

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

Contra Costa County
Department of Conservation and Development
30 Muir Road
Martinez, CA 94553
Attn: Affordable Housing Program Manager

No fee for recording pursuant to
Government Code Section 27383

DEED OF TRUST AND SECURITY AGREEMENT
(Contra Costa County Inclusionary Housing Program)

THIS DEED OF TRUST AND SECURITY AGREEMENT ("Deed of Trust") is made this ____ day of _____, 20____, among _____, as trustor ("Owner"); _____ a _____, as trustee ("Trustee"); and the County of Contra Costa, a political subdivision of the State of California, as beneficiary ("County").

Owner has signed a Buyer's Occupancy and Resale Restriction Agreement dated _____ (the "Resale Restriction") and a promissory note in favor of the County dated _____ (the "Note").

This Deed of Trust secures to County: (i) the payment of the Recapture Amount, including the Excess Sales Proceeds and the Proportionate Share of Appreciation (all as defined in the Resale Restriction), and (ii) the performance of Owner's covenants and agreements under this Deed of Trust, the Resale Restriction, and the Note. For this purpose, Borrower irrevocably grants, transfers, conveys, and assigns to Trustee, in trust, with power of sale, the property located in the County of Contra Costa, State of California, described in the attached Exhibit A and more commonly known as: <<HOME ADDRESS>>.

TOGETHER with all the improvements now or hereafter erected on the property, and all easements, rights, appurtenances, and fixtures now or hereafter a part of the property. All replacements and additions are also covered by this Deed of Trust. All of the foregoing is referred to in this Deed of Trust as the "Property."

OWNER COVENANTS that Owner holds fee title to the Property and has the right to grant and convey the Property and that the Property is unencumbered, except for (i) those encumbrances identified below (together, the "First Lender Loan") and (ii) the Resale Restriction and the Note. Owner warrants and shall defend generally the title to the Property against all claims and demands, subject to the First Lender Loan.

Name of Lender (together, the “ <u>First Lender</u> ”)	Amount	Date Deed of Trust Recorded
_____	\$ _____	_____
_____	\$ _____	_____
_____	\$ _____	_____
_____	\$ _____	_____

OWNER AND COUNTY COVENANT AND AGREE AS FOLLOWS:

1. Payment of Recapture Amount. Owner shall promptly pay, when and if due pursuant to the Resale Restriction and Note, the Recapture Amount including the Excess Sales Proceeds and the Proportionate Share of Appreciation (all as defined in the Resale Restriction). Under the terms of the Note, the Note is not assumable by transferees of the Property, but is due in full upon any sale, assignment, or transfer.

2. Resale Restriction. Owner shall observe and perform all of the covenants and agreements of the Resale Restriction, the Note, and this Deed of Trust.

3. First Lender Loan. Owner shall observe and perform all of the covenants and agreements of the promissory note(s) (together, the “First Lender Note”), the deed(s) of trust securing the First Lender Note (together, the “First Lender Deed of Trust”), and related documents of the First Lender Loan.

4. Charges; Liens. Owner shall pay all taxes, assessments, and other charges, fines, and impositions attributable to the Property that have or may attain a priority over this Deed of Trust, by Owner making any payment, when due, directly to the payee thereof. Upon request by the County, Owner shall promptly furnish to the County all notices of amounts due under this paragraph.

5. Hazard Insurance. Owner shall keep the improvements now existing or hereafter erected on the Property (the “Improvements”) insured against loss by fire, hazards included within the term “extended coverage,” and any other hazards for which the County requires insurance. The insurance must be maintained in an amount equal to the current replacement value of the Improvements, which will be initially established by appraisal, and then adjusted annually to reflect changes to local building costs calculated on a per square foot basis. The County has the right, but not the obligation, to inform Owner of the then-current replacement value of the Property. The amount of insurance may not be less than the amount necessary to prevent Owner from becoming a co-insurer under the terms of the policy. If the Property is located in an area with a FEMA flood zone designation of A or AE, Owner shall also obtain flood plain insurance.

The insurance carrier providing this insurance must be licensed to do business in the State of California.

All insurance policies and renewals thereof must be in a form acceptable to the County and include a standard mortgage clause and name the First Lender and the County as mortgagees and as additional loss payees, as their interests may appear. The County has the right to hold, or cause its designated agent to hold, the policies and renewals thereof. Upon request, Owner shall promptly furnish to the County, 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, Owner shall give prompt notice to the insurance carrier and the County or its designated agent. The County, or its designated agent, may make proof of loss if not made promptly by Owner. The County must receive 30 days advance written notice of cancellation of any insurance policies required under this section.

Subject to the rights of the First Lender, unless otherwise permitted by the County in writing, any insurance proceeds must be applied to restoration or repair of the damaged Property, if the restoration or repair is economically feasible and the County's security is not lessened. During such repair and restoration period, the County has the right to hold the insurance proceeds until the County has had an opportunity to inspect the Property to ensure the work has been completed to the County's satisfaction, provided that such inspection is undertaken promptly. The County may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. Unless an agreement is made in writing or applicable law requires interest to be paid on the insurance proceeds, the County is not required to pay Owner any interest or earnings on the proceeds. Fees of public adjusters or other third parties retained by Owner will not be paid out of the insurance proceeds and are the sole obligation of Owner. If the restoration or repair is not economically feasible or the County's security would be lessened, the insurance proceeds will be applied to the sums secured by this Deed of Trust, whether or not then due, with the excess, if any, paid to Owner. If the Property is abandoned by Owner, or if Owner fails to respond to the County or its designated agent within 30 days from the date notice is mailed by either of them to Owner that the insurance carrier has offered to settle a claim for insurance benefits, the County or its designated agent is authorized to (i) negotiate and settle the claim, and (ii) collect and apply the insurance proceeds at the County's option either to restoration or repair of the Property or to pay amounts due under the Resale Restriction and Note.

If the Property is acquired by the County, all right, title, and interest of Owner in and to any insurance policy, as well as any insurance proceeds paid or due Owner for damage to the Property prior to acquisition by the County, will pass to the County, subject to the rights of the First Lender.

6. Preservation and Maintenance of Property. Owner shall keep the Property in good repair and in a neat, clean, and orderly condition. Owner shall not commit waste or permit impairment or deterioration of the Property. If there arises a condition in contravention of this section, and if the Owner has not cured such condition within 30 days after receiving a County notice of such a condition, then in addition to any other rights available to the County, the County will 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 curing the condition.

7. Protection of the County's Interest in the Property. If Owner fails to perform the covenants and agreements contained in this Deed of Trust or if any action or proceeding is commenced that might significantly affect the County's interest in the Property or its rights under this Deed of Trust (including, but not limited to, default under the First Lender Deed of Trust, eminent domain, insolvency, code enforcement, or arrangements or proceedings involving a bankruptcy or decedent) or if Owner has abandoned the Property, then the County may do and pay for whatever is reasonable or appropriate to protect the County's interest in the Property and rights under this Deed of Trust, including protecting and assessing the value of the Property, and securing and/or repairing the Property. The County's actions may include but are not limited to: (a) paying any sums secured by a lien that has priority over this Deed of Trust; (b) appearing in court; (c) paying reasonable attorneys' fees to protect its interest in the Property and its rights under this Deed of Trust, including its secured position in a bankruptcy proceeding. Securing the Property includes but is not limited to entering the Property to make repairs, change locks, replace or board up doors and windows, drain water from pipes, eliminate building or other code violations or dangerous conditions, and have utilities turned on or off. Although the County may take action under this Section 7, the County does not have to do so and is not under any duty or obligation to do so. It is agreed that the County incurs no liability for not taking any or all actions authorized under this Section 7.

Any amounts disbursed by the County pursuant to this Section 7, with interest thereon, will become additional debt of Owner secured by this Deed of Trust. Such amounts will be payable upon notice from the County to Owner 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.

8. Inspection. The County and its authorized representatives may make or cause to be made reasonable entries upon the Property to determine if the Owner is in compliance with the requirements of the Resale Restriction, the Note, and this Deed of Trust. The County will give Owner reasonable notice of such entry and inspection.

9. Forbearance by the County Not a Waiver. Any forbearance by the County in exercising any right or remedy, including without limitation, the County's acceptance of an amount less than the amount due, is not a waiver of and does not preclude the exercise of any right or remedy. The procurement of insurance or the payment of taxes or other liens or charges by the County is not a waiver of the County'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. Hazardous Substances.

As used in this Section 11, "Hazardous Substances" are those substances defined as toxic or hazardous substances, pollutants, or wastes 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.

As used in this Section 11, "Environmental Law" means all federal laws and all laws of the state of California that relate to health, safety, or environmental protection.

Owner may not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances on or in the Property. Owner may not, and may not allow anyone else to, do anything affecting the Property that is in violation of any Environmental Law. The preceding two sentences do 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. Owner shall promptly give the County 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 Owner has actual knowledge. If Owner learns, or is notified by any governmental or regulatory authority, that any removal or other remediation of any Hazardous Substance affecting the Property is necessary, Owner shall promptly take all necessary remedial actions in accordance with Environmental Law.

12. Successors and Assigns Bound. The covenants and agreements herein contained bind and benefit the successors and assigns of the County and Owner.

13. Joint and Several Liability. Owner covenants and agrees that Owner's obligations and liabilities are joint and several.

14. Notice. Except for any notice required under applicable law to be given in another manner, all notices required herein shall be sent by certified mail, return receipt requested, express delivery service with a delivery receipt, or personal delivery with a delivery receipt, and shall be deemed to be effective as of the date received, the date delivery was refused, or the date returned as undeliverable as indicated on the return receipt. Notice to any one Owner will constitute notice to all Owners unless applicable law expressly requires otherwise. The notice address is the Property address unless Owner has designated a substitute notice address by notice to the County. Owner shall promptly notify the County of Owner's change of address. There may be only one designated notice address under this Deed of Trust at any one time. Any notice to the County must be given by mailing it to Contra Costa County Department of Conservation and Development at 30 Muir Road, Martinez, CA 94553, Attention: Housing and Community Improvement Division, or to such other address as the County may designate by notice to Owner as provided above. If any notice required by this Deed of Trust is also required under applicable law, the applicable law requirement will satisfy the corresponding requirement under this Deed of Trust.

15. Governing Law. This Deed of Trust is governed by the laws of the State of California. The venue for any legal action pertaining to this Deed of Trust shall be Contra Costa County, California.

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

17. Captions. The captions and headings in this Deed of Trust are for convenience only and are not to be used to interpret or define the provisions hereof.

18. Nondiscrimination. Owner covenants that there will 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 Owner or any person claiming under or through Owner 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 runs with the land.

19. Nonliability for Negligence, Loss, or Damage. Owner acknowledges, understands and agrees that the relationship between Owner and the County is solely that of an owner and an administrator of a County affordable housing program, and that the County does not undertake or assume any responsibility for or duty to Owner to select, review, inspect, supervise, pass judgment on, or inform Owner of the quality, adequacy, or suitability of the Property or any other matter. The County owes no duty of care to protect Owner against negligent, faulty, inadequate, or defective building or construction or any condition of the Property, and Owner agrees that neither Owner, or Owner's heirs, successors, or assigns shall ever claim, have, or assert any right or action against the County for any loss, damage, or other matter arising out of or resulting from any condition of the Property and will hold the County harmless from any liability, loss, or damage for these things.

20. Indemnity. Owner agrees to defend, indemnify, and hold the County and its officers, employees, agents, and board members harmless from all losses, damages, liabilities, claims, actions, judgments, costs, and reasonable attorneys' fees that the County may incur as a direct or indirect consequence of: (i) Owner's default, performance, or failure to perform any obligations as and when required by this Deed of Trust, the Resale Restriction, or the Note; or (ii) the failure at any time of any of Owner's representations to the County to be true and correct.

21. Acceleration; Remedies.

a. Upon Owner's breach of any covenant or agreement of Owner in the Resale Restriction, the Note, or this Deed of Trust, the County, prior to acceleration, will mail by express delivery, return receipt requested, notice to Owner specifying: (i) the breach; (ii) the action required to cure such breach; (iii) a date, not less than 30 days from the date the notice is

received by Owner as shown on the return receipt, by which such breach is to be cured; and (iv) 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 Property. The notice will also inform Owner of Owner'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 Owner to acceleration and sale.

b. Notwithstanding subsection (a) of this Section 21, in the event of a default by Owner under the First Lender Deed of Trust, no notice to Owner is required prior to acceleration.

c. If the breach is not cured on or before the date specified in the notice required by subsection (a), or in the event of a default by Owner under the First Lender Deed of Trust, the County, at the County's option, may: (i) 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; (ii) enter upon and take possession of the Property in the County's name or in the name of Trustee, or by a receiver appointed by a court, and do any acts which it deems necessary or desirable to preserve the value or marketability of the Property or increase the income from the Property, with or without bringing any action or proceeding; (iii) commence an action to foreclose under this Deed of Trust, appoint a receiver, or specifically enforce any of the covenants hereof; (iv) 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 Section 2924 et seq., as amended from time to time; or (v) exercise all other rights and remedies provided herein, in the instruments by which Owner acquires title to the Property, 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. Entering upon and taking possession of the Property pursuant to subsection (ii) above will not cure or waive any breach hereunder or invalidate any act done in response to such breach and, notwithstanding the County's continued possession of the Property, the County will be entitled to exercise every right provided for in this Deed of Trust and by law upon the occurrence of any uncured breach, including the right to exercise the power of sale.

d. The County is entitled to collect all reasonable costs and expenses incurred in pursuing the remedies provided in this section, including, but not limited to, reasonable attorneys' fees.

22. Owner's Right to Reinstate After Acceleration. If Owner meets certain conditions, Owner has the right to have enforcement of this Deed of Trust discontinued at any time prior to the earliest of: (a) five days before sale of the Property pursuant to the power of sale contained in this Deed of Trust; (b) such other period as applicable law might specify for the termination of Owner's right to reinstate; or (c) entry of a judgment enforcing this Deed of Trust. Those conditions are that Owner: (i) pays County all sums that then would be due under this Deed of Trust and the Note if no acceleration had occurred; (ii) cures any default of any other covenants or agreements; (iii) pays all expenses incurred by County and Trustee in enforcing this Deed of Trust, including, but not limited to, reasonable attorneys' fees, property inspection and valuation fees, and other fees incurred for the purpose of protecting the County's interest in the Property and rights under this Deed of Trust; and (iv) takes such other actions as County may reasonably

require to assure that the County's interest in the Property and rights under this Deed of Trust, and Owner's obligation to pay the sums secured by this Deed of Trust, continue unchanged. Upon such payment and cure by Owner, this Deed of Trust and the obligations secured hereby will remain in full force and effect as if no acceleration had occurred. However, this right to reinstate does not apply in the case of acceleration that results from a breach of Section 23.

23. Due on Transfer of the Property. Subject to Section 6 of the Resale Restriction, Owner shall pay in full all amounts secured by this Deed of Trust upon any Transfer (as defined in the Resale Restriction) of the Property or any interest in it.

24. Reconveyance. Upon payment of all sums secured by this Deed of Trust, and following the expiration of the Term of the Resale Restriction, and if Owner is not in violation of any provisions of this Deed of Trust, the Resale Restriction, or the Note, the County will request Trustee to reconvey the Property and will surrender this Deed of Trust to Trustee. Trustee will reconvey the Property without warranty and without charge to the person or persons legally entitled thereto. The County may charge such person or persons a reasonable fee for reconveying the Property, but only if the fee is to be paid to a third party (such as the Trustee) for services rendered and the charging of the fee is permitted under applicable law. If the fee charged does not exceed the fee set by applicable law, the fee is conclusively presumed to be reasonable.

25. Substitute Trustee. The County, at its 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, powers, and duties conferred upon the Trustee herein and by applicable law.

26. Superiority of First Lender Documents. Notwithstanding any other provision of this Deed of Trust, the provisions of this Deed of Trust are subordinate to the lien of the First Lender Deed of Trust and do not impair the rights of the First Lender, or the First Lender's successor or assign, 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 Owner. 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 a foreclosure or acceptance of a deed or assignment in lieu of foreclosure by the First Lender, this Deed of Trust will be forever terminated and will have no further effect as to the Property or any transferee thereafter if (i) the County has been given written notice of default under such First Lender Deed of Trust with a 60-day cure period (which requirement will be satisfied by recordation of a notice of default under California Civil Code Section 2924), and (ii) the County has not cured the default within such 60-day period. Owner agrees to execute any documents necessary to effect such termination, if applicable.

27. Request for Notice. Owner requests that copies of any notice of default and notice of sale be sent to Owner in accordance with Section 14 above.

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

OWNER

OWNER

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 CONTRA COSTA)

On _____, 20__, before me, _____, Notary Public, personally appeared, _____ who proved to me on the basis of satisfactory evidence to be the person(s) whose name is subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity, and that by his/her/their signature on the instrument the person, or the entity upon behalf of which the person 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 CONTRA COSTA)

On _____, 20__, before me, _____, Notary Public, personally appeared, _____ who proved to me on the basis of satisfactory evidence to be the person(s) whose name is subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity, and that by his/her/their signature on the instrument the person, or the entity upon behalf of which the person 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)

EXHIBIT A

Legal Description of the Property