

NO FEE DOCUMENT

RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:

Alameda County  
Housing and Community Development Department  
224 W. Winton Avenue, Room 108  
Hayward, CA 94544  
Attn: Housing Director

No fee for recording pursuant to  
Government Code Section 27383

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**NOTICE TO BORROWER: THIS DEED OF TRUST CONTAINS PROVISIONS  
LIMITING ASSUMPTIONS. THIS DEED OF TRUST SECURES A SHARED  
APPRECIATION LOAN.**

**DEED OF TRUST AND SECURITY AGREEMENT – SHARED APPRECIATION**  
(AC Boost Down Payment Assistance Loan – \$ \_\_\_\_\_ Plus Shared  
Appreciation)

THIS DEED OF TRUST AND SECURITY AGREEMENT ("Deed of Trust") made on  
\_\_\_\_\_, 20\_\_\_, among the trustor, \_\_\_\_\_ ("Borrower"),  
\_\_\_\_\_ ("Trustee"), and the County of Alameda, a political  
subdivision of the State of California (the "County"), as Beneficiary.

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 County of Alameda, State of California, described in the  
attached Exhibit A and more commonly known as: \_\_\_\_\_,  
California (APN No. \_\_\_\_\_) (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 therefore, 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 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 County the repayment of the sums and Shared Appreciation evidenced by a promissory note to the County executed by Borrower, dated the same date as this deed of trust, in the principal amount of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) ("Note"); and

TO SECURE the payment of all other sums, with interest thereon, secured by the Note or 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 COUNTY COVENANT AND AGREE AS FOLLOWS:**

1. Borrower's Estate. That Borrower is fee owner 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 the deed of trust executed by Borrower in connection with a loan made to Borrower by \_\_\_\_\_ (the "First Lender") in the amount of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) and recorded in the Official Records of Alameda County substantially concurrently herewith (the "First Lender Deed of Trust") securing a promissory note executed by Borrower in favor of the First Lender (the "First Lender Note") to assist in the purchase of the Property. As used in this Deed of Trust, the term "First Lender" shall include all successors and assigns of the First Lender.

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 County's interest in the Security.

2. Repayment. Borrower will promptly repay all sums due under the Note, including all principal and Shared Appreciation (as defined in the Note) required by the Note. The Note contains the following provisions limiting assumption:

"Limited Assumption of Note. Borrower(s) acknowledge(s) that this Note is given in connection with the Borrower's purchase of the Property as part of an effort by the County to assist in the purchase of homes by low and moderate income households. Consequently, this Note is only assumable if the following requirements are met: (i) Borrower is not in default under the Note, (ii) the subsequent purchaser is a low or moderate income household, as determined by the County in accordance with the AC Down Payment Assistance Boost Program guidelines, and (iii) such assignment is consented to by the County."

3. First Lender Loan. Borrower 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.

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 County, Borrower will promptly furnish to the County 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 First 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 County, 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 all risk property insurance policy equal to the replacement value of the Security (adjusted every five (5) years by appraisal, if requested by the County). If the Security is located in a flood plain, Borrower shall also obtain flood insurance. In no event shall the amount of insurance be less than 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 must meet the County's standards and requirements, as may be updated from time to time by the County.

All insurance policies and renewals thereof will be in a form acceptable to the County and will include a standard mortgagee clause with standard lender's endorsement in favor of the holder of the First Lender Note and the County as their interests may appear and in a form acceptable to the County. County shall be listed as a loss payee on any property insurance policy and as an additional insured on any liability policy. The County 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 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, Borrower will 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 Borrower. The County shall receive thirty (30) days advance notice of cancellation of any insurance policies required under this Section.

Unless otherwise permitted by the County in writing, insurance proceeds, subject to the rights of the First 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 amounts due under 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 County, 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 County, or its designated agent, is authorized to collect and apply the insurance proceeds at the County's option either to restoration or repair of the Security or to repay the amounts due under the Note.

If the Security is acquired by the County, 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 County 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 Lender.

6. Preservation and Maintenance of Security. Borrower 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 6, and if the Borrower has not cured such condition within thirty (30) days after receiving a County notice of such a condition, then in addition to any other rights available to the County, the County 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.

7. Protection of the County'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 County'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 County, at the County's option, upon notice to Borrower, may make such appearances, disburse such sums and take such action as it determines necessary to protect the County'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 County pursuant to this paragraph, with interest thereon, will become an indebtedness of Borrower secured by this Deed of Trust. Unless Borrower and County agree to other terms of payment, such amount will be payable upon notice from the County to Borrower requesting payment thereof, and will bear interest from the date of disbursement at the lesser of (a) ten percent (10%); or (b) the highest rate permissible under applicable law. Nothing contained in this paragraph will require the County to incur any expense or take any action hereunder.

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

9. Forbearance by the County Not a Waiver. Any forbearance by the County 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 County will not be 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. Borrower shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances on or in the Property. Borrower 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 and used in accordance with applicable laws.

"Hazardous Substances" shall mean those substances defined as toxic or hazardous substances or hazardous waste 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" shall mean all federal and state of California laws that relate to health, safety or environmental protection.

Borrower shall promptly give 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 Borrower has actual knowledge. If Borrower 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, Borrower shall promptly take all necessary remedial actions in accordance with Environmental Law.

12. 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 County and Borrower subject to the provisions of this Deed of Trust.

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

14. Notice. Except for any notice required under applicable law to be given in another manner, (a) any notice to Borrower provided for in this Deed of Trust will be given by certified mail, addressed to Borrower at the address shown in the second paragraph of this Deed of Trust or such other address as Borrower may designate by notice to the County as provided herein, and (b) any notice to the County will be given by express delivery, return receipt requested, to the County at 224 W. Winton Avenue, Room 108, Hayward, CA 94544, Attn: Housing Director or to such other address as the County may designate by notice to Borrower as provided above. Notice shall be effective as of the date received by County as shown on the return receipt.

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

16. Severability. In the event that any provision or clause of this Deed of Trust or the Note conflicts with applicable law, such conflict will not affect other provisions of this Deed of Trust or the Note which can be given effect without the conflicting provision, and to this end the provisions of the Deed of Trust 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. The Borrower 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 the Borrower or any person claiming under or through the Borrower establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, occupancy, or transfer of the Property. The foregoing covenant shall run with the land.

19. Nonliability for Negligence, Loss or Damage. Borrower acknowledges, understands and agrees that the relationship between Borrower and the County is solely that of borrower and lender, and that County neither undertakes nor assumes any responsibility for or duty to Borrower to select, review, inspect, supervise, pass judgment on, or inform Borrower of the quality adequacy or suitability of the Property or any other matter. County owes no duty of care to protect Borrower against negligent, faulty, inadequate or defective building or construction or any condition of the Property and Borrower agrees that neither Borrower, nor Borrower's heirs, successors or assigns shall ever claim, have or assert any right or action against County for any loss, damage or other matter arising out of or resulting from any condition of the Security and will hold County harmless from any liability, loss or damage for these things.

20. Indemnity. Borrower shall indemnify, hold harmless and defend (with counsel reasonably selected by the County), to the extent not prohibited by applicable law, the County, its councilmembers, commissioners, officials, employees and agents from all losses, damages, liabilities, claims, actions, judgments, costs, and reasonable attorneys' fees that County may incur as a direct or indirect consequence of:

- (a) the making of the loan evidenced by the Note to Borrower;
- (b) Borrower's default, performance, or failure to perform any obligations as and when required by the Note and Deed of Trust;
- (c) Borrower's purchase of the Property; or
- (d) the failure at any time of any of Borrower's certifications, representations, or warranties to be true and correct.

21. Acceleration; Remedies.

- (a) Upon Borrower's breach of any covenant or agreement of Borrower in this

Deed of Trust, including, but not limited to, the covenants to pay, when due, any sums secured by this Deed of Trust, the County, prior to acceleration, will mail by express delivery, return receipt requested, notice to Borrower 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 Borrower as shown on the return receipt (provided that if a shorter cure period is provided for in this Deed of Trust, Note or the Occupancy, Shared Appreciation, and Refinancing Restriction Agreement between Borrower and County dated the same date as this Deed of Trust (the "Shared Appreciation Agreement"), such short cure period shall control), 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 Security. The notice will also inform Borrower of Borrower'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 Borrower to acceleration and sale.

(b) Notwithstanding subsection (a) of this Section, in the event of a default by the Borrower under the First Lender Deed of Trust, no notice to Borrower shall be 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 the Borrower 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) 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) 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 County 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; (iii) commence an action to foreclose this Deed of Trust as a mortgage, 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 sections 2924, et seq., as amended from time to time; (v) or, 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.

(d) The County 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.

22. Borrower's Right to Reinstate. Notwithstanding the County's acceleration of the sums secured by this Deed of Trust, Borrower will have the right to have any proceedings begun by the County 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 County all sums which would be then due under this Deed of Trust and no acceleration under the 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 County and Trustee in enforcing the covenants and agreements of Borrower contained in this Deed of Trust, and in enforcing the County's and Trustee's remedies, including, but not limited to, reasonable attorneys' fees; and (d) Borrower takes such action as the County may reasonably require to assure that the lien of this Deed of Trust, the County'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.

23. Due on Transfer of the Property. Upon a Transfer (as defined in the Note) of the Property or any interest in it, the County shall require immediate payment in full of all sums secured by this Deed of Trust.

24. Reconveyance. Upon payment of all sums and all performance secured by this Deed of Trust, the County will request Trustee to reconvey the Security and will surrender this Deed of Trust and the Note to Trustee and release the Shared Appreciation Agreement. 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.

25. Substitute Trustee. The County, at the County'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.

26. 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 and approved by the County in writing.

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 in the event of default under the First Lender Deed of Trust by the Borrower. 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 only if (i) the County has been given written notice of default under such First Lender Deed of Trust with a sixty (60)-day cure period and (ii) the County shall not have cured the default



within such sixty (60)-day period or commenced to cure the default within such sixty (60)-day period and given its firm commitment to complete the cure in form and substance acceptable to the First Lender. Any successor to the First Lender identified in Section 1 above must be approved in advance by the County before such successor will be considered a "First Lender" under this Deed of Trust.

27. 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 14 above.

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

Borrower:

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Borrower:

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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 \_\_\_\_\_)

On \_\_\_\_\_, before me, \_\_\_\_\_, 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.

\_\_\_\_\_  
Name: \_\_\_\_\_  
Notary Public

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 \_\_\_\_\_)

On \_\_\_\_\_, before me, \_\_\_\_\_, 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.

\_\_\_\_\_  
Name: \_\_\_\_\_  
Notary Public

EXHIBIT A  
PROPERTY DESCRIPTION

TEMPLATE