

PROMISSORY NOTE SECURED BY DEED OF TRUST

\$_____ Principal Amount

Mountain View, California

Date: _____, 2020

FOR VALUE RECEIVED, the undersigned Dr. Ayindé Rudolph ("Borrower"), promises to pay to Mountain View Whisman School District, a California public school district ("Lender"), or to Lender's order, at _1400 Montecito Ave, Mountain View, CA 94043, or at such other place as Lender may from time to time designate by written notice to Borrower, the principal sum of _____ Dollars (\$_____) (the "Principal") secured by a Deed of Trust in the form attached hereto and incorporated herein as **Exhibit A**, in lawful money of the United States of America as hereafter set forth.

1. **BACKGROUND.**

1.1. Borrower and Lender entered into an Agreement for Employment of Superintendent dated as of _____, 2019 (the "Employment Agreement"), as amended on _____, 2020. Pursuant to the Employment Agreement, Lender agreed to lend Borrower an amount not to exceed One Million Two Hundred Thousand Dollars (\$1,200,000) for the acquisition of real property for his primary place of residence.

1.2. Borrower subsequently executed that certain Purchase and Sale Agreement, dated _____, 2020 ("Purchase and Sale Agreement"), for the purchase of property located at _____, California _____ ("Property"), for the total purchase price of _____ Dollars (\$_____).

1.3. Capitalized terms not defined in this Note shall have the meaning given to them in the Employment Agreement.

2. **DEFINITIONS.** The following definitions shall apply throughout this Note:

2.1. **Borrower.** Dr. Ayindé Rudolph and his successors and assigns.

2.2. **Lender.** Mountain View Whisman School District, a California public school district.

2.3. **Note.** This Promissory Note Secured by Deed of Trust.

2.4. **Property.** The Property located in the County of Santa Clara, State of California, as described in **Exhibit B**, which is attached hereto and incorporated herein, together with all appurtenances and improvements thereon, as described in the Purchase and Sale Agreement.

3. **PRINCIPAL AND INTEREST.**

3.1. The Principal shall be paid in equal monthly installments over a period of thirty (30) years, commencing thirty (30) days following close of escrow on the Property, as set forth in the Schedule of Payments attached hereto as **Exhibit C** and incorporated herein.

3.2. Interest ("Interest") on the unpaid principal balance of this Note shall accrue at the long-term adjusted applicable federal rates of _____% for thirty (30)

years, as set forth in **Exhibit C** and. Interest accrued and not paid by Borrower in any given year shall be added to the unpaid balance each year, and the Borrower shall pay interest on the total outstanding unpaid balance.

4. **AMOUNT AND TIME OF PAYMENT.** The Principal and Interest Payments shall be due in equal monthly payments for a period of thirty (30) years, as set forth in the Schedule of Payments attached hereto as **Exhibit C**. All sums paid by Borrower to Lender in connection with this Note will be applied first to sums, other than principal and interest, due to Lender pursuant to this Note, next to accrued but unpaid Interest on this Note and next to the unpaid principal balance of this Note. Principal, Interest and all other sums payable under this Note will be payable in the lawful money of the United States and in immediately available funds.

5. **PREPAYMENT.** Borrower shall have the right at any time to prepay the outstanding indebtedness under this Note, in whole or in part, together with any accrued but unpaid interest and other sums owed to the Lender under this Note, at any time and from time to time, without penalty.

6. **SECURITY.** This Note is secured by that certain Deed of Trust of even date herewith executed by Borrower, as "Trustor," for the benefit of Lender, as "Beneficiary."

7. **DUE ON SALE, TRANSFER OR CESSATION OF EMPLOYMENT.** The Deed of Trust contains the following limitation on the right of Borrower to transfer the Trust Estate (as defined in the Deed of Trust):

"Transfer of Trust Estate by Trustor. In order to induce Beneficiary to make the loan, Trustor agrees that, in the event of any Transfer (as hereinafter defined), without the prior written consent of Beneficiary, Beneficiary shall have the absolute right, at her option, without prior demand or notice, to declare all sums secured hereby immediately due and payable and to declare an Event of Default. Consent to one such transaction shall not be deemed to be a waiver of the right to require consent to future or successive transactions. Beneficiary may grant or deny such consent in its sole discretion and, if consent should be given, any such Transfer shall be subject to this Deed of Trust, and such transferee shall assume all obligations hereunder and agree to be bound by all provisions contained herein. Such assumption shall not, however, release Trustor or any maker or guarantor (if any) of the Promissory Note from any liability thereunder without the prior written consent of Beneficiary. As used herein, "Transfer" shall mean any sale, transfer, conveyance, assignment, hypothecation, mortgage, encumbrance, lease (except as expressly permitted by the Note and Deed of Trust) or vesting of the Trust Estate or any part thereof or interest therein to or in any person, firm or entity, whether voluntary, involuntary, by operation of law, or otherwise, provided, however, that the foregoing shall not include the granting of utility easements in the normal course of Trustor's business."

"Cessation of Employment. Borrower further agrees that no later than 180 days following cessation of Borrower's employment under the Employment Agreement, as may be amended or renewed from time to time, all sums secured hereby shall immediately be due and payable to Beneficiary."

8. **DUE ON DEFAULT UNDER DEED OF TRUST.** If default occurs in any of the covenants or agreements contained in the Deed of Trust securing this Note, and following the expiration of any applicable notice and cure period, this Note shall immediately become due and payable in full at the option of Lender. Failure by Lender to exercise its option to accelerate in the event of a default shall not constitute waiver of the right to exercise such

option in the event of the same or any other default.

9. **SHARED APPRECIATION.** Upon the full satisfaction of this Note or the sale or transfer of the Property, Lender and Borrower shall share any appreciation in the value of the Property, less brokerage and closing costs and fees, as follows:

<u>PROPERTY SOLD BETWEEN (YEAR)</u>	<u>BORROWER'S SHARE</u>	<u>LENDER'S SHARE</u>
JULY 1, 2020 – JUNE 30, 2024	60%	40%
JULY 1, 2024 – JUNE 30, 2030	80%	20%
JULY 1, 2030 - ON	100%	0%

Notwithstanding the foregoing shared appreciation provision, if Borrower transfers the Property without the consent of the Lender, which consent shall not be unreasonably withheld, or defaults on this Note, all appreciated value shall accrue to the Lender.

10. **REMEDIES.** Lender shall have available any such remedy provided by law or equity including foreclosure.

11. **WAIVER.** Borrower hereby waives diligence, demand for payment, presentment for payment, protest, notice of nonpayment, notice of protest, notice of intent to accelerate, notice of acceleration, notice of dishonor, and all other notices or demands of any kind (except notices specifically provided for in this Note and the Deed of Trust, if any). Borrower waives to the full extent permitted by law, the right to plead any and all statutes of limitations and/or any defenses relating to marshaling of assets as a defense.

12. **SEVERABILITY.** Every provision in this Note is intended to be severable. In the event any term or provision hereof is declared by a court of competent jurisdiction to be illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the balance of the terms and provisions hereof, which terms and provisions shall remain binding and enforceable.

13. **REPRESENTATIONS OF BORROWER.** Borrower represents and warrants that it has the legal authority and ability to comply with the terms and conditions contained in this Note and the Deed of Trust.

14. **ATTORNEYS' FEES.** In the event of any dispute, legal proceeding, foreclosure or other enforcement action, reference or arbitration between the parties arising out of or relating to this Note or its breach, the prevailing party shall be entitled to recover from the non-prevailing party all fees, costs and expenses, including but not limited to reasonable attorneys' and expert witness fees, incurred in connection with such dispute, legal proceedings, foreclosure or other enforcement action, reference or arbitration, with any counterclaims or cross-complaints, with any appeals, and with any proceeding to establish and recover such costs and expenses, in such amount as the court deems reasonable. Any attorneys' fees awarded hereunder to Lender shall be incorporated into the balance due on the secured promissory note contemplated hereunder and secured against the security until

paid.

15. **INTEREST RATE LIMITATION.** It is the intent of the Borrower and Lender in the execution of this Note and all other instruments securing this Note that the loan evidenced hereby be exempt from the restrictions of the usury laws of the State of California. Lender and Borrower agree that none of the terms and provisions contained herein or in the Deed of Trust shall be construed to create a contract for the use, forbearance or detention of money requiring payment of interest at a rate in excess of the maximum interest rate permitted to be charged by the laws of the State of California. In such event, if any holder of this Note shall collect monies which are deemed to constitute interest which would otherwise increase the effective interest rate on this Note to a rate in excess of the maximum rate permitted to be charged by the laws of the State of California, all such sums deemed to constitute interest in excess of such maximum rate shall, at the option of the holder, be credited to the payment of other amounts payable under this Note and/or the Deed of Trust or returned to Borrower.

16. **NUMBER AND GENDER.** In this Note the singular shall include the plural and the masculine shall include the feminine and neuter gender, and vice versa.

17. **HEADINGS.** Headings at the beginning of each numbered section of this Note are intended solely for convenience and are not part of this Note.

18. **CHOICE OF LAW.** This Note shall be governed by and construed in accordance with the laws of the State of California without giving effect to conflict of laws principles.

19. **INTEGRATION.** This Note and the Deed of Trust contain the complete understanding and agreement of the holder hereof and Borrower and supersede all prior representations, warranties, agreements, arrangements, understandings, and negotiations.

20. **BINDING EFFECT.** This Note and the Deed of Trust will be binding upon and inure to the benefit of the holder hereof, the Borrower, and their respective successors and assigns. Borrower may not assign its obligations under this Note and the Deed of Trust.

21. **TIME OF THE ESSENCE.** Time is of the essence with regard to each provision of this Note and the Deed of Trust as to which time is a factor.

22. **SURVIVAL.** The representations, warranties, and covenants of the Borrower in this Note and the Deed of Trust shall survive the execution and delivery of this Note and the Deed of Trust and the making of the loan.

23. **COUNTERPARTS.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which taken together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the Borrower has executed this Note as of the day and year set forth above.

Dr. Ayiné Rudolph

Lender's Acknowledgement

Mountain View Whisman School District, a
California public school district

Print Name: _____

Title: _____

**EXHIBIT A
Form of Deed of Trust**

**RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:**

Mountain View Whisman School District.
c/o Dannis Woliver Kelley
275 Battery Street
Suite 1150
San Francisco, CA 94111

**The Above Space for Recorder's Use
Only**

DEED OF TRUST

THIS DEED OF TRUST is made this ___ day of _____, 2020 ("Effective Date"), among Dr, Ayindé Rudolph ("Borrower" or "Trustor"); _____ Title Company ("Trustee"); and Mountain View Whisman School District, a California public school district, ("Lender" or "Beneficiary"), and is executed to secure that certain Promissory Note ("Promissory Note") of even date herewith in the principal amount, plus interest thereon, as provided by said Promissory Note.

1. Grant. Trustor irrevocably grants, transfers and assigns to Trustee, in trust, with power of sale, for the benefit of Beneficiary, the following:

(a) That certain real property located in the unincorporated areas of the County of Santa Clara, State of California, more particularly described in **Exhibit 1** attached hereto and incorporated herein by reference (the "Land"); and

(b) All buildings, structures and other improvements now or in the future located or to be constructed on the Land (the "Improvements"); and

(c) All other rights and interests now or in the future benefiting or otherwise relating to the Land or the Improvements, including but not limited to easements, rights-of-way, water rights and water stock (the "Appurtenances," and together with the Land and the Improvements, the "Property" or the "Trust Estate").

2. Obligations Secured. This Deed of Trust is given for the purpose of securing payment and performance of the following: (a) all present and future indebtedness evidenced by the Promissory Note, (b) all present and future obligations of Trustor to Beneficiary under this Deed of Trust, the Promissory Note and the Agreement for Employment of Superintendent (the "Employment Agreement"); and (c) all additional present and future obligations of Trustor to Beneficiary under any other agreement which is secured by this Deed of Trust (collectively, the "Secured Obligations").

3. Trustor's Covenants. To protect the security of this Deed of Trust, Trustor agrees as follows:

(a) Payment and Performance of Secured Obligations. Trustor shall pay and perform all Secured Obligations in accordance with their respective terms.

(b) Taxes and Levies. Trustor shall pay, prior to delinquency, all taxes and perform all other obligations which are or may become a lien affecting any part of the Property. However, Trustor shall not be required to pay any tax, assessment, charge, or levy so long as (1) the legality thereof shall be promptly and actively contested in good faith and by the appropriate proceedings; and (2) Trustor maintains reserves adequate to pay any contested liabilities. In the event that Trustor fails to pay any of the foregoing items, Beneficiary may, but shall be under no obligation to, pay the same, after Beneficiary has notified Trustor of such failure to pay and Trustor fails to fully pay such items within seven business days after receipt of such notice. Any amount so advanced by Beneficiary shall become an additional obligation of Trustor to Beneficiary and shall be secured by this Deed of Trust.

(c) Property Insurance. Trustor shall provide and maintain (1) comprehensive general liability insurance covering all buildings, structures and improvements now situated or which hereafter may be erected or placed upon said Property, and (2) provide and maintain homeowner's insurance for the Property against loss or damage by fire and other casualties (special broad-form perils) with the valuation clause reflecting replacement costs basis and to carry such and, in the event said Property or any part thereof now lies or hereafter lies in an area designated by the Federal Emergency Management Agency as located within a flood insurance rate map or flood hazard boundary map, or which is designated by the Department of Housing and Urban Development as a flood zone, to carry flood insurance. In the event of a loss, the amount collected under any policy of insurance on said Property shall be used in replacing or restoring the residence if it is partially or totally destroyed, to a condition satisfactory to Beneficiary, with the balance to be released to the Trustor and used in any manner Trustor desires. Such insurance shall include the Beneficiary as an additional insured. In the event Trustor fails to maintain the full insurance coverage required by this Deed of Trust, Beneficiary, after at least seven (7) business day's prior notice to Trustor, may, but shall be under no obligation to, take out the required policies of insurance and pay the premiums on such policies. Any amount so advanced by Beneficiary shall become an additional obligation of Trustor to Beneficiary and shall be secured by this Deed of Trust.

(d) Maintenance of the Property. Trustor shall, at the Trustor's own expense, maintain, and preserve the Property or cause the Property to be maintained and preserved in good condition and good repair. Trustor shall not cause or permit any violations of any laws, ordinances, regulations, covenants, conditions, restrictions, or equitable servitude as they pertain to improvements, alterations, or maintenance on the Property. Trustor shall not commit or permit waste on or to the Property and Trustor shall not abandon the Property. Beneficiary shall have no responsibility over maintenance of the Property. In the event Trustor fails to maintain the Property in accordance with the standards in this Deed of Trust, Beneficiary, after at least seven (7) calendar days prior notice to Trustor, may, but shall be under no obligation to, make such repairs or replacements as are necessary and provide for payment thereof. Any amount so advanced by Beneficiary shall become an additional obligation of Trustor to Beneficiary and shall be secured by this Deed of Trust.

(e) Defense and Notice of Claims and Actions. Trustor to appear in and defend, at its own expense, any action or proceeding purporting to affect the Property and/or the rights as described herein of Beneficiary. Trustor shall give Beneficiary and Trustee prompt notice in writing of the assertion of any claim, of the filing of any action or proceeding, and of any condemnation offer or action with respect to the Property.

4. Obligations With Respect to Property. Neither Beneficiary nor Trustee shall be under any obligation to preserve, maintain or protect the Property or any of Trustor's rights or interests in the Property, or take any action with respect to any other matters relating to the Property. Beneficiary and Trustee do not assume and shall have no liability for any of Trustor's obligations with respect to any rights or any other matters relating to the Property.

5. Event of Default. An "Event of Default" shall be deemed to occur if Trustor is in material breach of any of its obligations under the Promissory Note and this Deed of Trust and such breach is not cured within thirty (30) days after Trustor receives written notice of such breach. However, Trustor shall not be in default if such obligation cannot be cured within thirty (30) days so long as Trustor starts the cure within thirty (30) days of receipt of notice from Beneficiary and diligently pursues such cure to completion. Obligations to make payments under the Promissory Note are, by definition, curable within thirty (30) days. Moreover, Trustee and/or Beneficiary shall have the right, but not the obligation, to accelerate the Promissory Note and declare the full balance due and owing if, in the immediately preceding twelve (12) month period, Trustor cures three (3) or more material breaches hereunder. Notwithstanding the above, Beneficiary agrees that in the event that Beneficiary sends Trustor a notice of default and Trustor believes in good faith that it has not failed in any of its obligations, Beneficiary and Trustor agree to handle the dispute pursuant to the Dispute Resolution procedures set forth in Section 21 herein. In such an event, Beneficiary agrees not to invoke any remedies contained in this Deed of Trust, including the remedy of foreclosure, unless and until such dispute has been resolved in Beneficiary's favor in accordance with said Dispute Resolution procedures.

6. Remedies upon Event of Default. Upon the happening of an uncured Event of Default, Beneficiary may, in addition to other rights and remedies permitted by applicable law, commence an action to foreclose this Deed of Trust. Should Beneficiary elect to foreclose by exercise of the power of sale contained in this Deed of Trust, Beneficiary shall notify Trustee and shall deposit with Trustee this Deed of Trust, and such receipts and evidence of any expenditures made that are additionally secured hereby as Trustee may require.

Upon receipt of such notice from Beneficiary, Trustee shall cause to be recorded, published and delivered to Trustor such Notice of Default and Election to sell as then required by law and by this Deed of Trust. Trustee shall, without demand on Trustor, after lapse of such time as may then be required by law and after recordation of such Notice of Default and after Notice of Sale having been given as required by law, sell the Property, at the time and place of sale fixed by it in the Notice of Sale. The sale of the Property shall be as a whole or in separate lots or parcels as Trustee shall deem expedient and in such order as it may determine, unless specified otherwise by Beneficiary, at public auction to the highest bidder for cash in lawful money of the United States payable at the time of sale. Trustee shall deliver to the purchaser its deed or deeds conveying the property so sold, but without any covenant or warranty, express or implied. The recitals in such deed of any matters of facts shall be conclusive proof of truthfulness thereof. Any person, including, without limitation, Trustor, Trustee, or Beneficiary, may purchase at the sale.

Trustee may postpone sale of the Property by public announcement at such time and place of sale, and from time to time may postpone the sale by public announcement at the time and place fixed by the preceding postponement or May, in its discretion, give a new Notice of Sale.

After deducting all reasonable costs and fees of Trustee, including costs of evidence of title in connection with such sale, Trustee shall apply the proceeds of sale as follows: (i) first, to payment of all sums then secured by this Deed of Trust, in such order and amounts

as Beneficiary in her sole discretion determines; and (ii) the remainder, if any, to the person or persons legally entitled thereto.

7. Waiver of Marshalling. Trustor, for itself and for any other person claiming by or through Trustor, waives, to the fullest extent permitted by applicable laws, all rights to require a marshaling of assets by Trustee or Beneficiary or to require Trustee or Beneficiary to first resort to any particular portion of the Property or any other security (whether such portion shall have been retained or conveyed by Trustor) before resorting to any other portion, and all rights of redemption, stay, and appraisal.

8. Remedies Cumulative. No right, power or remedy conferred upon Beneficiary by this Deed of Trust is intended to be exclusive of any other rights, powers or remedies, but each such right, power and remedy shall be cumulative and concurrent and shall be in addition to any other right, power and remedy given hereunder or existing at law or in equity.

9. Transfer of Trust Estate by Trustor. In order to induce Beneficiary to make the loan, Trustor agrees that, in the event of any Transfer (as hereinafter defined), without the prior written consent of Beneficiary, Beneficiary shall have the absolute right, at her option, without prior demand or notice, to declare all sums secured hereby immediately due and payable and to declare an Event of Default. Consent to one such transaction shall not be deemed to be a waiver of the right to require consent to future or successive transactions. Beneficiary may grant or deny such consent in her sole discretion and, if consent should be given, any such Transfer shall be subject to this Deed of Trust, and such transferee shall assume all obligations hereunder and agree to be bound by all provisions contained herein. Such assumption shall not, however, release Trustor or any maker or guarantor (if any) of the Promissory Note from any liability thereunder without the prior written consent of Beneficiary. As used herein, "Transfer" shall mean any sale, transfer, conveyance, assignment, hypothecation, mortgage, encumbrance, lease (except as expressly permitted by the Note and Deed of Trust) or vesting of the Trust Estate or any part thereof or interest therein to or in any person, firm or entity, whether voluntary, involuntary, by operation of law, or otherwise, provided, however, that the foregoing shall not include the granting of utility easements in the normal course of Trustor's business.

10. Cessation of Employment. Borrower further agrees that no later than 180 days following cessation of Borrower's employment under the Employment Agreement, as defined in the Promissory Note and as may be amended or renewed from time to time, all sums secured hereby shall immediately be due and payable to Beneficiary.

11. Reconveyance by Trustee. Upon written request of Beneficiary and surrender of this Deed of Trust and the Promissory Note to Trustee for cancellation or endorsement, and upon payment of its fees and charges, Trustee shall reconvey, without warranty, all or any part of the Property then subject to this Deed of Trust. Any reconveyance, whether full or partial, may be made in terms to "the person or persons legally entitled thereto", and the recitals in such reconveyance of any matters or facts shall be conclusive proof of the truthfulness thereof. Beneficiary shall not be required to cause any Property to be released from this Deed of Trust until final payment and performance in full of all Secured Obligations and termination of all obligations of Beneficiary under or in connection with the Promissory Note or until the Secured Obligations are forgiven.

12. Notice, Demands, and Communications. Formal notices, demands and communications between Trustor and Beneficiary shall be given by registered or certified mail, postage prepaid, return receipt requested, or delivered personally, to the principal offices of Trustor and Beneficiary as follows, or if any such office is relocated, to the new

address specified by the relocated party:

TRUSTOR:

Dr. Ayindé Rudolph

BENEFICIARY:

Mountain View Whisman School District
1400 Montecito Avenue Mountain View,
California 94043
Attn: Governing Board President

13. Suits to Protect the Property. Beneficiary shall have power to institute and maintain such suits and proceedings as it may deem expedient: (a) to prevent any impairment of the Property or the rights of Beneficiary; (b) to preserve or protect its interest in the Property; and (c) to restrain the enforcement of or compliance with any governmental legislation, regulation, or order, if the enforcement of or compliance with such legislation, regulation, or order would impair the Property or be prejudicial to the interest of Beneficiary.

14. Condemnation. All judgments, awards of damages, settlements, and compensation made in connection with or in lieu of taking any part of or interest in the Property under assertion of the power of eminent domain ("Funds") shall be paid to Lender, subject to Section 9 of the Promissory Note.

15. Attorneys' Fees and Costs. In the event of any Event of Default, or any legal or administrative action is commenced to enforce the terms of this Deed of Trust, the Prevailing Party shall be entitled to recover all reasonable attorneys' fees and costs incurred in such action. "Prevailing Party" includes (i) a party who dismisses an action in exchange for sums allegedly due; (ii) the party that receives performance from the other party of an alleged breach of the Agreement or a desired remedy, if it is substantially equal to the relief sought in an action; or (iii) the party determined to be prevailing by a court of law. The accrual of attorney's fees and costs that may be recovered only begins after mediation is attempted in good faith and is unsuccessful. Any attorneys' fees awarded hereunder to Lender shall be incorporated into the balance due on the secured promissory note contemplated hereunder and secured against the security until paid.

16. Substitution of Trustee. Beneficiary may from time to time, by instrument in writing, substitute a successor or successors to any Trustee named in or acting under this Deed of Trust.

17. Successors and Assigns. This Deed of Trust applies to and shall be binding on and inure to the benefit of all parties to this Deed of Trust and their respective successors and permitted assigns.

18. Acceptance. Notice of acceptance of this Deed of Trust by Beneficiary or Trustee is waived by Trustor. Trustee accepts this Deed of Trust when this Deed of Trust, duly executed and acknowledged, is made a public record as provided by law.

19. Waiver. Any waiver by Beneficiary of any obligation of Trustor in this Deed of Trust must be in writing. No waiver will be implied from any delay or failure by Beneficiary to take action on any breach or default of Trustor or to pursue any remedy allowed under this Deed of Trust or applicable law. Any extension of time granted to Trustor to perform any obligation under this Deed of Trust shall not operate as a waiver or release from any of its obligations under this Deed of Trust. Consent by Beneficiary to any act or omission by Trustor shall not be construed to be a consent to any other or subsequent act or omission or to waive the

requirement for Beneficiary’s written consent to future waivers.

20. Severability. Every provision of this Deed of Trust is intended to be severable. If any provision of this Deed of Trust is declared to be invalid, illegal, or unenforceable by a court of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions shall not be affected. If the lien of this Deed of Trust is invalid or unenforceable as to any part of the debt or the Property, the unsecured or partially secured portion of the debt and all payments made on the debt (whether voluntary or under foreclosure or other enforcement action or procedure) shall be considered to have been first applied to the payment of that portion of the debt which is not secured by the lien of this Deed of Trust.

21. Dispute Resolution.

21.1 Meet and Confer. Should any dispute arise (a) regarding an alleged default by Trustor or (b) as a result of a natural/man-made disaster that results in the destruction or reduction in value of the Property, the involved parties agree to meet and confer to attempt in good faith to resolve the dispute?

21.2 Mediation. If the dispute is unresolved within thirty (30) days after meeting and conferring, the parties agree to attempt to resolve the dispute in good faith through mediation. Mediation is a process by which parties attempt to resolve a dispute or claim by submitting it to an impartial, neutral mediator, who is authorized to facilitate the resolution of the dispute, but who is not empowered to impose a settlement on the parties. Mediation fees, if any, shall be divided equally among the parties involved.

The requirements of Sections 21.1 and 21.2 shall not apply, and Lender may initiate legal action if Borrower fails to make a payment that is due under the Promissory Note and Borrower has cured three (3) material breaches in the immediately preceding twelve (12) month period.

22. Governing Law. This Deed of Trust shall be governed by, and construed and enforced in accordance with, the laws of California. All such actions or proceedings are to be tried and litigated in the County of Santa Clara.

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

TRUSTOR:
Dr. Ayindé Rudolph

ACKNOWLEDGEMENT

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 documents.

State of California

County of _____

On _____ before me, _____
(Insert name and title of the officer)

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 1 TO DEED OF TRUST

Legal Description of the Land

**Exhibit B to Promissory Note
Legal Description of Land**

**Exhibit C to Promissory Note
Schedule of Payments**

[See attached]