

RECORDING REQUESTED BY AND  
WHEN RECORDED MAIL TO:

County of Napa  
County Administration Building  
1195 Third Street, Suite 310  
Napa, CA 94559  
Attention: County Executive Officer

No fee for recording pursuant to  
Government Code Section 27383

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**PERFORMANCE DEED OF TRUST  
(Affordable Accessory Dwelling Unit)**

**THIS DEED OF TRUST** ("Deed of Trust") is dated as of \_\_\_\_\_ 20\_\_, by \_\_\_\_\_ ("Trustor"), whose address is \_\_\_\_\_, \_\_\_\_\_ ("Trustee"), whose address is \_\_\_\_\_ and the County of Napa ("Beneficiary"), whose address is 1195 Third Street, Suite 310, Napa, CA. Attention: County Executive Officer.

**TRUSTOR HEREBY** irrevocably grants, transfers, and assigns to Trustee, in trust, with power of sale, that certain real property ("Property") in the County of Napa, State of California, described as:

(See Legal Description - Exhibit "A")

**FOR THE PURPOSE OF SECURING:**

- (a) The performance of each agreement and obligation contained in this Deed of Trust;
- (b) The performance of each agreement and obligation contained in that Affordable Accessory Dwelling Unit Loan Agreement between the Trustor and the Beneficiary of even date with this Deed of Trust (the "Loan Agreement"); and
- (c) The performance of each agreement, obligation, and covenant of Trustor under that certain Agreement Containing Covenants and Restrictions Governing Rental of Affordable Accessory Dwelling Unit ("Regulatory Agreement") of even date with this Deed of Trust and recorded concurrently with this Deed of Trust affecting the Property.

**A. TO PROTECT THE SECURITY OF THIS DEED OF TRUST, TRUSTOR AGREES:**

- 1. Defense of Security. To appear in and defend any action or proceeding purporting to affect the security of this Deed of Trust or the rights or powers of Beneficiary, or Trustee; and to pay all costs and expenses, including cost of evidence of title and attorneys' fees in a reasonable sum, in any such action or proceeding in which Beneficiary or Trustee may appear, and in any suit brought by Beneficiary to foreclose this Deed of Trust.
- 2. Payment of Liens and Taxes. To pay all taxes and assessments affecting the Property prior to such payments becoming due, including assessments on appurtenant water stock, all

encumbrances, charges, and liens, with interest, on the Property or any part of the Property, which appear to be prior or superior to this Deed of Trust; and all costs, fees, and expenses of this Deed of Trust. If Trustor fails to make any payment or to do any act as provided in this Deed of Trust, then Beneficiary or Trustee may (but is not obligated to) make the payment or do the act in the required manner and to the extent deemed necessary by Beneficiary or Trustee to protect the security of this Deed of Trust. The performance by Beneficiary or Trustee of such an act shall not require notice to or demand upon Trustor and shall not release Trustor from any obligation under this Deed of Trust. Beneficiary or Trustee shall also have the following related rights and powers: to enter upon the Property for the foregoing purposes; to appear in and defend any action or proceeding purporting to affect the security of this Deed of Trust or the rights or powers of Beneficiary or Trustee; to pay, purchase, contest, or compromise any encumbrance, charge, or lien that in the judgment of either appears to be prior or superior to this Deed of Trust; to employ counsel; and to pay necessary expenses and costs, including reasonable attorneys' fees.

3. Reimbursement of Costs. To pay immediately and without demand all sums expended by Beneficiary or Trustee pursuant to this Deed of Trust, with interest from date of expenditure at the amount allowed by law in effect at the date of this Deed of Trust, and to pay any amount demanded by Beneficiary (up to the maximum allowed by law at the time of the demand) for any statement regarding the obligation secured by this Deed of Trust.

4. Use. That Trustor will not permit or suffer the use of any of the Property for any purpose other than the use for which the same was intended at the time this Deed of Trust was executed.

5. Incorporation of Agreements. The Note, Loan Agreement, and Regulatory Agreement are incorporated in this Deed of Trust by reference and made a part of this Deed of Trust, although not attached. Copies are on file in the office of the Beneficiary.

6. Performance of Other Obligations. To perform, in a timely manner, each agreement and covenant by and between Trustor on any and all notes, loans, and deeds of trust that are senior and/or junior to this Deed of Trust. A default in any of these obligations after the expiration of any applicable notice or cure period pursuant to the Loan Agreement shall constitute a default under this Deed of Trust.

**B. THE PARTIES AGREE THAT:**

7. Waiver of Late Payments. By accepting payment of any sum secured by this Deed of Trust after its due date, Beneficiary does not waive its right either to require prompt payment when due of all other sums so secured or to declare default for failure to pay any amounts secured by this Deed of Trust.

8. Full Reconveyance. Upon written request of Beneficiary stating that all obligations secured by this Deed of Trust have been performed in full, surrender of this Deed of Trust, and payment of Trustee's fees and charges, Trustee shall reconvey, without warranty, the Property then subject to this Deed of Trust. The recitals in the reconveyance shall be conclusive proof of the truthfulness of the recitals. The grantee in the reconveyance may be described as "the person or persons legally entitled thereto."

9. Assignment of Rents. As additional security, Trustor hereby gives to and confers upon Beneficiary the right, power, and authority during the continuance of this Deed of Trust, to collect the rents, issues, and profits of the Property, but reserves the right, prior to any default, which continues beyond any applicable notice and cure periods, by Trustor in payment of any amounts

secured by this Deed of Trust or in the performance of any agreement under this Deed of Trust, to collect and retain these rents, issues, and profits as they become due and payable. Upon any such uncured default, Beneficiary may, without notice and without regard to the adequacy of the security for the amounts secured by this Deed of Trust, either personally or by agent or court-appointed receiver, do the following: enter upon and take possession of the Property or any part of the Property; sue for or otherwise collect all rents, issues, and profits, including those past due and unpaid; and apply these rents, issues, and profits, less costs and expenses of operation and collection (including reasonable attorneys' fees), upon any amounts secured by this Deed of Trust, in any order determined by Beneficiary. The exercise of the foregoing rights by Beneficiary shall not cure or waive any default or notice of default under this Deed of Trust or invalidate any act done pursuant to such a notice.

10. Default; Foreclosure. Upon material default by Trustor in the performance of any obligation under the Loan Agreement, the Regulatory Agreement or this Deed of Trust, after the expiration of any and all applicable notice or cure periods, Beneficiary may declare all sums secured by this Deed of Trust immediately due and payable by delivering to Trustee a written declaration of default and demand for sale and a written notice of default and election to sell the Property. Trustee shall cause the notice of default and election to sell to be recorded. After the required time period has lapsed following the recordation of the notice of default, and after notice of sale has been given as required by law, Trustee, without demand on Trustor, shall sell the Property at the time and place specified in the notice of sale, either as a whole or in separate parcels, and in any order determined by Trustee, at public auction to the highest bidder for cash in lawful money of the United States, payable at the time of sale. Trustee may postpone sale of all or any portion of the Property by public announcement at the time and place of sale, and from time to time thereafter may postpone the sale by public announcement at the time fixed by the preceding postponement. Trustee shall deliver to the purchaser at the auction its deed conveying the Property sold, but without any covenant or warranty, express or implied. The recital in the deed of any matter or fact shall be conclusive proof of the truthfulness of the recital. Any person, including Trustor, Trustee, or Beneficiary, may purchase at the sale. After deducting all costs, fees, and expenses of Trustee and Beneficiary under this section, including costs of procuring evidence of title incurred in connection with the sale, Trustee shall apply the proceeds of sale to payment of: all sums expended under the terms of this Deed of Trust, not then repaid, with accrued interest at the amount allowed by law in effect at the date of this Deed of Trust; all other sums then secured by this Deed of Trust; and the remainder, if any, to the person or persons legally entitled to the remaining proceeds.

11. Due on Sale or Further Encumbrance. Except as provided in the Regulatory Agreement, should Trustor agree to or actually sell, convey, transfer, or dispose of, or further encumber the Property, or any part of it, or any interest in it, without first obtaining the written consent of the Beneficiary, then all obligations secured by this Deed of Trust may be declared due and payable, at the option of the Beneficiary. Consent to one transaction of; this type will not constitute a waiver of the right to require consent to future or successive transactions.

12. General Provisions. This Deed of Trust applies to, inures to the benefit of, and binds all parties to this Deed of Trust and their heirs, legatees, devisees, administrators, executors, successors, and assigns. The term "Beneficiary" shall mean the County of Napa and its successors and assigns. In this Deed of Trust, whenever the context so requires, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural.

13. Substitution of Trustees. Beneficiary, or any successor in ownership of any obligations secured by this Deed of Trust, may from time to time, by written instrument, substitute a successor

or successors to any Trustee named in or acting under this Deed of Trust. The substitution instrument shall contain the name of the original Trustor, Trustee, and Beneficiary under this Deed of Trust, the book and page where this Deed is recorded, and the name and address of the new Trustee. When executed by Beneficiary and duly acknowledged and recorded in the office of the recorder of the county or counties where the Property is situated, the substitution instrument shall be conclusive proof of proper substitution of the successor Trustee or Trustees. Any successor Trustee or Trustees shall, without conveyance from the predecessor Trustee, succeed to all its title, estate, rights, powers, and duties.

14. Cumulative Powers and Remedies. The powers and remedies conferred in this Deed of Trust are concurrent and cumulative to all other rights and remedies provided in this Deed of Trust or given by law. These powers and remedies may be exercised singly, successively, or together, and as often as deemed necessary.

15. Conclusiveness of Recitals. The recitals contained in any reconveyance, trustee's deed, or any other instrument executed by Trustee from time to time under the authority of this Deed of Trust or in the exercise of its powers or the performance of its duties under this Deed of Trust, shall be conclusive evidence of their truth, whether stated as specific and particular facts, or in general statements or conclusions. Further, the recitals shall be binding and conclusive upon Trustor, its heirs, executors, administrators, successors, and assigns, and all other persons.

16. Attorneys' Fees. If any action is brought for the foreclosure of this Deed of Trust or for the enforcement of any provision of this Deed of Trust (whether or not suit is filed), Trustor agrees to pay all costs and expenses of Beneficiary and Trustee, including reasonable attorneys' fees; and these sums shall be secured by this Deed of Trust.

17. Request for Notices of Default and Sale. In accordance with Section 2924b of the California Civil Code, request is hereby made that a copy of any Notice of Default and a copy of any Notice of Sale under any deeds of trust executed by Trustor concerning the Property be mailed to:

County of Napa  
County Administration Building  
1195 Third Street, Suite 310  
Napa, CA 94559  
Attention: County Executive Officer

**NOTICE: A copy of any notice of default and of any notice of sale will be sent only to the address contained in this recorded request. If your address changes, a new request must be recorded.**

18. Hazardous Materials. Trustor will keep and maintain the Property in compliance with all Hazardous Materials Laws (as defined below) and will not cause or permit the Property to be in violation of any Hazardous Materials Law. For purposes of this Deed of Trust, "Hazardous Materials" mean and include any hazardous, toxic or dangerous waste, substance or material including, without limitation, flammable explosives, radioactive materials, asbestos, hazardous wastes, toxic substances and any materials or substances defined as hazardous materials, hazardous substances, or toxic substances under any applicable federal, state or local laws, ordinances, or regulations relating to any hazardous materials, health, industrial hygiene, environmental conditions, or the regulation or protection of the environment, and all amendments as of this date and to be added in the future and any successor statute or rule or

regulation promulgated ("Hazardous Materials Law"). All claims made or threatened by any third party against Trustor or the Property relating to damage, contribution, cost recovery compensation, loss, or injury resulting from any Hazardous Materials are referred to as "Hazardous Materials Claims". Trustor will indemnify and hold harmless Beneficiary and its board members, directors, officers, employees, agents, consultant, successors, and assigns from and against any loss, damage, cost, fine, penalty, judgment, award, settlement, expense or liability, directly or indirectly arising out of or attributable to: (i) any actual or alleged past or present violation of any Hazardous Materials Law; (ii) any Hazardous Materials Claim; (iii) any actual or alleged past or present use, generation, manufacture, storage, release, threatened release, discharge, disposal, transportation, or presence of Hazardous Materials on, under, or about the Property; and (iv) any investigation, cleanup, remediation, removal, or restoration work of site conditions of the Property relating to Hazardous Materials (whether on the Property or any other property).

19. Choice of Law. This Deed of Trust will be governed by and construed in accordance with the laws of the State of California.

20. Authority to Sign. All individuals signing this Deed of Trust for a party which is a corporation, limited liability company, partnership or other legal entity, or signing under a power of attorney, or as a trustee, guardian, conservator, or in any other legal capacity, covenant to the Beneficiary that they have the necessary capacity and authority to act for, sign and bind the respective entity or principal on whose behalf they are signing.

[SIGNATURES ON FOLLOWING PAGE]

**TRUSTOR:**

\_\_\_\_\_  
Name: \_\_\_\_\_

\_\_\_\_\_  
Name: \_\_\_\_\_

## ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California )  
 )  
County of Napa )

On \_\_\_\_\_, 2022, 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.

Signature \_\_\_\_\_ (Seal)

**ACKNOWLEDGMENT**

A notary public or other officer completing this  
certificate verifies only the identity of the  
individual who signed the document to which  
this certificate is attached, and not the  
truthfulness,  
accuracy, or validity of that document.

State of California                     )  
                                                      )  
County of Napa                         )

On \_\_\_\_\_, 2022, 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.

Signature \_\_\_\_\_ (Seal)

## **Exhibit “A”**

### **Property Description**

That certain real property situated in the County of Napa, State of California, described as follows: