

COMPLIMENTARY RECORDING  
REQUESTED PURSUANT  
TO GOVERNMENT CODE SECTION 27383

Recording Requested By **TITLE COMPANY** and  
When Recorded Mail To:  
The City of Santa Clara  
City Hall, 1500 Warburton Avenue  
Santa Clara, California 95050  
Attention: City Clerk Office

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SPACE ABOVE THIS LINE FOR RECORDER'S USE

**THIS DEED OF TRUST CONTAINS  
PROVISIONS RESTRICTING ASSUMPTIONS**

**BELOW MARKET PURCHASE PROGRAM  
DEED OF TRUST AND SECURITY AGREEMENT  
(CITY SUBORDINATE DEED OF TRUST)**

THIS DEED OF TRUST AND SECURITY AGREEMENT ("Deed of Trust") is made this \_\_\_\_ day of MONTH, 20YY, among the trustor, **BORROWER** ("Borrower") and **TITLE COMPANY**, a Title Company ("Trustee"), and the CITY OF SANTA CLARA as Beneficiary (the "City").

The Borrower, in consideration of the promises herein recited and the trust herein created, irrevocably grants, transfers, conveys and assigns to Trustee, in trust, with power of sale, the property located in the City of Santa Clara, State of California, described in the attached Exhibit "A" and more commonly known as: **ADDRESS**, Santa Clara, California (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 therefor, 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 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 performance of the covenants and agreements of Borrower contained in that certain Covenants, Restrictions and Option to Purchase executed by and between the Owner and the City and incorporated herein by this reference (the "City Covenants");

TO SECURE to the City the repayment of all sums evidenced by that certain promissory note to the City executed by Borrower, on or about the date hereof, in the principal amount of Five Hundred and Four Thousand Nine Hundred and Ninety Dollars (\$504,990.00) and incorporated herein by this reference ("City Note"), with interest or equity share as provided in the City Note; 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 Borrower herein contained.

**BORROWER AND CITY COVENANT AND AGREE AS FOLLOWS:**

1. **Borrower's Estate.** Borrower is lawfully seized of the estate hereby conveyed and has the right to grant and convey the Security and other than this Deed of Trust, the Security is encumbered only by: (1) that deed of trust executed by Borrower in connection with a loan made to Borrower by FIRST MORTGAGE LENDER, a \_\_\_\_\_, (the "First Mortgage Lender"), securing a promissory note executed by Borrower in favor of the First Mortgage Lender (the "First Mortgage Note") to assist in the purchase of the Property; (2) the Senior Loan Deeds of Trust (hereinafter defined); (3) the City Note; and (4) the City Covenants. 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 City's interest in the Security. (As used in this Deed of Trust, the term "First Mortgage Lender" shall include all successors and assigns of the First Mortgage Lender.) For purposes of this Deed of Trust, "Senior Deeds of Trust" shall refer to the recordable instruments securing acquisition loans for the Security made for the benefit of the following entities, their successors and assigns: (i) First Mortgage Lender, (ii) California Housing Finance Agency; (iii) the City of Santa Clara; or (iv) a lender under a California Housing Finance Agency first mortgage program (collectively, the "Senior Lenders").

2. **Repayment of Debt.** Borrower will promptly repay, when due, the accrued interest or shared appreciation, plus principal required by the City Note.

3. **City Covenants.** Borrower will observe and perform all of the covenants and agreements of the City Covenants.

4. **Charges; Liens.** 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 Borrower making any payment, when due, directly to the payee thereof. Upon request by the City, Borrower will promptly furnish to the City all notices of amounts due under this paragraph. In the event Borrower makes payment directly, Borrower will promptly discharge any lien which has priority over this Deed of Trust; provided, that Borrower will not be required to discharge the lien of the Deed of Trust securing the First Mortgage Note (the "First Mortgage Lender Deed of Trust") or any other lien described in this paragraph so long as Borrower will agree in writing to the payment of the obligation secured by such lien in a manner acceptable to the City, 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.

5. **Hazard Insurance.** 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 City may require, which amounts shall be the lesser of (1) the sum of the loan amounts under the City Note and the First Mortgage Note, or (2) the replacement cost of the Security, but in no event less than (3) the amount necessary to prevent 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 Borrower subject to approval by the City; provided that such approval will not be withheld if the insurer is also approved by the Senior Lenders, the Federal Home Loan Mortgage Company, Fannie Mae, California Housing Finance Agency, or successors thereto.

All insurance policies and renewals thereof will be in a form acceptable to the City and will include a standard mortgagee clause with standard lender's endorsement in favor of the holder of the First Mortgage Note and the City as their interests may appear and in a form acceptable to the City. The City shall have the right to hold, or cause its designated agent to hold, the policies and renewals thereof, and Borrower shall promptly furnish to the City, 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, Borrower will 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 Borrower. The City shall receive thirty (30) days' advance notice of cancellation of any insurance policies required under this section.

