

**RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:**

City of Morgan Hill
City Clerk's Office
17575 Peak Avenue
Morgan Hill, CA 95037
Attention: Housing

**EXEMPT FROM RECORDING FEES PER
GOVERNMENT CODE §27383**

Space above this line for Recorder's use.

Escrow No: [REDACTED]
Property Address: [REDACTED], Morgan Hill
APN: [REDACTED]

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

(City of Morgan Hill Affordable Housing Program – Below Market-Rate Units)

THIS PERFORMANCE DEED OF TRUST, ASSIGNMENT OF RENTS AND SECURITY AGREEMENT (“**Deed of Trust**”) is made as of _____, 20__, by _____ and _____ (collectively, “**Trustor**”) as Trustor, to [REDACTED] Title Company] [the City of Morgan Hill, a municipal corporation] (“**Trustee**”) as Trustee, for the benefit of the City of Morgan Hill, a municipal corporation (the “**City**”) as Beneficiary.

The Trustor, in consideration of the 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 Morgan Hill, Santa Clara County, State of California, described in the attached Exhibit A and more commonly known as: [REDACTED] Street, Morgan Hill, 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 the City the payment of the sums, and the performance of the covenants and agreements of the Trustor evidenced by (i) that certain 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 “**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 Proceeds (as defined in the Resale Restriction Agreement), and all extensions, modifications, or renewals of the Note and the Resale Restriction Agreement. The 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 [REDACTED] (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 [REDACTED] Dollars (\$ [REDACTED]) (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 the 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. **Note and Resale Restriction Agreement.** Trustor will promptly pay when due all sums payable pursuant to the Note and shall perform all of Trustor’s covenants and obligations under the 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 the 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 at 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.** The City may make, or cause to be made, reasonable entries upon the Property and inspections of the Security; provided that the 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 the 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 the City, and shall include a standard mortgagee clause with standard lender's endorsement in favor of the holder of any senior lien and the 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 the City or its designated agent. The 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 the 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 the 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 the City, shall be delivered to the City at least thirty (30) days prior to the expiration of existing policies. Neither Trustee nor the 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 the City. The 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 the City shall determine at its option. The 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 the City may be released to Trustor upon such conditions as the City may impose for its disposition. Application of all or any part of the amounts collected and received by the 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 the 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 the 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 or consented to by City in writing. The 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 the City.

11. **Transfer.** Trustor shall not Refinance or Transfer (as such terms are defined in the Resale Restriction Agreement) 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 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 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 prior to the time that the holder of such lien has the right to pursue foreclosure thereon;

- (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 the 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 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, the City shall be entitled to exercise every right and remedy provided under the Note, this Deed of Trust, or the Resale Restriction Agreement, or by law upon 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 the 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 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 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 the 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 non-monetary default is not reasonably capable of being cured within thirty (30) days, the City, in its sole and absolute discretion, may grant the Trustor or the First Mortgage Lender such additional time as is reasonably necessary to cure the default provided that the 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 the 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: (a) Trustor pays City all sums which would be then due under this Deed of Trust and the Note had no acceleration occurred; (b) 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; (c) 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 (d) 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 the City, 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 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 Note and the Resale Restriction Agreement, in such order as the 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 the City or Trustee hereunder shall constitute a waiver of any other right or remedy herein contained or provided by law, and no delay or forbearance by the 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 Morgan Hill, and its elected and appointed officers, officials, employees, and agents 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 Note, the Resale Restriction Agreement, or 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 Note to be true and correct.

18. **Due on Transfer of the Property.** If the 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 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, the City will provide a written request to the Trustee to reconvey the Security and will surrender this Deed of Trust and the Note to Trustee. The 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.** The City, at its option and without prior notice, may from time to time, by written instrument, remove the 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 the Trustee herein and by applicable law. Such instrument shall set forth the name of the 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 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.** Absent the prior written consent of City, this Deed of Trust shall not be subordinated to any other deed of trust or encumbrance on the Property.

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.** All notices, requests, demands, reports or other communications regarding this Deed of Trust shall be in writing and delivered: (i) personally; or (ii) by independent,

reputable, overnight commercial courier; or (iii) by deposit in the United States mail, postage and fees fully prepaid, registered or certified mail, with return receipt requested, and addressed as follows, or to such other address as specified in written notice delivered to the parties pursuant to this Section:

To Trustor: At the Property address.

To City: City of Morgan Hill
17575 Peak Avenue
Morgan Hill, California 95037
Attention: Housing Manager

Any notice that is personally delivered (including by means of professional messenger service, courier service such as United Parcel Service or Federal Express, or by U.S. Postal Service), shall be deemed received on the documented date of delivery thereof.

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

26. **Attorneys' Fees and Costs.** If any legal action is filed to enforce or interpret this Deed of Trust, or the interpretation or enforcement thereof, the prevailing party shall be entitled to an award of its reasonable attorneys' fees, costs and expenses incurred therein.

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 the City, the Trustee, and the Trustor and their respective successors and assigns.

29. **Entire Agreement.** This Deed of Trust, together with the Resale Restriction Agreement and the Note, sets forth the entire understanding between Trustor and the 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 Note whether written or oral, are superseded by the terms of the Resale Restriction Agreement, the 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 Beneficiary 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.

SIGNATURES ON FOLLOWING PAGE.

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

TRUSTOR:

By: _____

Print Name: _____

By: _____

Print Name: _____

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)

On _____, 20__, before me, _____,
(Name of Notary Public)

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

(ABOVE AREA FOR OFFICIAL NOTARIAL SEAL)

Exhibit A

PROPERTY DESCRIPTION

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

[Insert legal description.]

APN: _____