

**NO CHARGE ON THIS DOCUMENT FOR
THE BENEFIT OF A STATE AGENCY
FORMED BY THE CITY OF SAN DIEGO**

Recording Requested By:

Christensen, Schwerdtfeger & Spath LLP
444 West C Street, Suite 200
San Diego, CA 92101

And When Recorded Mail To:

San Diego Housing Commission
1625 Newton Avenue
San Diego, CA 92113
Attn: Elizabeth C. Morris, Executive Director

DEED OF TRUST
(the "Deed of Trust")

THIS DEED OF TRUST is made this ____ day of _____, 2003, between EV, LLC, a Washington limited liability company, whose address is _____ ("Developer" or "Trustor"); Chicago Title Insurance Company, a California corporation (the "Trustee"); the City of San Diego, a charter city, whose address is 202 C Street, San Diego, California 92101 (the "City") and the San Diego Housing Commission, a public agency, whose address is 1625 Newton Avenue, San Diego, California, 92113 ("Commission"). The City and the Commission shall be referred to collectively herein as the ("Beneficiary").

TRUSTOR HEREBY irrevocably grants, transfers, and assigns to Trustee, in trust, with power of sale, all that property in the City of San Diego, County of San Diego, State of California, described as (the "Property"):

(See Legal Description - Exhibit "A")

FOR THE PURPOSE OF SECURING:

- (1) The timely performance of the INCLUSIONARY HOUSING IN LIEU FEE AGREEMENT (the "AGREEMENT") of even date herewith, between the Developer, Commission and City which is being recorded concurrently, and any duly executed and recorded renewals, extensions, modifications or amendments to the Agreement, and each and every covenant set forth herein;
- (2) The performance of each agreement contained in this Deed of Trust.

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

Maintenance and Repair

- (1) Except as allowed by the Agreement, to keep the Property in good condition and repair; not to remove or demolish any buildings on the Property; to complete or restore promptly and in good and workmanlike manner any building that may be constructed, damaged, or destroyed on the Property; to pay when due all claims for labor performed and materials furnished for the Property; to comply with all laws affecting the Property or requiring any alterations or improvements to be made on the Property; not to commit or permit waste of the Property; not to commit, suffer, or permit any act upon the Property in violation of law; and to cultivate, maintain the landscaping, and do all other acts that from the character or use of the Property may be reasonably necessary.

Fire Insurance

- (2) To provide, maintain, and deliver to Beneficiary fire insurance satisfactory to and with loss payable to Beneficiary as its interest may appear. The amount collected under any fire or other insurance policy may be applied by Beneficiary upon any indebtedness secured by this Deed of Trust and in any order determined by Beneficiary, or at the option of Beneficiary the entire amount so collected or any part of that amount may be released to Trustor, except that if the proceeds of the award for any taking or injury to the Property or the amount of such proceeds plus funds provided by Trustor is sufficient to allow for the repair and restoration of the Property and such repair and/or restoration is physically and legally possible, then Trustor shall use the proceeds of the award to timely effectuate such repair and/or restoration. Upon receipt of such proceeds, Beneficiary may hold the proceeds as further security, or apply or release them in the same manner and with the same effect as provided in this Deed of Trust for the disposition of proceeds of fire or other insurance. This application or release 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.

Defense of Security

- (3) 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.

Payment of Liens and Taxes

(4) To pay, at least ten (10) days before delinquency, all taxes and assessments affecting the Property, 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 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 attorneys' fees.

Reimbursement of Costs

(5) 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 reasonable 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.

(6) That it 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.

(7) That the Agreement is incorporated herein by reference and made a part of this Deed of Trust.

(8) 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, beyond any applicable cure period, shall constitute a default under this Deed of Trust.