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

If the Security is acquired by the City, all right, title and interest of 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 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 First Mortgage Lender.

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

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

Any amounts provided pursuant to this paragraph, with interest thereon, will become an indebtedness of Borrower secured by this Deed of Trust. Unless Borrower and City agree to other terms of payment, such amount will be payable upon notice from the City to Borrower requesting payment thereof, and will bear interest from the date of disbursement at the highest interest rate permissible under applicable law. Nothing contained in this paragraph will require the City to insure any expense or take any action hereunder.

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

9. **Forbearance by the City Not a Waiver.** Any forbearance by the City 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 City will not be a waiver of the City's right to accelerate the maturity of the indebtedness secured by this Deed of Trust.

10. **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.

11. **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 City and Borrower subject to the provisions of this Deed of Trust.

12. **Joint and Several Liability.** All covenants and agreements of Borrower shall be joint and several.

13. **Notice.** In every case under the provisions of this Deed of Trust when it shall be necessary or desirable for one party to serve any notice, request, demand, report or other communication on another party, the same shall be in writing and shall not be effective for any purpose unless served: (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; or (iv) by facsimile machine, with transmission and receipt confirmed, addressed as follows:

To Owner: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

To First Mortgage  
Lender: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

To Senior Lenders: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

To City: The City of Santa Clara  
1500 Warburton Avenue  
Santa Clara, California 95050  
Fax: (408) 248-3381  
(Or such other address as may be provided by the City)

Any notice that is transmitted by electronic facsimile transmission during regular business hours of regular business days followed by delivery of a "hard" copy, shall be deemed delivered upon its transmission by facsimile; 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 receipt; and any notice that is sent by registered or certified mail, postage prepaid, return receipt required shall be deemed received on the date of receipt thereof.

14. **Governing Law.** This Deed of Trust shall be governed by the laws of the State of California.

15. **Severability.** In the event that any provision or clause of this Deed of Trust or the City Note conflicts with applicable law, such conflict will not affect other provisions of this Deed of Trust or the City Note which can be given effect without the conflicting provision, and to this end the provisions of the Deed of Trust and the City Note are declared to be severable.

16. **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.

17. **Default.** The occurrence of any of the following shall be deemed a Default hereunder:

- (a) Failure or delay by Borrower to make any payments provided for in the City Note or herein; or
- (b) Failure or delay by Borrower to perform any covenant or agreement of Borrower in the City Covenants; or

- (c) Failure or delay by Borrower to perform any other covenant or agreement of Borrower in this Deed of Trust or the City Note.

18. **Notice of Default.**

- (a) Regardless of whether any notice is given, in the event of a failure or delay that constitutes a default by the Borrower in the performance of any term or provision of this Deed of Trust, the Borrower must immediately commence to cure, correct, or remedy such default and shall complete such cure, correction or remedy with reasonable diligence.
- (b) In the event of a non-monetary default by the Borrower, the City shall give, or cause to be given, notice of default to the Borrower, the First Mortgage Lender and the Senior Lenders, specifying: (1) the default complained of by the City; (2) the action required to cure such default; (3) a date by which such default is to be cured; (4) that failure to cure such default on or before the date specified in the notice may result in acceleration of the sums secured by this Deed of Trust, sale of the Security or the exercise of such other remedies available to the City under this Deed of Trust or as provided by law; and (5) that Borrower has the right to seek reinstatement 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 non-monetary default is reasonably capable of being cured within thirty (30) days, the City, in its sole and absolute discretion, may grant the Borrower, the First Mortgage Lender or the Senior Lender such period after receipt of the notice to effect a cure. If such default is not reasonably capable of being cured within thirty (30) days, and the Borrower 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, the City, in its sole and absolute discretion, may grant the Borrower or the First Mortgage Lender such additional time as is reasonably necessary to cure the default.
- (c) In the event of a monetary default by the Borrower, the notice provisions under Section 13 of the City Note shall govern, subject to any forbearance agreement that the City and Borrower may execute pursuant thereto.
- (d) Notwithstanding the cure periods established in this Paragraph 18, 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.

- (e) Any omission or delay by the City in asserting any of its rights and remedies as to any default shall not operate as a waiver of any default or of any such rights or remedies. Delays by the City in asserting any of its rights and remedies shall not deprive the City of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert, or enforce any such rights or remedies.

