforcing this Deed of Trust if: (1) Trustor pays City all sums which would be then due under this Deed of Trust and the City Note had no acceleration occurred; (2) Trustor pays all reasonable expenses incurred by City and Trustee in enforcing the covenants and agreements of Trustor contained in this Deed of Trust, including, but not limited to, reasonable attorneys' fees; (3) Trustor cures all breaches of any other covenants or agreements of Trustor set forth in the Resale Restriction Agreement and this Deed of Trust; and (4) Trustor takes such action as City may reasonably require to assure that the lien of this Deed of Trust, City's interest in the Property, and Trustor's obligation to pay the sums and perform the obligations secured by this Deed of Trust shall continue unimpaired. Upon such payment and cure by Trustor, this Deed of Trust and the obligations secured hereby will remain in full force and effect as if no acceleration had occurred.

c. 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 Trustor, 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 Trustor, Trustee or City as Beneficiary, 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, Trustee shall apply the proceeds of sale to the payment of the indebtedness hereby secured, including, without limitation, the indebtedness evidenced by the City Note, any advances made, or costs or expenses paid or incurred by City under this Deed of Trust, any indebtedness evidenced by any other instrument hereby secured, and all other sums then secured hereby, including, without limitation, interest as provided in the City Note and the Resale Restriction Agreement, in such order as City shall direct; and then the remainder, if any, shall be paid to the person or persons legally entitled thereto.

16. **Remedies Cumulative; No Waiver**. No exercise of any right or remedy by City as Beneficiary, or by Trustee hereunder shall constitute a waiver of any other right or remedy herein contained or provided by law, and no delay or forbearance by City or Trustee in exercising any such right or remedy hereunder shall operate as a waiver thereof or preclude the exercise thereof in any continued or subsequent default hereunder. 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. No sale of the Property, forbearance on the part of City, 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 Trustor either in whole or in part.

17. **Indemnity.** Trustor agrees to defend, indemnify, and hold the City of Mountain View and its elected and appointed officers, officials, employees, agents, contractors, and consultants harmless from all losses, damages, liabilities, claims, actions, judgments, costs, and reasonable attorneys' fees that they may incur as a direct or indirect consequence of: (i) Trustor's failure to perform any obligations as and when required by the City Note, the Resale Restriction Agreement, and this Deed of Trust; or (ii) the failure at any time of any of Trustor's representations or warranties herein or in the Resale Restriction Agreement or the City Note to be true and correct.

18. **Due on Transfer of the Property.** If Trustor sells, conveys, assigns, transfers, alienates, or otherwise disposes of its interest in the Property, either voluntarily or involuntarily or by operation of law, in part or in full, in violation of the Resale Restriction Agreement, the City may, at its option, require immediate payment in full of all sums due under the City Note.

19. **Reconveyance.** Upon payment of all sums and satisfaction of all obligations secured by this Deed of Trust, including without limitation, payment of Excess Proceeds as defined in the Resale Restriction Agreement, and upon the expiration or termination of the Resale Restriction Agreement, City will provide a written request to the Trustee to reconvey the Security and will surrender this Deed of Trust and the City Note to Trustee. Trustee shall reconvey the Security without warranty and without charge to the person or persons legally entitled thereto. Such person or persons shall pay all costs of recordation, if any. The recitals in the reconveyance of any matters or facts shall be conclusive proof of the truthfulness thereof.

20. **Trustee Substitution.** City, at its option and without prior notice, may from time to time, by written instrument, remove Trustee and appoint a successor trustee pursuant to a written instrument executed by City and duly acknowledged and recorded in the Official Records of Santa Clara County. Such instrument shall be conclusive proof of proper substitution of such successor Trustee or Trustees, who shall, without conveyance from the predecessor Trustee, succeed to all the title, estate, power, and duties conferred upon Trustee herein and by applicable law. Such instrument shall set forth the name of Trustor, the original Trustee and the Beneficiary hereunder, the book and page where this Deed of Trust is recorded, and the name and address of the new Trustee.

21. **City'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 (1) 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) City may, in 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 the City, may reconvey all or any part of the Property, consent to the making of any map or plot of the Land, join in granting any easement thereon, or join in any extension agreement of any agreement subordinating the lien or charge hereof.

22. **Subordination.** Notwithstanding any provision herein, this Deed of Trust shall not diminish or affect the rights of the First Mortgage Lender (defined in Section 1 above) under the First Mortgage Deed of Trust (defined in Section 3 above). Further, this Deed of Trust and the City Note are expressly subordinate to the First Mortgage Deed of Trust and the First Mortgage loan documents.

23. **Request for Notice.** City requests that copies of any notice of default and notice of sale affecting the Property be sent to City at its address set forth herein. City shall record a Request for Notice of Default and Sale.

24. **Notices.** Any notice given under this Agreement shall be in writing and shall be given by delivering the same to such Party in person, by delivering the same to such Party by reputable overnight courier or express service, or by sending the same to such Party by registered or certified mail, return receipt requested, with postage prepaid. The address(es) of each Party for the giving of notices hereunder are, until changed as hereinafter provided, the following:

To City: Community Development Department
 Attention: Housing and Neighborhood Services Manager
 City of Mountain View
 500 Castro Street
 P.O. Box 7540
 Mountain View, CA 94039-7540

To Trustor: At the property address

With a copy to: _____ (optional)

Any notice will be deemed given on the date of delivery, on the date of refusal to accept delivery, or when delivery is first attempted but cannot be made due to a change of address for which no notice was given. A Party may change its notice address(es) at any time by giving written notice of such change to the other Party in the manner

provided herein. Notice given by counsel shall be deemed given by the Party represented by such counsel.

25. **Successors Bound.** The terms of this Deed of Trust shall be binding upon Trustor and Trustor's heirs, legatees, devisees, administrators, executors, successors, and assigns.

26. **Applicable Laws and Attorneys' Fees.** This Agreement shall be construed and enforced pursuant to the laws of the State of California. Any suit, claim, or legal proceeding of any kind related to this Agreement shall be filed and heard in a court of competent jurisdiction in the County of Santa Clara. Should any legal action be brought by a Party for breach of this Agreement or to enforce any provision herein, the prevailing Party of such action shall be entitled to reasonable attorneys' fees, court costs, and such other costs as may be fixed by the court. Reasonable attorneys' fees of the City Attorney's Office, if private counsel is not used, shall be based on comparable fees of private attorneys practicing in Santa Clara County.

27. **No Waiver.** Any waiver of any term or provision of this Deed of Trust must be in writing. No waiver shall be implied from any delay or failure by City to take action on any breach or default hereunder or to pursue any remedy allowed under this Deed of Trust or applicable law. No failure or delay by City at any time to require strict performance of any provision of this Deed of Trust or to exercise any election contained herein or any right, power, or remedy hereunder shall be construed as a waiver of any other provision or any succeeding breach of the same or any other provision hereof or a relinquishment for the future of such election.

28. **No Third-Party Beneficiaries.** This Deed of Trust shall not benefit or be enforceable by any person or entity except City, Trustee, and Trustor and their respective successors and assigns.

29. **Entire Agreement.** This Deed of Trust, together with the Resale Restriction Agreement and the City Note, sets forth the entire understanding between Trustor and City with respect to the subject matter hereof. Any previous representations, warranties, agreements, and understandings among the Parties regarding the subject matter of the Resale Restriction Agreement, this Deed of Trust, and City Note, whether written or oral, are superseded by the terms of the Resale Restriction Agreement, the City Note, and this Deed of Trust.

30. **Amendments.** This Deed of Trust shall not be amended except by a written instrument duly executed by Trustor and City and recorded in the Official Records of Santa Clara County.

31. **Severability.** If any provision of this Deed of Trust shall be held by a court of competent jurisdiction to be invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions of this Deed of Trust shall not be affected or impaired thereby.

32. **Controlling Law and Venue.** The terms of this Deed of Trust shall be interpreted under the laws of the State of California without regard to principles of conflicts of law. This Deed of Trust was entered into and is to be performed in the County of Santa Clara, which is the exclusive venue for any action or dispute arising out of this Deed of Trust.

33. **Captions and Gender.** All captions and headings in this Deed of Trust are for the purposes of reference and convenience and shall be disregarded for all other purposes, including the construction or enforcement of any of provisions thereof. Whenever the context so requires, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural.

34. **Joint and Several.** The obligations of each signatory to this Deed of Trust shall be joint and several.

35. **Time of the Essence.** Time is of the essence with regard to all matters contained in this Deed of Trust.

36. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which in the aggregate shall constitute one and the same instrument, and the Parties agree that signatures on this Agreement shall be sufficient to bind the Parties.

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

“TRUSTOR”:

By: _____

Print Name: _____

Title: _____

By: _____

Print Name: _____

Title: _____

SIGNATURES MUST BE NOTARIZED.

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
)
COUNTY OF SANTA CLARA) ss.

On _____, 20__, before me, _____, a Notary Public, personally appeared _____ who 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.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing is true and correct.

WITNESS my hand and official seal.

Signature of Notary Public

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

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I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing is true and correct.

WITNESS my hand and official seal.

Signature of Notary Public

Exhibit A

PROPERTY DESCRIPTION

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF MOUNTAIN VIEW, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

[Insert legal description.]

APN:
ADDRESS: