

Recording requested by and when recorded mail to:

Town Clerk
Town of Los Gatos
110 E. Main Street
Los Gatos, CA 95030

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

(Space Above This Line For Recorder's Use Only)

PERFORMANCE DEED OF TRUST AND SECURITY AGREEMENT

THERE ARE RESTRICTIONS ON THE SALE OF THE PROPERTY ENCUMBERED BY THIS DEED OF TRUST. EXCEPT FOR A TRANSFER TO THE TOWN OF LOS GATOS (THE "TOWN") OR TOWN'S ASSIGNEE FOLLOWING TOWN'S EXERCISE OF ITS OPTION TO PURCHASE, THIS PROPERTY MAY ONLY BE SOLD TO AN INCOME QUALIFYING PURCHASER ON THE TOWN'S WAITING LIST AT A SALES PRICE ESTABLISHED BY THE TOWN. THE AGREEMENT AND DEED RESTRICTIONS REGARDING RESALE CONTROLS FOR BELOW MARKET PRICE PROPERTY ALSO RESTRICTS THE EXTENT TO WHICH THIS PROPERTY MAY BE ENCUMBERED BY JUNIOR FINANCING AND LIMITS TRUSTOR'S RIGHTS TO REFINANCE EXISTING MORTGAGES.

This Performance Deed of Trust ("DEED OF TRUST") is made as of this ____ day of _____, by {{HOMETRACKER__SERVICE_FILE_VESTING_INFORMATION_FOR_BUYER}} ("TRUSTOR) whose address is {{HOMETRACKER__SERVICE_FILE_CAMPAGN_NAME}}, Los Gatos, CA {Insert zip code} in favor of Town of Los Gatos, a municipal corporation of the State of California ("TRUSTEE"), for the benefit of the Town of Los Gatos (referred to variously as "TOWN" or "BENEFICIARY") whose address is 110 E. Main Street, Los Gatos, CA 95030, as "BENEFICIARY."

RECITALS

A. TRUSTOR is the owner of the real property located at {{HOMETRACKER__SERVICE_FILE_CAMPAGN_NAME}}, Los Gatos, CA {Insert proper Zip Code} and more particularly described in the attached Exhibit A, (the "PROPERTY").

B. The TRUSTOR's predecessor in interest developed the PROPERTY pursuant to the TOWN's Below Market Price ("BMP") Housing Program codified in Chapter 29 (Zoning Regulations) of the Town Code of the Town of Los Gatos and BMP Housing Program Guidelines (collectively "BMP Program"), which require developers of rental and ownership housing to construct within their projects units that are affordable to low- and moderate-income households and which regulations require the PROPERTY to be subjected to restrictions on resale that ensure that the PROPERTY remains affordable.

In connection with the BMP Program, BENEFICIARY and TRUSTOR entered into a Deed Restriction, Refinance Restriction, and First Right of Refusal Agreement for BMP PROPERTY dated as of the document date and recorded in the Official Records of Santa Clara County substantially concurrently herewith (the "Resale Restriction Agreement") (capitalized terms used without definition herein have the meaning ascribed to such terms in the Resale Restriction Agreement); and

C. Pursuant to the Resale Restriction Agreement, TRUSTOR is obligated, among other requirements, to sell the PROPERTY only to the TOWN or to income qualifying purchasers at a price designated by the TOWN; and

D. The Resale Restriction Agreement also provides (among other provisions) that: (i) TRUSTOR is obligated to notify BENEFICIARY of TRUSTOR's intent to sell the PROPERTY in order to enable BENEFICIARY to exercise its option to purchase the PROPERTY at a restricted price; (ii) BENEFICIARY has an option to purchase the PROPERTY if TRUSTOR defaults under the Resale Restriction Agreement; and (iii) there are restrictions on TRUSTOR's ability to encumber the PROPERTY and to refinance the existing loans secured by the PROPERTY.

AGREEMENT

NOW, THEREFORE, to secure the full and timely performance by TRUSTOR of the Secured Obligation, it is agreed as follows:

1. Grant in Trust. TRUSTOR, in consideration of the promises herein recited and the trust herein created, hereby irrevocably and unconditionally grants, transfers, conveys, and assigns to TRUSTEE, in trust for the benefit of BENEFICIARY, with power of sale, all estate, right title, and interest which TRUSTOR now has or may later acquire in and to that certain real property located in the Town of Los Gatos, County of Santa Clara, State of California, described in the attached Exhibit A together with all of the following:

(i) All improvements now or hereafter located or constructed on the PROPERTY and all replacements and additions thereto ("Improvements");

(ii) All easements, rights of way, appurtenances, and other rights used in connection with the PROPERTY or as a means of access thereto ("Appurtenances");

(iii) All fixtures now or hereafter attached to or used in and about the PROPERTY or the improvements located thereon or hereafter located or constructed on the PROPERTY, and all renewals or replacements thereof or articles in substitution therefor, whether or not the same are, or shall be attached to the improvements in any manner ("Fixtures and Equipment"); and

(iv) All leases, subleases, licenses, and other agreements relating to use or occupancy of the PROPERTY ("Leases") and all rents or other payments which may now or hereafter accrue or otherwise become payable to or for the benefit of TRUSTOR ("Rents") (whether or not such Leases and Rents are permitted by the Resale Restriction Agreement).

All of the above-referenced PROPERTY, Improvements, Appurtenance, Fixtures, and Equipment, Leases, and Rents are herein referred to collectively as the "SECURITY".

2. Obligations Secured. This DEED OF TRUST is given for the purpose of securing payment and/or performance of the following (the "Secured Obligations"): (i) all present and future obligations of TRUSTOR set forth in this DEED OF TRUST or in the Resale Restriction Agreement, including without limitation, TRUSTOR's obligation to convey the PROPERTY only to income qualifying purchasers on the TOWN's BMP Waiting List at a purchase price determined by the TOWN (as described in the TOWN's BMP Housing Guidelines); (ii) all additional present and future obligations of TRUSTOR, to BENEFICIARY under any other agreement or instrument acknowledged by TRUSTOR (whether existing now or in the future) which states that it is or such obligations are, secured by this DEED OF TRUST; (iii) all modifications, supplements, amendments, renewals, and extensions of any of the foregoing, whether evidenced by new or additional documents; and (iv) reimbursement of all amounts advanced by or on behalf of BENEFICIARY to protect BENEFICIARY's interests under this DEED OF TRUST.

3. Assignment of Rents, Issues, and Profits. TRUSTOR hereby irrevocably, absolutely, presently, and unconditionally assigns to BENEFICIARY the rents, royalties, issues, profits, revenue, income, and proceeds of the PROPERTY. This is an absolute assignment and not an assignment for security only. Except to the extent that the lease or rental of the PROPERTY is prohibited by the Resale Restriction Agreement, BENEFICIARY hereby confers upon TRUSTOR a license to collect and retain such rents, royalties, issues, profits, revenue, income, and proceeds as they become due and payable prior to any Event of Default hereunder. Upon the occurrence of any such Event of Default, BENEFICIARY 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 BENEFICIARY may determine. BENEFICIARY's right to the rents, royalties, issues, profits, revenue, income, and proceeds of the PROPERTY does not depend upon whether or not BENEFICIARY takes possession of the PROPERTY. The entering upon and taking possession of the PROPERTY, the collection of such rents, issues, and profits, and the application thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice. If an Event of Default occurs while BENEFICIARY is in possession of all or part of the PROPERTY and/or is collecting and applying Rents as permitted under this DEED OF TRUST, BENEFICIARY, 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 BENEFICIARY, in person or by agent, takes actual possession of the Land and Improvements, BENEFICIARY 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 BENEFICARY, 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.

4. Fixture Filing. This DEED OF TRUST is intended to be and constitutes a fixture filing pursuant to the provisions of the Uniform Commercial Code (“UCC”) with respect to all of the PROPERTY constituting fixtures, is being recorded as a fixture financing statement and filing under the UCC, and covers property, goods, and equipment which are or are to become fixtures related to the Land and the Improvements. TRUSTOR covenants and agrees that this DEED OF TRUST is to be filed in the real estate records of Santa Clara County and shall also operate from the date of such filing as a fixture filing in accordance with Section 9502 and other applicable provisions of the UCC. This DEED OF TRUST shall also be effective as a financing statement covering minerals or the like (including oil and gas) and accounts subject to the UCC, as amended. TRUSTOR shall be deemed to be the “debtor” and BENEFICARY shall be deemed to be the “secured party” for all purposes under the UCC. The full name of TRUSTOR and the mailing address of TRUSTOR are set forth in the first paragraph of this DEED OF TRUST.

5. Trustor’s Representations, Warranties, and Covenants.

5.1 Trustor’s Estate. TRUSTOR represents and warrants that TRUSTOR is lawfully seized of the estate hereby conveyed and has the right to grant and convey the Security, that other than this DEED OF TRUST, the SECURITY is encumbered only by: (i.) that DEED OF TRUST executed by TRUSTOR in connection with a loan made to TRUSTOR by **Lender** (the “First Lender”), securing a promissory note executed by TRUSTOR in favor of the First Lender (“First Lender Note”), to assist in the purchase of the PROPERTY (the “First Lender DEED OF TRUST”); and (ii.) 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 TOWN’s interest in the Security. (As used in this DEED OF TRUST, the term “First Lender” shall include all successors and assigns of the First Lender.)

5.2 Repayment of Sums Owed under Resale Restriction Agreement. TRUSTOR will promptly pay to the TOWN all sums due under the Resale Restriction Agreement.

5.3 Resale Restriction Agreement. TRUSTOR will observe and perform all of the covenants and agreements of the Resale Restriction Agreement.

5.4 First Lender Loan. TRUSTOR will observe and perform all of the covenants and agreements of the First Lender Note, First Lender DEED OF TRUST, and related First Lender loan documents.

5.5 Charges; Liens. TRUSTOR will pay prior to delinquency, all taxes, assessments, other charges, fines, and impositions affecting the Security directly to

the payee thereof. Upon request by the TOWN, TRUSTOR will promptly furnish to the TOWN all notices of such amounts due. 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 in it, whether or not such lien, charge, or encumbrance is or would be senior or subordinate to this DEED OF TRUST. TRUSTOR shall not be required to pay any tax, levy, charge, or assessment so long as its validity is being actively contested in good faith and by appropriate actions and/or proceedings which will operate to prevent the enforcement of the lien or forfeiture of the Security or any part thereof.

5.6 Hazard Insurance.

(a) TRUSTOR will keep the SECURITY insured by a standard all risk property insurance policy equal to the replacement value of the SECURITY (adjusted every five (5) years by appraisal, if requested by the TOWN). If the SECURITY is located in a flood plain, TRUSTOR shall also obtain flood insurance. In no event shall the amount of insurance be less than the amount necessary to prevent TRUSTOR 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 TRUSTOR subject to approval by the TOWN.

All insurance policies and renewals thereof will be in a form acceptable to the TOWN, and will include a standard mortgagee clause with standard lender's endorsement in favor of the holder of the First Lender Note and the TOWN as their interests may appear and in a form acceptable to the TOWN. The TOWN shall have the right to hold, or cause its designated agent to hold, the policies and renewals thereof, and TRUSTOR shall promptly furnish to the TOWN, 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, TRUSTOR will give prompt notice to the insurance carrier and the TOWN or its designated agent. The TOWN, or its designated agent, may make proof of loss if not made promptly by TRUSTOR. The TOWN shall receive thirty (30) days advance notice of cancellation of any insurance policies required under this section.

Unless otherwise permitted by the TOWN in writing, insurance proceeds, subject to the rights of the First Lender, will be applied to restoration or repair of the SECURITY damaged. If permitted by TOWN, and subject to the rights of the First Lender, the insurance proceeds shall be used to repay any amounts due under the Resale Restriction Agreement, with the excess, if any, paid to TRUSTOR. If the SECURITY is abandoned by TRUSTOR or if TRUSTOR fails to respond to the TOWN, or its designated agent, within thirty (30) days from the date notice is mailed by either of them to TRUSTOR that the insurance carrier offers to settle a claim for insurance benefits, the TOWN, or its designated agent, is authorized to collect and apply the insurance proceeds at the TOWN's option either to restoration or repair of the SECURITY or to pay amounts due under the Resale Restriction Agreement.

If the SECURITY is acquired by the TOWN, 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 SECURITY prior to the sale or acquisition will pass to the TOWN to the extent of the sums secured by this DEED OF TRUST immediate prior to such sale or acquisition, subject to the rights of the First Lender.

(b) During the course of any rehabilitation of the improvements located on the PROPERTY TRUSTOR shall hire only licensed contractors who maintain the following forms of insurance:

(i) Liability Insurance. Comprehensive general liability insurance against liability for bodily injury to or death of any person or property damage arising out of an occurrence on or about the PROPERTY. The limits of such insurance shall be not less than One Million Dollars (\$1,000,000) combined single limit for bodily injury and property damage; and

(ii) Worker's Compensation Insurance. Worker's compensation insurance covering all persons employed in connection with any work on the PROPERTY.

5.7 Preservation and Maintenance of Security. TRUSTOR will keep the SECURITY in good repair and in a neat, clean, and orderly condition and will not commit waste or permit impairment or deterioration of the SECURITY. 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 TOWN notice of such a condition, then in addition to any other rights available to the TOWN, the TOWN 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 Security to recover its cost of curing.

5.8 Protection of the Town's Security. If TRUSTOR 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 TOWN's interest in the SECURITY, including, but not limited to, default under the First Lender Deed of Trust, eminent domain, insolvency, code enforcement, or arrangements or proceedings involving a bankrupt or decedent, then the TOWN, at the TOWN's option, without releasing TRUSTOR from any obligation hereunder, may make such appearances, disburse such sums, and take such action as it determines necessary to protect the TOWN's interest, including but not limited to, disbursement of reasonable attorneys' fees and entry upon the SECURITY to make repairs. Any amounts disbursed by the TOWN pursuant to this paragraph, with interest thereon, will become an indebtedness of TRUSTOR secured by this DEED OF TRUST. Unless TRUSTOR and TOWN agree to other terms of payment, such amount will be payable upon notice from the TOWN to TRUSTOR requesting payment thereof, and will bear interest from the date of disbursement at the lesser of: (i) ten percent (10%); or (ii) the highest rate permissible under applicable law. Nothing contained in this paragraph will require the TOWN to incur any expense or take any action hereunder.

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

5.10 Hazardous Substances. TRUSTOR shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances in, on, under, about, or from the PROPERTY. TRUSTOR shall not do, nor allow anyone else to do, anything affecting the PROPERTY that is in violation of any Environmental Law. The preceding two sentences shall not apply to the presence, use, or storage on the PROPERTY of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and to maintenance of the PROPERTY when used and disposed of in accordance with Environmental Law.

“Hazardous Substances” means any substance defined as toxic or hazardous substances or hazardous waste or regulated under any Environmental Law, and the following substances: gasoline; kerosene; other flammable or toxic petroleum products; toxic pesticides and herbicides; volatile solvents; materials containing asbestos or formaldehyde; and radioactive materials.

“Environmental Law” means all federal, state or local statutes, ordinances, regulations, orders, decrees, and judgments that relate to health, safety, or environmental protection including without limitation the regulation of the use, disposal, manufacture, or release of Hazardous Substances.

TRUSTOR shall promptly give TOWN written notice of any investigation, claim, demand, lawsuit, or other action by any governmental or regulatory agency or private party involving the PROPERTY and any Hazardous Substance or Environmental Law of which TRUSTOR has actual knowledge. If TRUSTOR learns, or is notified by any governmental or regulatory authority, that any removal or other remediation of any Hazardous Substance affecting the PRPERTY is necessary, TRUSTOR shall promptly take all necessary remedial actions in accordance with Environmental Law.

6. Nonliability for Negligence, Loss, or Damage; No Joint Venture. TRUSTOR acknowledges, understands, and agrees that the relationship between TRUSTOR and the TOWN is solely that of a borrower and lender, and that the TOWN does not undertake or assume any responsibility for or duty to TRUSTOR to select, review, inspect, supervise, pass judgment on, or inform TRUSTOR of the quality, adequacy or suitability of the SECURITY or any other matter. The TOWN owes no duty of care to protect TRUSTOR against negligent, faulty, inadequate, or defective building or construction or any condition of the SECURITY and TRUSTOR agrees that neither TRUSTOR, or TRUSTOR’s heirs, successors, or assigns shall ever claim, have, or assert any right or action against the TOWN for any loss, damage, or other matter arising out of or resulting from any condition of the SECURITY and will hold TOWN harmless from any liability, loss, or damage for these things. Nothing contained herein or in Note or the Resale Restriction Agreement shall be deemed to create or construed to create a partnership, joint venture, or any relationship other than that of a borrower and lender.

7. Indemnity. TRUSTOR agrees to defend, indemnify, and hold the Town of Los Gatos and its elected and appointed officials, officers, employees, and agents (“Indemnitees”) harmless from and against all losses, damages, liabilities, claims, actions, judgments, costs, and reasonable attorney’s fees that the Indemnitees may incur as a direct or indirect consequence of:

(i) TRUSTOR’s failure to perform any obligations as and when required by the Resale Restriction Agreement and this DEED OF TRUST; or

(ii) The failure at any time of any of TRUSTOR’s representations or warranties to be true and correct.

8. Acceleration; Remedies. Upon TRUSTOR’s breach of any covenant or agreement of Trustor in Resale Restriction Agreement or this DEED OF TRUST, including, but not limited to, the covenants to pay, when due, any sums secured by this DEED OF TRUST, the TOWN, prior to acceleration, will mail by express delivery with delivery receipt, notice to TRUSTOR specifying: (i.) the breach; (ii.) the action required to cure such breach; (iii.) a date, not less than thirty (30) days from the date the notice is received by TRUSTOR as shown on the return receipt, by which such breach is to be cured; and (iv.) if the breach is curable, that failure to cure such breach on or before the date specified in the notice may result in acceleration of the sums secured by this DEED OF TRUST and sale of the SECURITY. The notice will also inform TRUSTOR of TRUSTOR’s right to reinstate after acceleration and the right to bring a court action to assert the nonexistence of default or any other defense of TRUSTOR to acceleration and sale. If the breach is not cured on or before the date specified in the notice, the TOWN, at the TOWN’s option, may:

(a) Declare all of the sums secured by this DEED OF TRUST to be immediately due and payable without further demand and may invoke the power of sale and any other remedies permitted by California law;

(b) Either in person or by agent, with or without bringing any action or proceeding, or by a receiver appointed by a court, and without regard to the adequacy of its security, enter upon the SECURITY and take possession thereof (or any part thereof) and of any of the SECURITY, in its own name or in the name of 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 TOWN 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 TRUSTEE a written declaration of default and demand for sale, pursuant to the provisions for notice of sale found at California Civil Code Sections 2924 et seq., as amended from time to time; or

(e) Exercise all other rights and remedies provided herein, in the instruments by which the 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, or provided by law.

The TOWN 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.

9. Trustor's Right to Reinstate. Notwithstanding the TOWN's acceleration of the sums secured by this DEED OF TRUST, TRUSTOR will have the right to have any proceedings begun by the TOWN 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: (i.) TRUSTOR pays TOWN all sums which would be then due under this DEED OF TRUST if there were no acceleration under this DEED OF TRUST or the Resale Restriction Agreement; (ii.) TRUSTOR cures all breaches of any other covenants or agreements of TRUSTOR contained in the Resale Restriction Agreement or this DEED OF TRUST; (iii) TRUSTOR pays all reasonable expenses incurred by TOWN and TRUSTEE in enforcing the covenants and agreements of TRUSTOR contained in the Resale Restriction Agreement or this DEED OF TRUST, and in enforcing the TOWN's and TRUSTEE's remedies, including, but not limited to, reasonable attorney's fees; and (iv.) TRUSTOR takes such action as TOWN may reasonably require to assure that the lien of this DEED OF TRUST, TOWN's interest in the SECURITY and TRUSTOR's obligation to pay the sums 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.

10. Reconveyance. Upon the expiration of the term of the Resale Restriction Agreement if the TRUSTOR owns and occupies the PROPERTY and is not in violation of any provisions of this DEED OF TRUST or the Resale Restriction Agreement, the TOWN will request TRUSTEE to reconvey the SECURITY and will surrender this DEED OF TRUST and the Resale Restriction Agreement to TRUSTEE. TRUSTEE will reconvey the SECURITY without warranty and without charge to the person or persons legally entitled thereto. Such person or persons will pay all costs of recordation, if any.

11. Substitute Trustee. The TOWN, at the TOWN'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.

12. Superiority of First Lender Documents. Notwithstanding any provision herein, this DEED OF TRUST shall not diminish or affect the rights of the First Lender under the First Lender Deed of Trust or any subsequent First Lender deeds of trust hereafter recorded against the Security in compliance with the requirements of the Resale Restriction Agreement.

Notwithstanding any other provision hereof, the provisions of this DEED OF TRUST shall be subordinate to the lien of the First Lender Deed of Trust and shall not impair the rights of the First Lender, or such lender's assignee or successor in interest, to exercise its remedies under the First Lender Deed of Trust in the event of default under the First Lender Deed of Trust by the TRUSTOR. Such remedies under the First Lender Deed of Trust include the right of foreclosure or acceptance of a deed or assignment in lieu of foreclosure. After such foreclosure or acceptance of a deed in lieu of foreclosure, this Deed of Trust shall be forever terminated and shall have no further effect as to the PROPERTY or any transferee thereafter; provided, however, if the holder of such First Lender Deed of Trust acquired title to the PROPERTY pursuant to a deed or assignment in lieu of foreclosure, this DEED OF TRUST shall automatically terminate upon such acquisition of title, provided that: (i) the TOWN has been given written notice of default under such First Lender Deed of Trust with a sixty (60)-day cure period; and (ii) the TOWN shall not have cured or commenced to cure the default within such sixty (60)-day period or commenced to cure and given its firm commitment to complete the cure in form and substance acceptable to the First Lender.

13. Request for Notice. TOWN requests that copies of the notice of default and notice of sale be sent to TOWN at the address set forth in Section 14.5.

14. Miscellaneous.

14.1 Forbearance by the Town Not a Waiver. Any forbearance by the TOWN 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 TOWN will not be a waiver of the TOWN's right to require satisfaction of any obligations secured by this DEED OF TRUST.

14.2 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.

14.3 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 TOWN and TRUSTOR subject to the provisions of this DEED OF TRUST.

14.4 Joint and Several Liability. If this DEED OF TRUST is executed by more than one person as TRUSTOR, the obligations of each shall be joint and several.

14.5 Notices. Except for any notice required under applicable law to be given in another manner: (i.) any notice to TRUSTOR provided for in this DEED OF TRUST will be given by certified mail, return receipt requested, express delivery with delivery receipt, or personal delivery with delivery receipt, addressed to TRUSTOR at the address shown in the first paragraph of this DEED OF TRUST or such other address as TRUSTOR may designate by notice to the TOWN as provided herein; and (ii.) any notice to the TOWN will be given by certified mail, return receipt requested, express delivery with delivery receipt, or personal delivery with delivery receipt, to the Town of Los Gatos, 110 E. Main Street, Los Gatos, CA 95030 Attn: Community Development Director or to such other address as the TOWN may designate by notice to TRUSTOR as provided above. Notice shall be effective as of the date received by TOWN as shown on the return receipt.

14.6 Governing Law. This DEED OF TRUST shall be governed by the laws of the State of California.

14.7 Severability. In the event that any provision or clause of this DEED OF TRUST or the Resale Restriction Agreement conflicts with applicable law, such conflict will not affect other provisions of this DEED OF TRUST or the Resale Restriction Agreement which can be given effect without the conflicting provision, and to this end the provisions of the DEED OF TRUST and the Resale Restriction Agreement are declared to be severable.

14.8 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.

14.9 Nondiscrimination. TRUSTOR covenants by and for itself and its successors and assigns that there shall be no discrimination against or segregation of a person or of a group of persons on account of race, color, religion, creed, age, disability, sex, sexual orientation, marital status, ancestry, or national origin in the sale, transfer, use, occupancy, tenure, or enjoyment of the PROPERTY, nor shall TRUSTOR or any person claiming under or through TRUSTOR establish or permit any such practice or practices of discrimination or segregation with reference to the use, occupancy, or transfer of the PROPERTY. The foregoing covenant shall run with the land.

Signatures on following page

IN WITNESS WHEREOF, TRUSTOR has executed this DEED OF TRUST as of the date first written above.

Owner

Notary Acknowledgement
[Insert Here]

EXHIBIT A

LEGAL DESCRIPTION