

Recording requested by and
after recording return to:

City of Pleasanton
123 Main Street
Pleasanton, CA 94566-0802
Attn: City Clerk

No fee for recording pursuant to
Government Code § 27383

**DEED OF TRUST AND
COVENANT REGARDING GAS SERVICE**

THIS DEED OF TRUST AND COVENANT REGARDING GAS SERVICE ("Deed of Trust") is made this _____ day of _____, 20__, among the trustor, {name of borrower} ("Borrower"), whose address is {street address} , and {name title company} ("Trustee"), and the City of Pleasanton, a municipal corporation (the "City"), 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 City of Pleasanton, County of Alameda, State of California, described in the attached Exhibit A and more commonly known as: {street address} (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 all of the foregoing, together with the Property, is herein referred to as the "Security;" and

TO SECURE to the City the payment of the Promissory Note executed by the Borrower of even date herewith (the "Promissory Note");

TO SECURE the performance of the covenant of Borrower herein contained.

BORROWER AND CITY COVENANT AND AGREE AS FOLLOWS:

1. Borrower's Estate. That Borrower is lawfully seized of the estate hereby conveyed and has the right to grant and convey the Security.

2. Promissory Note. Borrower will observe and perform the covenant and agreements of the Promissory Note and this Deed of Trust.

3. Covenant Regarding Gas Service. Borrower covenants and agrees that Borrower, its contractor, tenant or agent shall not be allowed or entitled to have natural gas service provided or connected to any buildings or improvements on the Property until Borrower has paid all amounts due under the Promissory Note.

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.

5. Forbearance by the City Not a Waiver. Any forbearance by the City in exercising any right or remedy will not be a waiver of the exercise of any such right or remedy, nor shall acceptance by the City of any payment provided for in the Promissory Note constitute a waiver of the City's right to require prompt payment of any remaining principal and interest owed.

6. Remedies Cumulative. All remedies provided in this Deed of Trust are distinct and cumulative to any other right or remedy under the Promissory Note, or afforded by law or equity, and may be exercised concurrently, independently or successively.

7. 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 City and Borrower subject to the provisions of this Deed of Trust.

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

9. 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, return receipt requested, addressed to Borrower at the address shown in the first paragraph of this Deed of Trust or such other address as Borrower may designate by notice to the City as provided herein, and (b) any notice to the City will be given by certified mail, return receipt requested, to the City of Pleasanton, 123 Main Street, Pleasanton, CA 94566-0802, Attn: City Manager, or to such other address as the City may designate by notice to Borrower as provided above. Notice shall be effective as of the date received by City or Borrower as shown on the return receipt.

10. Governing Law. This Deed of Trust shall be governed by the laws of the State of California. The venue for any legal action pertaining to this Agreement shall be Alameda County, California.

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

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

13. Nonliability for Negligence, Loss, or Damage. Borrower acknowledges, understands and agrees that the relationship between Borrower and the City is solely that of an owner and an administrator of a City development impact fee deferment program, and that the City 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 Security or any other matter. The City owes no duty of care to protect Borrower against negligent, faulty, inadequate or defective building or construction or any condition of the Security and Borrower agrees that neither Borrower, or Borrower's heirs, successors or assigns shall ever claim, have or assert any right or action against the City for any loss, damage or other matter arising out of or resulting from any condition of the Security and will hold City harmless from any liability, loss or damage for these things.

14. Indemnity. Borrower agrees to defend, indemnify, and hold the City and its officers, employees, agents, board members, and/or council members harmless from all losses, damages, liabilities, claims, actions, judgments, costs, and reasonable attorneys fees that the City may incur as a direct or indirect consequence of:

(a) Borrower's failure to perform any obligations as and when required by the Promissory Note and this Deed of Trust; or

(b) the failure at any time of any of Borrower's representations or warranties to be true and correct.

15. Acceleration; Remedies.

Upon Borrower's breach of any covenant or agreement of Borrower in the Promissory Note, or this Deed of Trust, including, but not limited to, the covenants to pay, when due, any sums secured by this Deed of Trust, the City, prior to acceleration, will mail by certified mail with 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, by which such breach is to be cured; and (iv) if the breach is curable, that failure to cure such breach on or before the date specified in the notice may result in acceleration of the sums secured by this Deed of Trust and sale of the Security. The notice will also inform 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.

(a) Notwithstanding subsection (a) of this Section, in the event of a default by the Borrower under any deed of trust senior to this Deed of Trust, no notice to Borrower shall be required prior to acceleration.

(b) If the breach is not cured on or before the date specified in the notice, the City, at the City'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) and of any of the Security, in its own name or in the name of Trustee, and do any acts which it deems necessary or desirable to preserve the value or marketability of the Property, or part thereof or interest therein, increase the income therefrom or protect the security thereof. The entering upon and taking possession of the Security shall not cure or waive any breach hereunder or invalidate any act done in response to such breach and, notwithstanding the continuance in possession of the Security, the City 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; or (v) 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.

(c) The City 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 attorney's fees.

16. Borrower's Right to Reinstate. Notwithstanding the City's acceleration of the sums secured by this Deed of Trust, Borrower will have the right to have any proceedings begun by the City 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 City all sums which would be then due under this Deed of Trust and no acceleration under this Deed of Trust or the Promissory Note has occurred; (b) Borrower cures all breaches of any other covenants or agreements of Borrower contained in the Promissory Note or this Deed of Trust; (c) Borrower pays all reasonable expenses incurred by City and Trustee in enforcing the covenants and agreements of Borrower contained in the Promissory Note or this Deed of Trust, and in enforcing the City's and Trustee's remedies, including, but not limited to, reasonable attorney's fees; and (d) Borrower takes such action as City may reasonably require to

assure that the lien of this Deed of Trust and City'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 or declaration of default had occurred.

17. Reconveyance. Upon performance of all obligations secured by this Deed of Trust and payment of all sums secured by this Deed of Trust, the City will request Trustee to reconvey the Security and will surrender this Deed of Trust to Trustee. Trustee will reconvey the Security without warranty and without charge to the person or persons legally entitled thereto. Such person or persons will pay all costs of recordation, if any.

18. Substitute Trustee. The City, at the City'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.

19. Request for Notice. City requests that copies of the notice of default and notice of sale be sent to City at the address set forth in Section 10 above.

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

Borrower

Borrower

{Attach Notary Acknowledgement}

Approved as to Form:

Jonathan Lowell, City Attorney

EXHIBIT A
Property Description