B. THE PARTIES AGREE THAT:**Condemnation Award**

(1) Any award of damages in connection with any taking or condemnation, or for injury to the Property by reason of public use, or for damages for private trespass or injury to the Property, is hereby assigned and shall be paid to Beneficiary, as its interest may appear as further security for all obligations secured by this Deed of Trust, except that if the proceeds of the award for any taking or injury to the Property or the amount of such proceeds plus funds provided by Trustor is sufficient to allow for the repair and restoration of the Property and such repair and/or restoration is physically and legally possible, then the Trustor shall use the proceeds of the award to timely effectuate such repair and/or restoration. Upon receipt of such proceeds, Beneficiary may hold the proceeds as further security, or apply or release them in the same manner and with the same effect as provided in this Deed of Trust for the disposition of proceeds of fire or other insurance.

Waiver of Late Payments

(2) 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 indebtedness secured by this Deed of Trust.

Trustee's Powers

(3) Upon written request of Beneficiary and presentation of this Deed of Trust, Trustee may (a) reconvey all or any part of the Property; (b) consent to the making and recording, or either, of any map or plat of all or any part of the Property; (c) join in granting any easement on the Property; or (d) join in or consent to any extension agreement or any agreement subordinating the lien, encumbrance, or charge of this Deed of Trust. Trustee need not provide Trustor with notice before taking any of the foregoing actions, and shall not be liable for the proper performance of the act. The exercise by Trustee of any of the foregoing powers shall not affect the personal liability of any person for payment of the indebtedness secured by this Deed of Trust, or the lien of this Deed of Trust on the remaining property as security for the repayment of the full amount secured by this Deed of Trust.

Full Reconveyance

(4) 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, any notes secured by this Deed of Trust to the Trustee for cancellation and retention, and payment of Trustee's fees and charges, Trustee shall reconvey, without warranty, the Property then subject to this Deed of Trust. Absent manifest error, 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.” Five years after issuance of the full reconveyance, Trustee may destroy the Note and this Deed of Trust, unless directed in the request to retain them.

Assignment of Rents

(5) As additional security, Trustor hereby gives to and confers upon Beneficiary the right, power, and authority during the continuance of these Trusts, to collect the rents, issues, and profits of the Property, but reserves the right, prior to any default by Trustor in payment of any indebtedness 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 default beyond any applicable cure period, Beneficiary may, without notice and without regard to the adequacy of the security for the indebtedness 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 indebtedness 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.

Default in Foreclosure

(6) Upon default by Trustor in the payment of any indebtedness secured by this Deed of Trust or in the performance of any obligation under this Deed of Trust beyond any applicable cure period, 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. Beneficiary also shall deposit with Trustee this Deed of Trust, a copy of the Agreement and all other documents evidencing obligations secured by this Deed of Trust.

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. Absent manifest error, 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 paragraph, including costs of procuring evidence of title incurred in connection with 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.

Further Encumbrances

(7) Should the undersigned 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 Commission, then all obligations secured by the Deed of Trust may be declared due and payable, at the option of the Commission. Provided, however, that nothing contained herein shall prevent the undersigned from entering into a purchase and sale agreement, or other comparable agreement, with respect to the Property, wherein the sale, conveyance, transfer or disposition of the Property is contingent upon the written consent of the Commission. Consent to one transaction of this type will not constitute a waiver of the right to acquire consent to future or successive transactions. The Commission hereby agrees not to unreasonably withhold its consent to any further encumbrance of the Property on commercially reasonable terms. The Commission hereby agrees not to unreasonably withhold its consent to any future conveyance of the Property'. Any conveyance approved by the Commission shall not result in the acceleration of any obligations secured by the Deed of Trust or under the terms of the Agreement, nor shall the obligations secured by this Deed of Trust become due and payable. Upon Commission providing consent to any conveyance of the Property described in this Deed of Trust, the proposed buyer and Commission shall promptly execute an Assumption Agreement in a form reasonably agreed upon by the parties, whereby (i) the existing Trustor shall assign its obligations pursuant to this Deed of Trust to the proposed buyer, (ii) the proposed buyer shall assume the obligations of Trustor pursuant to this Deed of Trust and (iii) Commission shall consent to the said assignment and assumption ("Assumption Agreement"). The Assumption Agreement shall be recorded upon conveyance of the Property to the proposed buyer. Upon the recordation of the Assumption Agreement and the conveyance of the Property, the Trustor shall be released from any and all prospective liability or responsibility under this Deed of Trust and the Agreement. Effective upon the conveyance of title to the Property, the party conveying the Property (and the interests of Trustor pursuant to this Deed of Trust) shall be released from any and all prospective liability or responsibility concerning the Agreement and this Deed of Trust, and the Commission shall not have any recourse against such seller for a breach of any obligations under the Agreement and this Deed of Trust.

General Provisions

(8) This Deed 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 Commission, and the heirs, legatees, devisees, administrators, executors, and assigns of any such person. 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.

Acceptance by Trustee

(9) Trustee accepts this trust when this Deed of Trust, duly executed and acknowledged, is made a public record as provided by law. Trustee is not obligated to notify any party to this Deed of Trust of pending sale under any other deed of trust or of any action or proceeding in which Trustor, Beneficiary, or Trustee shall be a party unless brought by Trustee.

Substitution of Trustees

(10) Beneficiary, or any successor in ownership of any indebtedness 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 of Trust 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 Trustee predecessor, succeed to all its title, estate, rights, powers, and duties.

Cumulative Powers and Remedies

(11) 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.

Conclusiveness of Recitals

(12) The recitals contained in any reconveyance, trustee’s deed, or any other instrument executed by the 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 absent manifest error. Further, the

recitals shall be binding and conclusive upon the Trustor, its heirs, executors, administrators, successors, and assigns, and all other persons.

Attorneys' Fees

(13) 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.

Co-trustees

(14) If two or more persons are designated as Trustees in this Deed of Trust, any, or all, power granted in this Deed of Trust to Trustee may be exercised by any of those persons, if the other person or persons are unable, for any reason, to act. Any recital of this inability in any instrument executed by any of those persons shall be conclusive against Trustor and Trustor's heirs and assigns.

Request for Notices of Default and Sale

(15) 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 that Deed of Trust executed by the Trustor concerning this Property be mailed to:

San Diego Housing Commission

c/o Programs & Policy
1625 Newton Avenue
San Diego, CA 92113

City of San Diego
c/o Michael Uberuaga, City Manager
202 C Street
San Diego, CA 92101

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.

The undersigned Trustor requests that a copy of any notice of default and of any notice of sale under this

Deed of Trust be mailed to Trustor at the address of Trustor set forth above.

(16) Trustor shall permit Beneficiary and its agents or representatives, to inspect the Property at any and all reasonable times, with or without advance notice. Inspections shall be conducted so as not to interfere with the tenants' use and enjoyment of the Property.

(17) 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 in (or for purposes of) the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), as amended (42 U.S.C. §9601, et seq.), the Hazardous Materials Transportation Act (49 U.S.C. §1801, et seq.), the Resource Conservation and Recovery Act (42 U.S.C. §6901, et seq.), and those substances defined as hazardous wastes in §25117 of the California Health and Safety Code or as hazardous substances in §25316 of the California Health and Safety Code or in any regulations promulgated under either such law, any so-called "Superfund" or "Superlien" law, or any other federal, state or local statute, law, ordinance, code, rule, regulation, order or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic or dangerous waste, substance or material, as now or at any time hereafter in effect.

(18) In addition to the general and specific representations, covenants and warranties set forth in the Deed of Trust or otherwise, Trustor represents, covenants and warrants, with respect to Hazardous Materials, as follows:

(a) Neither Trustor nor (except as may have been previously disclosed to Beneficiary in writing) to the actual knowledge of Trustor, any other person, has ever caused or permitted any Hazardous Materials to be manufactured, placed, held, located or disposed of on, under or at the Property or any part thereof, and neither the Property nor any part thereof, or any property adjacent thereto, has ever been used (whether by the Trustor or, to the best knowledge of the Trustor, by any other person) as a manufacturing site, dump site or storage site (whether permanent or temporary) for any Hazardous Materials. The preceding sentence does not apply to Hazardous Materials (including construction materials) which were legally placed or stored on the Property at the time of such placement or storage.

(b) Trustor hereby agrees to indemnify Beneficiary, its officers, employees, contractors and agents, and hold Beneficiary, its officers, employees, contractors and agents harmless from and against any and all losses, liabilities, damages, injuries, costs, expenses and claims of any and every kind whatsoever paid, incurred or suffered by, or asserted against Beneficiary, its officers, employees, contractors or agents for, with respect to, or as a direct or indirect result of, the presence or use, generation, storage, release, threatened release or disposal of Hazardous Materials on or under the Property or the escape, seepage, leakage, spillage, discharge, emission or release of any Hazardous Materials from the Property (including,

without limitation, any losses, liabilities, damages, injuries, costs, expenses or claims asserted or arising under CERCLA, any so-called "Superfund" or "Superlien" law, or any other federal, state or local statute, law, ordinance, code, rule, regulation, order or decree regulating, relating to or imposing liability or standards of conduct concerning any Hazardous Materials) regardless of whether or not caused by or within the control of Trustor. Notwithstanding the foregoing, Trustor's obligations under this section shall not apply to any losses, liabilities, damages, injuries, costs, expenses, or claims which arise out of or relate to Hazardous Materials which (1) were present, generated, released, or stored on the Property on or before the date that Trustor acquired title to the Property or (2) are generated, released or stored on the Property after the date that Beneficiary takes possession thereof or Trustor no longer holds title to the Property.

(c) Trustor has not received any notice of (i) the happening of any event involving the use, spillage, discharge, or cleanup of any Hazardous Materials ("Hazardous Discharge") affecting Trustor or the Property or (ii) any complaint, order, citation or notice with regard to air emissions, water discharges, noise emissions or any other environmental, health or safety matter affecting Trustor or the Property ("Environmental Complaint") from any person or entity, including, without limitation, the United States Environmental Protection Agency ("EPA"). If Trustor receives any such notice after the date hereof, then Trustor will give, within seven (7) business days thereafter, oral and written notice of same to Beneficiary.

(d) Without limitation of Beneficiary's rights under this Deed of Trust, Beneficiary shall have the right, but not the obligation, to enter onto the Property or to take such other actions as it deems necessary or advisable to clean up, remove, resolve or minimize the impact of, or otherwise deal with, any such Hazardous Materials or Environmental Complaint upon its receipt of any notice from any person or entity, including without limitation, the EPA, asserting the existence of any Hazardous Materials or an Environmental Complaint on or pertaining to the Property which, if true, could result in an order, suit or other action against Trustor affecting any part of the Property by any governmental agency or otherwise which, in the sole opinion of Beneficiary, could jeopardize its security under this Deed of Trust. All reasonable costs and expenses incurred by Beneficiary in the exercise of any such rights shall be secured by this Deed of Trust and shall be payable by Trustor upon demand together with interest thereon at a rate equal to the highest rate payable under the note secured hereby.

(e) The foregoing representation, covenants, indemnities and warranties shall be continuing and shall be true and correct for the period from the date hereof to the release of this Deed of Trust (whether by payment of the indebtedness secured hereby or foreclosure or action in lieu thereof), and these representations, covenants, indemnities and warranties shall survive such release.

(19) Each successor owner of an interest in the Property other than through foreclosure or deed in lieu of foreclosure, shall take its interest subject to this Deed of Trust.

ATTACHED HERETO AND INCORPORATED HEREIN BY REFERENCE IS AN "ADDENDUM

TO DEED OF TRUST.”

TRUSTOR:

EV, LLC, a Washington limited liability company

By: _____

Name: _____

Title: _____

By: _____

Name: _____

Title: _____

Signature _____

(Seal)

Signature _____

(Seal)

Exhibit "A"
to
Deed of Trust

Legal Description of the Property