19. **Acceleration; 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: (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 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 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 one or more of the Trustees named in this Deed of Trust and the trustee named in the First Mortgage Deed of Trust, or any of them, 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, which notice such trustee shall cause to be duly filed for record; (e) exercise its option to purchase pursuant to the City Covenants; or (f) 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. No delay or omission on the part of the City in exercising any right under the City Note, the City Covenants or this Deed of Trust shall operate as a waiver of such right. The City 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. **Borrower's Right to Reinstate.** Notwithstanding the City's acceleration of the sums secured by this Deed of Trust, Borrower will have the right to have any proceedings begun by the City 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) Borrower pays City all sums which would be then due under this Deed of Trust and no acceleration under the City Note has occurred; (b) Borrower cures all breaches of any other covenants or agreements of Borrower

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

21. **Due on Transfer of the Property or Repayment of the First Mortgage Loan.**

Upon a Transfer (as defined in the City Note) of the Property or any interest in it or repayment in full of the amounts due under the First Mortgage Note, the City may, at its option, require immediate payment in full of all sums due and outstanding under the City Note and secured by this Deed of Trust. However, this option shall not be exercised by the City if applicable law as of the date of this Deed of Trust prohibits such exercise, or if the City has executed a separate written waiver of this option.

22. **Reconveyance.** Upon satisfaction of all obligations secured by this Deed of Trust, the City will request Trustee to reconvey the Security and will surrender this Deed of Trust and the City Note 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 City, at the City's option, may from time to time remove 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.** Notwithstanding any provision herein, this Deed of Trust shall not diminish or affect the rights of the First Mortgage Lender, and their successors and assigns, under the First Mortgage Deed of Trust or any subsequent First Mortgage deeds of trust or the Senior Lenders, and their successors and assigns, under the Senior Deeds of Trust or any subsequent Senior Lenders deeds of trust hereafter recorded against the Security. Further, this Deed of Trust, the City Covenants and the City Note are expressly subordinate to the First Mortgage Loan Documents and the Senior Loan Deeds of Trust.

Notwithstanding any provision in this Deed of Trust to the contrary, all of the provisions of this Deed of Trust shall terminate and have no further force and effect upon the occurrence of one of the following events:

- (a) Title is acquired by First Mortgage Lender or another party upon foreclosure of the Senior Loan Deeds of Trust;

(b) Title is acquired by the First Mortgage Lender or another party by a deed in lieu of foreclosure of the Senior Loan Deeds of Trust.

25. **Request for Notice.** Borrower requests that copies of the notice of default and notice of sale be sent to Borrower at the address set forth in Section 13 above.

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

\_\_\_\_\_  
Borrower

\_\_\_\_\_  
Borrower

EXHIBIT A  
Property Description

State of California            )  
  )  
County of Santa Clara        )

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 paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (SEAL)

State of California            )  
  )  
County of Santa Clara        )

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 paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (SEAL)

FULL RECONVEYANCE

THE CITY OF SANTA CLARA, the Beneficiary named in that Below Market Purchase Program Deed of Trust and Security Agreement (City Subordinate Deed of Trust) dated \_\_\_\_\_, 20\_\_, in which \_\_\_\_\_ is named as Trustor and the undersigned \_\_\_\_\_ Title Insurance Company, is named as Trustee [or appropriate language if successor trustee], and recorded on \_\_\_\_\_, as Instrument No. \_\_\_\_\_, in the Official Records, Santa Clara County, California, having declared that all obligations secured thereby have been discharged or performed and having requested the reconveyance thereof, \_\_\_\_\_ Title Insurance Company, as said Trustee does hereby reconvey, without warranty, to the person or persons legally entitled thereto all right, title, interest and estate held by the undersigned as such Trustee, in and to the following real property described in the City Subordinate Deed of Trust:

[describe]

Dated: \_\_\_\_\_

[TRUSTEE]

By: \_\_\_\_\_

[ACKNOWLEDGMENT]

REQUEST FOR FULL RECONVEYANCE

A reconveyance will be issued only upon presentation to the \_\_\_\_\_ Title Insurance Company, of this request properly signed and accompanied by the City Subordinate Deed of Trust, the original City Note secured by said City Subordinate Deed of Trust, and any receipt or document evidencing any other indebtedness secured thereby.

To \_\_\_\_\_, Trustee

The undersigned is the legal owner and holder of the Below Market Purchase Program Promissory Note ("City Note") for the total sum of \$\_\_\_\_\_, and of all other indebtedness secured by City Subordinate Deed of Trust dated \_\_\_\_\_, 20\_\_, made by \_\_\_\_\_, Trustor, to \_\_\_\_\_, Trustee, and recorded on \_\_\_\_\_, 20\_\_, as Instrument No\_\_\_\_\_, in the Official Records in the Office of the County Recorder of Santa Clara County, California.

Said City Note, together with all other indebtedness and obligations secured by said City Subordinate Deed of Trust, have been fully paid and satisfied; and you are hereby requested and directed, upon payment to you of any sums owing to you under the terms of said City Subordinate Deed of Trust, to cancel said City Note, above mentioned, and all other evidences of indebtedness secured by said City Second Deed of Trust delivered to you herewith, together with the said City Subordinate Deed of Trust, and to reconvey, without warranty, to the parties designated by the terms of said City Subordinate Deed of Trust, all the estate now held by you and under the same.

Dated: \_\_\_\_\_, 20\_\_

THE CITY OF SANTA CLARA

By: \_\_\_\_\_

Name:

Title:

Mail Reconveyance to: