

When Recorded Return to:
Oregon Housing and Community Services
725 Summer Street, Suite B
Salem, OR 97301-1266
Attn: Affordable Rental Housing Division

SPACE ABOVE FOR RECORDER'S USE

**STATE OF OREGON
HOUSING AND COMMUNITY SERVICES DEPARTMENT**

LOCAL INNOVATION AND FAST TRACK HOUSING PROGRAM

**LINE OF CREDIT TRUST DEED, SECURITY AGREEMENT,
Fixture Filing and Assignment of Leases and Rents**

Statutory Notice

The maximum principal amount to be advanced pursuant to the Loan Agreement (as defined below) is \$[X,XXX,XXX]. Such amount may be exceeded (at Beneficiary's option) to complete the construction of previously agreed-upon improvements on the Land (as defined below) pursuant to ORS 86.155(2)(c).

The maturity date (exclusive of any option to renew or extend the maturity date) is [date].

This Trust Deed secures an obligation incurred for the construction of improvements on land and constitutes a construction mortgage as defined in ORS 79.0334.

The tax account number for the real property subject to this instrument is [].

THIS LINE OF CREDIT TRUST DEED, SECURITY AGREEMENT, FIXTURE FILING AND ASSIGNMENT OF LEASES AND RENTS ("Trust Deed") is made this [day] day of [month], [year], by and among [Legal Entity Name], an Oregon [type of entity], having its office at [address 1], [address 2], [city], OR [Zip Code], as "Grantor", [Legal Entity Name], having its office at [address 1], [address 2], [city], OR [Zip Code] as "Trustee", and the **State of Oregon**, acting by and through its **Housing and Community Services Department**, together with its successors and assigns, having its office at 725 Summer Street, Suite B, Salem Oregon 97301-1266, as "Beneficiary".

Capitalized terms used herein without definition have the meaning ascribed to such term in that certain Loan Agreement of even date herewith between Grantor, as Borrower and Beneficiary, as Lender (the "Loan Agreement") or in that certain Operating Agreement and Declaration of Land-Use Restrictive Covenants of even date herewith between Grantor, as Borrower and Beneficiary, as Lender (the "Operating Agreement").

Therefore, for good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties hereto agree as follows:

1. GRANT AND CONVEYANCE.

FOR VALUE RECEIVED, and for the purpose of securing the Obligations (as defined below), Grantor hereby irrevocably grants, bargains, sells, conveys, assigns, and transfers to Trustee, in trust, for the benefit and security of the Beneficiary, **WITH POWER OF SALE** and right of entry and possession, all of Grantor's right, title, and interest in and to that certain real property situated in the County of **[County]**, State of Oregon, and described in **Exhibit A** attached hereto and by this reference incorporated herein (the "**Land**");

TOGETHER WITH a security interest in, and a lien upon, Grantor's right, title and interest in all improvements, property and property rights associated with the Land, and all proceeds thereof, whether now owned or hereafter acquired, including, but not limited to, the following:

All buildings, structures and improvements now or at any time hereafter erected, constructed and situated upon the Land or any part thereof (collectively, "**Improvements**") and all apparatus, appliances, furnaces, boilers, machinery, engines, equipment and other like property and fixtures of every kind and description now or hereafter affixed or attached to or located in any such Improvements;

All furniture, fixtures (including without limitation appliances), equipment, and other personal property used in connection with the operation of the Land and Improvements; and

All general intangibles, licenses, accounts, contracts and contract rights (including construction and architect contracts), leases, rental agreements, and other agreements for the use and occupancy of residential or commercial space in the Improvements, Rents (as defined in Section 4 below), plans and specifications, engineering environmental or other reports and studies, management contracts or agreements, zoning rights and privileges, permits, and certificates required, used or created in connection with the construction, ownership, operation or maintenance of the Land or Improvements.

The Land, the Improvements and all other property described above are collectively referred to herein as the "**Property**".

TO HAVE AND TO HOLD the Property to Trustee and its successors and assigns for the benefit of Beneficiary and its successors and assigns, forever.

PROVIDED ALWAYS, that if all the Obligations are paid, performed, and satisfied in full, then the lien and estate granted by this Trust Deed will be reconveyed.

Grantor is indebted to Beneficiary according to the terms of that certain Promissory Note of even date herewith (the "**Promissory Note**") in the principal amount not to exceed **[\$X,XXX,XXX]**, under which the final payment will be due on **[date]**. The Promissory Note,

together with any note or notes given in renewal, modification, substitution or in addition to the Promissory Note originally issued, is referred to herein as the “**Note**”. This Trust Deed, and the lien and security interest granted hereunder, are given to secure: (a) repayment of all principal, interest and other charges under the Note; (b) performance of all obligations of Grantor under that certain Loan Agreement of even date herewith between Grantor and Beneficiary, as amended from time to time (the “**Loan Agreement**”); (c) performance of all obligations of Grantor under the Operating Agreement; (d) any future amounts that Beneficiary may in its discretion loan to Grantor, with interest thereon; (e) any amounts expended or advanced by Beneficiary to discharge obligations of Grantor or expenses incurred by Beneficiary or Trustee to enforce obligations of Grantor, as permitted under this Trust Deed, with interest thereon at the Default Rate; (f) performance of all other obligations of Grantor under this Trust Deed or under the Note; (g) the payment and performance of all covenants and obligations in all other Loan Documents (as defined in the Loan Agreement); and (h) the payment and performance of any and all other indebtedness and obligations of Grantor to Beneficiary of any nature whatsoever, whether direct or indirect, primary or secondary, joint or several, liquidated or unliquidated, whenever and however arising, and whether or not reflected in a written agreement or instrument (all of the foregoing are collectively referred to herein as the “**Obligations**”).

TO PROTECT THE SECURITY OF THIS TRUST DEED, GRANTOR COVENANTS AND AGREES TO THE TERMS SET FORTH IN THIS TRUST DEED.

2. REPRESENTATIONS, WARRANTIES, AND COVENANTS

Grantor represents, warrants and covenants as follows:

- 2.1. **Title.** Grantor is the lawful owner of the Property and holds good and merchantable title to the Land and Improvements, and the Property is free and clear of any trust deed, mortgage, lien, charge, encumbrance, easement, reservation, restriction, adverse claim or other matter affecting title thereto, other than property taxes not yet due and payable, utility easements, matters permitted by Beneficiary as set forth in **Exhibit B** (collectively, “**Permitted Exceptions**”), and matters otherwise expressly permitted by this Trust Deed or as otherwise approved by Beneficiary in writing. Grantor will maintain, preserve and defend the lien of this Trust Deed until the Obligations secured hereby have been paid in full.
- 2.2. **Performance.** Grantor shall pay to Beneficiary promptly when due all amounts due under the Note, the Loan Agreement, this Trust Deed, and any other Loan Documents, and shall strictly perform all Obligations, including all obligations imposed upon Grantor by this Trust Deed.
- 2.3. **Maintain the Property; Completion, Repair and Restoration.** Grantor will protect, preserve and maintain, at Grantor’s expense, the Property in good order and repair and will not permit or cause any waste of the Property, and will repair and restore promptly and in a good and workmanlike manner, any Improvement on the Property that may be damaged or destroyed by any casualty (whether or not insured against or insurable) or affected by any Condemnation (as defined in Section 7

below) and shall pay all costs incurred therefor. Prior to commencement of any construction Grantor shall submit the plans and specifications for Beneficiary's approval and furnish evidence of sufficient funds to complete the work. Grantor shall not conduct or permit any nuisance to be maintained on the Land. Grantor will not remove from the Land or demolish any of the Improvements.

2.4. Books and Records; Access by Beneficiary and Trustee.

- 2.4.1. Grantor will keep complete and accurate records and books of account with respect to the Property and its operation in accordance with generally accepted accounting principles consistently applied. Grantor will permit Trustee, Beneficiary, and their authorized representatives to examine and make copies or extracts of the records and books of account of the Grantor with respect to the Property, all at any reasonable times as Beneficiary or Trustee may choose.
- 2.4.2. Trustee, Beneficiary and their agents and representatives may, upon twenty-four (24) hours' prior notice, except in the case of an emergency when no notice will be required, enter upon the Property to attend to Beneficiary's interest and to inspect the Property. This provision will not be construed to allow Trustee, Beneficiary or their agents or representatives to violate (or cause the owner or manager to violate) the provisions of the Oregon Landlord Tenant Act.

2.5. **Insurance.** The Grantor shall obtain and maintain: (a) commercial general liability insurance (including liabilities assumed under contract), naming Beneficiary, its employees and agents as additional insureds, covering the Property and the work and business conducted thereon, with such limits, coverages, and risks insured as Beneficiary may reasonably request from time to time; (b) insurance against loss or damage to the Improvements and other tangible Property (other than the Land) by fire and any of the risks covered under an "all risk" policy, with extended coverage and course of construction endorsements and with endorsements for replacement cost, inflation adjustment, malicious mischief, and sprinkler damage coverages, and with a standard lender's loss payable clause naming as beneficiary "State of Oregon, by and through its Housing and Community Services Department," in an amount not less than the full replacement value of the Improvements, without reduction for coinsurance; and (c) unless Beneficiary otherwise agrees in writing, rent loss or business interruption insurance in an amount no less than the total annual rents provided for in all leases for the Property. In addition, Grantor will obtain and maintain all other insurance coverages designated by Beneficiary that are commonly carried for similar properties in any amounts that Beneficiary may require. In each case the insurance must: (i) be written by a company or companies acceptable to Beneficiary; (ii) contain a long-form mortgagee clause in favor of Beneficiary with loss proceeds under any policy payable to Beneficiary, subject to the terms of this Trust Deed and the rights of any superior mortgagee or trust deed beneficiary; (iii) require at least 30 days' prior written notice to Beneficiary of cancellation or reduction of coverage; (iv) contain waivers of subrogation and endorsements that no act or negligence of Grantor or any occupant, and no occupancy or use of the

Property for purposes more hazardous than permitted by the terms of the policy, will affect the validity or enforceability of such insurance as against Beneficiary; and (v) be in full force and effect on the date of this Trust Deed. Grantor agrees that it will comply with the requirements of Beneficiary as to the purchase and maintenance of flood insurance, as those requirements are established by Beneficiary's policies and requirements in effect from time to time. Beneficiary must be named as an additional insured on all liability policies. The "loss payable" clause must identify all lenders as beneficiaries and indicate that payments be made to or among beneficiaries as their interests shall appear. Grantor will forward to Beneficiary certificates executed by the insurer or its agent evidencing the coverages required under this Trust Deed (and, if requested, copies of all policies and renewals thereof) together with proof of premiums paid for the current policy year.

WARNING:

Unless you (Grantor) provide us (Beneficiary) with evidence of the insurance coverage as required by this Trust Deed or the Loan Agreement, we may purchase insurance at your expense to protect our interest. This insurance may, but need not, also protect your interest. If the Property becomes damaged, the coverage we purchase may not pay any claim you make or any claim made against you. You may later cancel this coverage by providing evidence that you have obtained property coverage elsewhere.

You are responsible for the cost of insurance purchased by us. The cost of this insurance may be added to your contract or loan balance. If the cost is added to your contract or loan balance, the interest rate on the underlying contract or loan will apply to this added amount. The effective date of coverage may be the date your prior coverage lapsed or the date you failed to provide proof of coverage.

The coverage we purchase may be considerably more expensive than insurance you can obtain on your own and may not satisfy any need for property damage coverage or any mandatory liability insurance requirements imposed by applicable law.

In the event of foreclosure of the lien of this Trust Deed or other transfer of title, or assignment of the Property in whole or in part, all right, title, and interest of Grantor in and to all policies of insurance procured under this Section 2.5 will inure to the benefit of and pass to the successors in interest of Grantor or the purchaser or grantee of all or any part of the Property.

After the occurrence of any casualty to the Property, whether or not required to be insured against as provided in this Trust Deed, Grantor will give prompt written notice of the casualty to Beneficiary, specifically describing the nature and cause of the casualty and the extent of the damage or destruction to the Property. Beneficiary may make proof of loss if it is not made promptly and to Beneficiary's satisfaction by Grantor.

Subject to the rights of any superior mortgagee or trust deed beneficiary, Grantor assigns to Beneficiary all insurance proceeds that Grantor may be entitled to receive with respect to any casualty. Beneficiary may, at its sole option, apply the insurance proceeds to the reduction of the Obligations in any order that Beneficiary may determine, whether or not the Obligations are then

due, or apply all or any portion of the insurance proceeds to the cost of restoring and rebuilding the portion of the Property that was damaged or destroyed, provided, however, Beneficiary will elect to apply the proceeds to restoration or rebuilding if insurance proceeds and any other funds provided by Grantor are sufficient, in Beneficiary's reasonable judgment to complete such restoration. If Beneficiary elects to apply the insurance proceeds to rebuilding and restoration, Beneficiary will be entitled to hold the proceeds, and the proceeds will be released only on the terms and conditions that Beneficiary may require in its sole discretion, including but not limited to prior approval of plans and release or waiver of construction liens. No proceeds will be released if an Event of Default has occurred.

2.6. **Liens, Taxes and Assessments.** Grantor shall, so long as this Trust Deed remains in force, keep the Property free from construction liens and shall timely pay all taxes, assessments, fees, levies, and all other governmental and nongovernmental charges of every nature now or hereafter assessed or levied against any part of the Property, or on the lien or estate of Beneficiary or Trustee ("Impositions"), before any fine, penalty, interest, or cost attaches, before any Imposition becomes past due or delinquent, and before commencement of any foreclosure or collection proceedings that may threaten the security of this Trust Deed. Grantor may, at its expense and after prior written notice to Beneficiary, contest by appropriate legal, administrative, or other proceedings conducted in good faith and with due diligence, the amount, validity, or application, in whole or in part, of any such Imposition, provided that (a) such proceedings will suspend collection from the Property; (b) no part of or interest in the Property will be sold, forfeited, or lost if Grantor pays the amount or satisfies the condition being contested, and Grantor would have the opportunity to do so in the event of Grantor's failure to prevail in the contest; (c) neither Beneficiary nor Trustee will, by virtue of the permitted contest, be exposed to any risk of liability for which Grantor has not furnished additional security as provided in clause (d) below; (d) Grantor furnishes to Beneficiary cash, corporate surety bond, or other additional security in respect of the claim being contested or the loss or damage that may result from Grantor's failure to prevail in the contest in an amount sufficient to discharge the Imposition and all interest, costs, attorney fees, and other charges that may accrue in connection therewith. Grantor will promptly satisfy any final judgment.

Grantor will furnish to Beneficiary, promptly upon request, satisfactory evidence of the payment of all Impositions. Beneficiary is hereby authorized to request and receive from the responsible governmental and nongovernmental personnel written statements with respect to the accrual and payment of all Impositions.

Grantor shall not, without Beneficiary's prior written consent, place or allow any liens or encumbrances to be placed on the Property (other than the Permitted Exceptions).

2.7. **Other Loans Kept Current.** Grantor shall timely make all payments due and perform all other covenants under all other loans secured by the Property.

2.8. **Environmental Matters.**

- 2.8.1. Grantor will not bring onto, store upon, bury, emit from, use, generate, manufacture, produce, store, release, discharge, or dispose of, on, under, or about the Property or the Property's groundwater, or transport to or from the Land, any Hazardous Material (as defined below) and will not permit any other person to do so, except for any Hazardous Material that may be used in the ordinary course of Grantor's business and in compliance with all Environmental Laws (as defined below), including but not limited to those relating to licensure, notice, and recordkeeping.
- 2.8.2. Grantor will keep and maintain the Property in compliance with, and will not cause or permit all or any portion of the Property, including groundwater, to be in violation of any Environmental Law.
- 2.8.3. Grantor will give prompt written notice to Beneficiary of:
 - 2.8.3.1. Any proceeding, inquiry, or notice by or from any governmental authority with respect to any alleged violation of any Environmental Law or the presence of any Hazardous Material on the Property or the migration of any Hazardous Material from or to other premises;
 - 2.8.3.2. All known claims made or threatened by any person against Grantor or with respect to the Property relating to any loss or injury resulting from any Hazardous Material or the violation of any Environmental Law;
 - 2.8.3.3. The existence of any Hazardous Material on or about all or any portion of the Property;
 - 2.8.3.4. Grantor's discovery of any occurrence or condition on any real property adjoining or in the vicinity of the Land that could in Grantor's judgment cause any restrictions on the ownership, occupancy, transferability, or use of the Land under any Environmental Law.
- 2.8.4. Grantor will promptly provide to Beneficiary copies of all reports, documents, and notices provided to or received from any agency administering any Environmental Laws. Beneficiary will have the right to join and participate, in its own name if it so elects, in any legal proceeding or action initiated with respect to the Property in connection with any Environmental Law and to have its attorney fees in connection with such an action paid by Grantor, if Beneficiary determines that such participation is reasonably necessary to protect its interest in the Property.
- 2.8.5. If at any time Beneficiary has reason to believe that any release, discharge, or disposal of any Hazardous Material affecting the Property has occurred or is threatened, or if Beneficiary has reason to believe that a violation of an Environmental Law has occurred or may occur with respect to the Property, Beneficiary may require Grantor to obtain or may itself obtain, at Grantor's expense, an environmental assessment of such condition or threatened condition

by a qualified environmental consultant. Grantor shall promptly provide to Beneficiary a complete copy of any environmental assessment obtained by Grantor.

- 2.8.6. If any investigation, site monitoring, containment, cleanup, removal, restoration, or other remedial work of any kind or nature (the “**Remedial Work**”) is required under any applicable Environmental Law, by any judicial order, or by any governmental agency or person because of, or in connection with, the current or future presence, suspected presence, release or suspected release of a Hazardous Material on, under, or about all or any portion of the Land, or the contamination (whether currently existing or occurring after the date of this Trust Deed) of the buildings, facilities, soil, groundwater, surface water, air, or other elements on or under any other property as a result of Hazardous Material emanating from the Land, Grantor will, within 30 days after written demand by Beneficiary for Grantor’s performance under this provision (or such shorter period of time as may be required under any applicable law, regulation, order, or agreement), commence and thereafter diligently prosecute to completion, all such Remedial Work.
- 2.8.7. Grantor will pay all costs and expenses of that Remedial Work, including, without limitation, Beneficiary’s reasonable attorney fees and costs incurred in connection with monitoring or reviewing the legal aspects of the Remedial Work. If Grantor fails to timely commence, or cause to be commenced, the Remedial Work, Beneficiary may, but will not be required to, cause the Remedial Work to be performed. In that event, all costs and expenses incurred in connection with the Remedial Work will become part of the Obligations secured by this Trust Deed and will bear interest until paid at the rate provided in the Note.
- 2.8.8. Grantor shall indemnify, hold harmless and defend (subject to ORS Chapter 180) Beneficiary and its officers, employees, agents, successors, and assigns from, against and for any and all losses, liabilities, damages, injuries, liens, costs, expenses and claims (collectively, “**Claims**”) directly or indirectly arising out of or relating to the presence on or under, or the escape, seepage, leakage, spillage, discharge, emission or release from, the Property of any Hazardous Material (including, without limitation, any Claims asserted or arising under the Comprehensive Environmental Response, Compensation and Liability Act, any so-called “superfund” or “super lien” law or any other federal, state or local statute, law, ordinance, code, rule, regulation, order or decree applicable to the Property or to the operations thereon that regulates, relates to or imposes liability or standards of conduct concerning any Hazardous Material (“**Environmental Laws**”). For purposes of this Trust Deed, the term “**Hazardous Material**” shall mean any and all hazardous or toxic substances, wastes or materials as listed or defined by any Environmental Law.
- 2.8.9. Grantor warrants to Beneficiary that, to the best knowledge and belief of Grantor and based on due and diligent inquiry by Grantor, (i) neither the Property nor Grantor is in violation of or subject to any existing, pending, or threatened

investigation by any governmental authority under any Environmental Law, (ii) Grantor has not and is not required by any Environmental Law to obtain any permit or license other than those it has obtained to construct or use the Improvements, (iii) no Hazardous Material has ever been used, generated, manufactured, produced, stored, released, discharged, or disposed of on, under, or about the Property in violation of any Environmental Law, (iv) there are no Hazardous Materials in, upon, or buried on or beneath the Property or the Improvements, nor have any Hazardous Materials been emitted or released therefrom in violation of any Environmental Laws, and (v) there are not now, nor have there been, any underground storage tanks located on the Property, including any tanks used for the storage of Hazardous Materials.

2.8.10. All representations, warranties, and covenants in this section will survive the satisfaction of the Obligations, the reconveyance of the Property, or the foreclosure of this Trust Deed by any means.

2.9. **Compliance with Laws and Covenants.** Grantor shall promptly comply with all federal, state, and local laws, ordinances and regulations, including without limitation, all Environmental Laws, the Americans with Disabilities Act of 1990, and the Fair Housing Act of 1968 (all as amended or as may be amended from time to time) applicable to the use or occupancy of the Property. Grantor may contest in good faith and with diligence any law, ordinance or regulation and withhold compliance during any proceeding, including appropriate appeals, so long as Beneficiary's interest in the Property is not jeopardized. Grantor shall also comply with any and all covenants, conditions, easements, and restrictions affecting the Property, including any restrictive covenants and affordability requirements (including without limitation, those contained in the Loan Documents) applicable to the use or occupancy of the Property (collectively, "**Covenants**").

2.10. **Failure to Comply with Covenants.** Should Grantor default in the performance of any of the Covenants contained in this Trust Deed relating to payments of insurance, liens, taxes, assessments or other charges, and fail to cure such default within the applicable cure period set forth herein, Beneficiary may elect to pay any such amount and any payment so made will be added to the debt secured by this Trust Deed and will bear interest at the Default Rate under the Note until paid. Any such payment by Beneficiary will be without prejudice to Beneficiary's rights and remedies hereunder and will not be a waiver of default.

2.11. **Further Encumbrance.** Grantor will pay when due all claims for labor, materials, or supplies that if unpaid might become a lien on all or any portion of the Property. Grantor shall not permit the Property to be further encumbered by additional liens for financing without the prior written consent of Beneficiary.

2.12. **Impairment to Property.** Grantor shall not, without Beneficiary's prior written consent, change the general nature of the occupancy of the Property, initiate, acquire or permit any change in any public or private restrictions (including, without

limitation, a zoning reclassification) limiting the uses which may be made of the Property, or take or permit any action which would impair the Property or Beneficiary's lien or security interest in the Property.

2.13. **Utilities.** Grantor shall pay or cause to be paid when due all utility charges which are incurred by Grantor or others for the benefit of or for service to the Property or which may become a charge or lien against the Property for gas, electricity, water, sewer or other utility services furnished to the Property and all other assessments or charges of a similar nature, whether public or private, affecting the Property or any portion thereof, whether or not such assessments or charges are liens thereon.

2.14. **Alterations, Removal and Demolition.** Unless otherwise agreed in writing by Beneficiary, Grantor shall not structurally alter, remove or demolish any building or improvement on the Property without Beneficiary's prior written consent, except minor changes that do not reduce the number of units and do not affect Beneficiary's affordability requirements. Grantor shall not remove any fixture or other item or property which is part of the Property without Beneficiary's prior written consent unless the fixture or item of property is replaced by an article of equal suitability, owned by Grantor free and clear of any lien or security interest.

2.15. **Disclosure of Material Facts.** Grantor shall keep Beneficiary fully and currently informed as to all material facts and developments regarding Grantor and the construction and operation of the Property, including any facts that are necessary to make all previous disclosures and representations not misleading. Without thereby limiting the generality of the foregoing, Grantor shall promptly notify Beneficiary of any investigation, action, or proceeding that might affect the title, value, or utility of the Property, or the security interest of Beneficiary under this Trust Deed, and Grantor shall appear and participate in any such investigation, action, or proceeding unless excused by Beneficiary in writing. In the event that Grantor, in Beneficiary's reasonable judgment, fails to participate diligently in any such investigation, action, or proceeding, Beneficiary may appear and participate in such investigation, action, or proceeding and settle or compromise claims in connection therewith.

2.16. **Further Assurances, Filing, Refiling, Etc.**

2.16.1. Grantor will execute, acknowledge, and deliver, from time to time, any further instruments that Beneficiary or Trustee may require to accomplish the purposes of this Trust Deed.

2.16.2. Immediately on the execution and delivery of this Trust Deed, and thereafter from time to time, Grantor will cause this Trust Deed, any supplemental security agreement, mortgage, or deed of trust and each instrument of further assurance, to be recorded and rerecorded in the manner and in the places that may be required by any present or future law in order to perfect, and continue perfected, the lien and estate of this Trust Deed.

2.16.3. Grantor will pay all filing and recording fees, and all expenses incident to the execution, filing, recording, and acknowledgment of this Trust Deed; any security agreement, mortgage, or deed of trust supplemental to this Trust Deed and any instrument of further assurance; and all federal, state, county, and municipal taxes, assessments, and charges arising out of or in connection with the execution, delivery, filing, and recording of this Trust Deed, any supplemental security agreement, mortgage, or deed of trust and any instrument of further assurance.

3. SECURITY AGREEMENT AND FIXTURE FILING

3.1. **Security Agreement.** To secure the Obligations Grantor hereby grants to Beneficiary a continuing security interest in, and lien upon, Grantor's right, title and interest in and to, whether now owned or hereafter acquired, (1) all Property to the extent that it is not encumbered by this Trust Deed as a real estate lien; (2) all personal property that is used or will be used in the construction of any Improvements on the Property; (3) all personal property that is now or will hereafter be placed on or in the Property or Improvements; (4) all personal property that is derived from or used in connection with the use, occupancy, or enjoyment of the Property; (5) and all property defined in the Oregon Uniform Commercial Code ("UCC"), as accounts, equipment, fixtures, and general intangibles, to the extent that they are used at, or arise in connection with the ownership, maintenance, or operation of, the Property; (6) all causes of action, claims, security deposits, advance rental payments, utility deposits, refunds of fees or deposits paid to any governmental authority, refunds of taxes, and refunds of insurance premiums relating to the Property; (7) all options, agreements, and contracts for the purchase or sale of all or any part or parts of the Property or interests in the Property; and (8) all present and future attachments, accessions, amendments, replacements, additions, products, and proceeds of every nature of the foregoing. This Trust Deed constitutes a security agreement and a "fixture filing" under the UCC regarding secured transactions. The mailing address of Grantor and the address of Beneficiary from which information may be obtained are set forth at the outset of this Trust Deed. Grantor agrees that Beneficiary has the right to file UCC financing statements, instruments and documents and Grantor agrees to take such other action as may be necessary or appropriate to perfect or continue the perfection of Beneficiary's security interest in such collateral.

3.2. **Fixture Filing.** To the extent any of the Property constitutes fixtures subject to the Oregon Uniform Commercial Code, this Trust Deed shall also be effective as a financing statement filed as a fixture filing pursuant to ORS 79.0502, between Grantor as debtor and Beneficiary as secured party, covering such Property, which is or is to become fixtures related to the Land. The parties agree that a photographic or other reproduction of this Trust Deed will be sufficient as a financing statement and as a fixture filing and may be filed in any appropriate office in lieu thereof to the extent permitted by law.

4. ASSIGNMENT OF LEASES AND RENTS

4.1. **Assignment.** Grantor hereby assigns to Beneficiary and grants to Beneficiary a security interest in all existing and future leases, licenses, rental agreements, and other agreements for the use and occupancy of residential or commercial space in the Improvements, including all modifications, extensions and renewals of them (the “Leases”). Grantor further assigns to Beneficiary the right to receive all of the payments owing under the Leases, and all other rents, income, receipts, revenues, issues, profits, income, proceeds and benefits of any nature now due or which may become due to Grantor, including without limitation basic and percentage rent, payments for use of parking areas or other common areas and lease and security deposits, arising from or related to the Property (collectively, the “Rents”), subject, however, to the license set forth in Section 4.4.

This assignment is intended by Grantor and Beneficiary to create a present and unconditional assignment to Beneficiary, subject only to the license set forth in Section 4.4 below.

4.2. **Rights of Beneficiary.** Subject to the provisions of Section 4.4 below giving Grantor a revocable, limited license, Beneficiary will have the right, power, and authority to:

- 4.2.1. Notify any and all tenants, renters, licensees, and other obligors under any of the Leases that the same have been assigned to Beneficiary and that all Rents are to be paid directly to Beneficiary, whether or not Beneficiary has foreclosed or commenced foreclosure proceedings against the Property, and whether or not Beneficiary has taken possession of the Property;
- 4.2.2. Discount, settle, compromise, release, or extend the time for payment of any amounts owing under any of the Leases and any Rents, in whole or in part, on terms acceptable to Beneficiary;
- 4.2.3. Collect and enforce payment of Rents and all provisions of the Leases, and to prosecute any action or proceeding, in the name of Grantor or Beneficiary, with respect to any and all Leases and Rents; and
- 4.2.4. Exercise any and all other rights and remedies of the lessor in connection with any of the Leases and Rents.

4.3. **Application of Receipts.** Beneficiary will have the right, power, and authority to use and apply any Rents received under this Trust Deed (a) for the payment of any and all costs and expenses incurred in connection with enforcing or defending the terms of this assignment or the rights of Beneficiary, and in collecting any Rents; and (b) for the operation and maintenance of the Property and the payment of all costs and expenses in connection therewith, including but not limited to the payment of utilities, taxes, assessments, governmental charges, and insurance. After the payment of all such costs and expenses, and after Beneficiary has set up any reserves that it deems

necessary in its sole discretion for the proper management of the Property, Beneficiary will apply all remaining Rents collected and received by it to the reduction of the Obligations in any order that Beneficiary may determine. Beneficiary's exercise or failure to exercise any of the rights or powers granted in this assignment will not constitute a waiver of any Event of Default under this Trust Deed, the Note, or any of the other Loan Documents.

4.4. **License.** Beneficiary hereby grants to Grantor a revocable license to, either by itself or through a receiver, collect and receive all Rents. This license may be revoked by Beneficiary, without notice to Grantor, upon the occurrence of any Event of Default (as defined below) or an event that, with notice or passage of time, or both, would become an Event of Default. Beneficiary will not be deemed to be in possession of the Property solely by reason of exercise of the rights contained in this Section 4.4. Unless and until the license is revoked, Grantor agrees to apply the proceeds of Rents to the payment of the Obligations and to the payment of taxes, assessments, governmental charges, insurance premiums, and other obligations in connection with the Property, and to the maintenance of the Property, before using the proceeds for any other purpose. Grantor agrees to (a) observe and perform every obligation of Grantor under the Leases, (b) enforce or secure at its expense the performance of every obligation to be performed by any lessee or other party under the Leases, (c) promptly give notice to Beneficiary of any default by any such lessee or other party under any of the Leases, and promptly provide Beneficiary with a copy of any notice of default given to any such lessee or other party, (d) not collect any Rents more than 30 days in advance of the time when they become due, or anticipate any other payments under the Leases, except for bona fide security deposits not in excess of an amount equal to two months' rent, (e) except with Beneficiary's prior written consent, not further assign or hypothecate any of the Leases or Rents, (f) obtain Beneficiary's prior written approval on the standard form of residential Lease and modifications of any present or future residential Lease from the approved standard residential Lease form, and (g) appear in and defend, at Grantor's sole cost and expense, any action or proceeding arising out of or in connection with the Leases or the Rents.

4.5. **Limitation of Beneficiary's Obligations.** Notwithstanding the assignment provided for in this Section 4, Beneficiary will not be obligated to perform or discharge, and Beneficiary does not undertake to perform or discharge, any obligation or liability with respect to the Leases or the Rents. This assignment will not operate to place responsibility for the control, care, maintenance, or repair of the Property on Beneficiary, or to make Beneficiary responsible for any condition of the Property. Beneficiary will be accountable to Grantor only for the sums actually collected and received by Beneficiary under this assignment. Grantor will hold Beneficiary fully harmless from, indemnify Beneficiary for, and defend (subject to ORS Chapter 180) Beneficiary against any and all claims, demands, liabilities, losses, damages, and expenses, including attorney fees, arising out of any of the Leases, with respect to any of the Rents, or in connection with any claim that may be asserted against Beneficiary on account of this assignment or any obligation or undertaking alleged to arise therefrom.

- 4.6. **Termination.** The assignment provided for in this Section 4 will continue in full force and effect until all the Obligations have been fully paid and satisfied. At such time, this assignment and the authority and powers herein granted by Grantor to Beneficiary will cease and terminate.
- 4.7. **Attorney-in-Fact.** Grantor irrevocably constitutes and appoints Beneficiary, and each of its officers, as its true and lawful attorney-in-fact, with power of substitution, to undertake and execute any and all of the rights, powers, and authorities described in this Section 4 with the same force and effect as if undertaken or performed by Grantor, and Grantor ratifies and confirms any and all such actions that may be taken or omitted to be taken by Beneficiary, its officers, employees, agents, and attorneys.

5. EVENTS OF DEFAULT

Each of the following will be an event of default (each an “**Event of Default**”) under this Trust Deed:

- 5.1. **Failure to Pay Obligations When Due.** Grantor fails to pay any sum due under the Note within ten (10) days after the date it is due, or fails to pay any other amount required to be paid by Grantor pursuant to this Trust Deed or any of the Loan Documents (including, without limitation, taxes, assessments, insurance and any other payment necessary to prevent filing or imposition of any liens) within ten (10) days after written notice of nonpayment from Beneficiary specifying the Event of Default.
- 5.2. **Failure to Comply with Covenants.** Grantor fails to perform or abide by any covenant in this Trust Deed or in any of the Loan Documents (other than as specified in any other subsection of this Section 5) and such failure, to the extent curable, is not cured within thirty (30) days after written notice from Beneficiary specifying the default or, if such breach cannot with due diligence be cured within such period, Grantor fails within such thirty (30) day period to commence cure of the failure and thereafter diligently prosecute to completion such cure (which cure in any event shall occur within sixty (60) days after the Event of Default).
- 5.3. **Failure to Obtain Beneficiary’s Consent to Transaction.** Except as permitted in the Loan Agreement, this Trust Deed or the other Loan Documents, Grantor engages in a sale, transfer or assignment, or uses Loan proceeds, in violation of the terms of the Note, this Trust Deed, or other Loan Documents, or changes the use of the Property without Beneficiary’s prior written consent.
- 5.4. **Failure to Comply.** Grantor fails to comply, perform or discharge any other obligation of Grantor under the Note, the Loan Agreement, this Trust Deed (other than as specified in any other subsection of this Section 5), or any of the Loan Documents and fails to cure the failure within the applicable cure period, if any, set forth therein.

5.5. Bankruptcy or Insolvency

5.5.1. Grantor or any guarantor of the Loan (i) applies for or consents to the appointment of, or the taking of possession by, a receiver, custodian, trustee, or liquidator of itself or of all or a substantial part of its property, (ii) admits in writing its inability to pay, or generally is not paying, its debts as they become due, (iii) makes a general assignment for the benefit of creditors, (iv) commences a voluntary action under the United States Bankruptcy Code (as now or hereafter in effect), (v) files a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding up, or composition or adjustment of debts, (vi) fails to controvert in a timely or appropriate manner, or acquiesces or consents in writing to, any petition filed against it, in an involuntary action under the United States Bankruptcy Code (as now or hereafter in effect), or (vii) takes any action for the purpose of effecting any of the foregoing.

5.5.2. A proceeding or case is commenced against Grantor, without its consent, in any court of competent jurisdiction, seeking the liquidation, reorganization, dissolution, windup, or composition or readjustment of the debts of Grantor, (ii) a receiver, trustee, custodian, liquidator, or the like is appointed for Grantor or for all or a substantial part of its assets, (iii) relief is granted to Grantor under any law relating to bankruptcy, insolvency, reorganization, winding up, or composition or adjustment of debts, and such proceeding or case continues undismissed, or an order, judgment, or decree approving or ordering any of the foregoing is entered and continues unstayed and in effect for any period of 20 days, or (iv) an order for relief against Grantor is entered in an involuntary case under the United States Bankruptcy Code (as now or hereafter in effect).

5.6. **Failure to Disclose Material Facts.** Borrower fails to disclose any fact material to the making of any loan to Borrower, or upon discovery by Lender of any misrepresentation by, or on behalf of, or for the benefit of Borrower.

5.7. **Default Under Other Loans.** Grantor defaults under any other loan (including any construction, permanent, or bond financing) secured in whole or in part by the Property, including any loan secured by a Permitted Exception, and fails to cure such default within any applicable cure period set forth in the loan documents relating to such loan.

5.8. **Discontinued Construction.** Construction of the Project is discontinued or prohibited for at least thirty (30) consecutive days, or the Project is abandoned.

5.9. **Failure to Diligently Pursue the Project.** Grantor fails to diligently pursue the Project during the Construction Period, including the Lease-up Period.

5.10. **Notice and Cure by Grantor's Investor.** With respect to any event that, with notice or lapse of time or both would become an Event of Default, Beneficiary shall accept

a tender of cure from Grantor's investor member or investor limited partner, on the same terms and conditions as Beneficiary would accept a tender of cure from Grantor.

5.11. Certain Taxes. For purposes of this subsection 5.11, State Tax shall mean:

- 5.11.1. A specific tax on mortgages, trust deeds, secured indebtedness, or any part of the Obligations secured by this Trust Deed.
- 5.11.2. A specific tax on the grantor of property subject to a trust deed that the taxpayer is authorized or required to deduct from payments on the trust deed.
- 5.11.3. A tax on property chargeable against Beneficiary or Trustee under a trust deed or holder of the note secured by the trust deed.
- 5.11.4. A specific tax (other than an income tax or a gross receipts tax) on all or any portion of the Obligations or on payments of principal and interest made by Grantor.

If any State Tax is enacted after the date of this Trust Deed applicable to this Trust Deed, enactment of the State Tax shall constitute an event of default, unless the following conditions are met:

- 5.11.4.1. Grantor may lawfully pay the tax or charge imposed by the State Tax without causing any resulting economic disadvantage or increase of tax to Beneficiary or Trustee, and
- 5.11.4.2. Grantor pays or agrees in writing to pay the tax or charge within 30 days after notice from Beneficiary or Trustee that the State Tax has been enacted.

5.12. Event of Default under Operating Agreement. An Event of Default occurs, and any applicable cure period with respect to such Event of Default lapses, under the Operating Agreement.

6. RIGHTS AND REMEDIES ON DEFAULT

Upon the occurrence of an Event of Default and at any time thereafter, Trustee or Beneficiary may, at its option, exercise any one or more of the following rights and remedies:

- 6.1. **Acceleration.** Beneficiary may declare the entire remaining unpaid balance of the Loan and other charges payable by Grantor pursuant to the Note or any other Loan Document, to be immediately due and payable in full.
- 6.2. **Receiver.** Beneficiary may have a receiver appointed for the Property. Beneficiary will be entitled to the appointment of a receiver as a matter of right whether or not the apparent value of the Property exceeds the amount of the Obligations secured by this Trust Deed. Employment by Trustee or Beneficiary will not disqualify a person from serving as receiver. Grantor consents to the appointment of a receiver at Beneficiary's option and waives any and all defenses to such an appointment.

6.3. **Possession.** Beneficiary may, either through a receiver or as lender-in-possession, enter and take possession of all or any part of the Property and use, operate, manage, and control it as Beneficiary shall deem appropriate in its sole discretion. Upon request after an Event of Default, Grantor will peacefully relinquish possession and control of the Property to Beneficiary or any receiver appointed under this Trust Deed.

6.4. **Foreclosure.** At Beneficiary's direction, the Trustee will foreclose the lien of the Trust Deed by notice and sale, or Trustee will have the right to foreclose by judicial foreclosure, in either case in accordance with applicable law. In any judicial foreclosure, Beneficiary will be entitled to obtain a deficiency judgment (subject to any applicable nonrecourse provisions in the Note) for any amount by which the amount of the Obligations secured hereby exceeds the sale proceeds.

6.5. **Waiver of Rights.** Notwithstanding subsection 6.2, Beneficiary will have the right, at its sole option, to waive its rights under this Trust Deed and pursue an independent action upon the Note, unless the Note is nonrecourse by its express terms. The Note, this Trust Deed, and other Loan Documents are separate and distinct instruments separately or collectively enforceable in accordance with their terms.

6.6. **Rights and Remedies.** Beneficiary will have any other right or remedy provided in this Trust Deed, the Note, the Loan Documents, or any other instrument delivered by Grantor in connection therewith, or available at law, in equity, or otherwise in such order and manner as it may select.

6.7. **Notification to Obligors to Pay Rent Directly to Beneficiary.** Beneficiary may at any time, without notice, either in person, by agent or by receiver to be appointed by a court, enter upon, take possession of and manage the Property and to collect the rents of the Property including those past due. All rents collected by Beneficiary or the receiver shall be applied first to payment of the costs of management of the Property and collection of rents, including, but not limited to, receiver's fees, premiums on receiver's bonds and reasonable attorney fees, and then to the Obligations secured by this Trust Deed. Without regard to the adequacy of the security for the Obligations hereby secured, Beneficiary or such receiver may notify obligors of Rents to pay Beneficiary directly, may enter upon and take possession of the Property or any part thereof, in its own name, and may sue or otherwise collect any and all Rents, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorney fees, upon any Obligations secured hereby, and in such order as Beneficiary may determine. Beneficiary and any receiver shall be liable to account only for those rents actually received.

6.8. **Uniform Commercial Code.** Beneficiary will have all rights and remedies under the Oregon Uniform Commercial Code, as amended from time to time. Beneficiary will give Grantor reasonable notice of the time and place of any public sale of any personal property or of the time after which any private sale or any other intended

disposition of personal property collateral is to be made. Reasonable notice shall mean notice given at least ten (10) days before the time of the sale or disposition.

6.9. **Exercising Rights and Remedies.** In exercising its rights and remedies, Beneficiary may cause all or any part of the Property to be sold as a whole or in parcels, and certain portions of the Property may be sold without selling other portions and in any order that Beneficiary may choose, without regard to the right of Grantor, Borrower, any person claiming under Grantor or Borrower, or any guarantor or surety to the marshalling of assets. The purchaser at any such sale will take title to the Property or the part of it so sold, free and clear of Grantor's estate, the purchaser being hereby discharged from all liability to see to the application of the purchase money. Beneficiary and each of its officers are irrevocably appointed Grantor's attorney-in-fact, with power of substitution, to make all appropriate transfers and deliveries of the Property or any portions of it so sold and, for that purpose, Beneficiary and its officers may execute all appropriate instruments of transfer. Nevertheless, Grantor will ratify and confirm, or cause to be ratified and confirmed, any such sale or sales by executing and delivering, or by causing to be executed and delivered, to Beneficiary or to such purchaser or purchasers all such instruments as may be advisable, in the judgment of Beneficiary, for that purpose.

Beneficiary may bid at any public sale on all or any portion of the Property. A waiver of a breach of a provision of this Trust Deed will not constitute a waiver of or prejudice the right otherwise to demand strict compliance with that provision or any other provision. An election by Beneficiary to pursue any remedy will not exclude pursuit of any other remedy, and all remedies of Beneficiary under this Trust Deed are cumulative and not exclusive. An election to make expenditures or take action to perform an obligation of Grantor will not affect Beneficiary's right to declare an Event of Default and exercise its remedies under this Trust Deed.

6.10. **Foreclosure of Lessee's Rights - Subordination.** Beneficiary will have the right, at its option, to foreclose this Trust Deed subject to the rights of any lessee(s) of the Property. Beneficiary's failure to foreclose against any lessee will not be asserted as a claim against Beneficiary or as a defense against any claim by Beneficiary in any action or proceeding. Beneficiary, at any time, may subordinate this Trust Deed to any or all of the lessees, except that Beneficiary will retain its priority claim to any condemnation or insurance proceeds.

6.11. **Repairs During Redemption.** In the event of a judicial foreclosure, the purchaser during any redemption period may make such repairs and alterations to the Property as may be reasonably necessary for the proper operation, care, preservation, protection and insuring of the Property. Any sums so paid, together with interest from the date of the expenditure at the rate provided in the judgment will be added to the amount required to be paid for redemption of the Property.

6.12. **Event of Foreclosure.** In the event of any judicial or nonjudicial foreclosure sale, Beneficiary in its discretion may use a single notice covering both real estate and

personal property, designate the order of sale, and may elect to sell the real estate and personal property as an integrated unit or separately. Any person permitted by law to do so may purchase at any sale.

- 6.13. **Proceeds of Sale.** Subject to the provisions of applicable law, the proceeds of any sale under this Trust Deed will be applied first to payment of costs and expenses, then to payment of security protection advances, then to payment of the other secured Obligations (which includes any applicable prepayment premium or fee) in any order that Beneficiary chooses, and then to any other person or persons who may establish to the satisfaction of Beneficiary that they are legally entitled to it.
- 6.14. **Grantor's Waiver of Rights Upon Sale.** Grantor waives all rights to direct the order and/or combinations in which any of the Property will be sold, and also any right to have any of the Property marshaled upon any sale. Grantor acknowledges that there is no fiduciary relationship between Grantor and Trustee or between Grantor and Beneficiary.

6.15. **During Construction.**

- 6.15.1. Beneficiary will have the right to take over and cause the Project to be completed and, for that purpose, make disbursements from the undisbursed Loan funds. Any contract entered into or indebtedness incurred on the exercise of such right may be exercised by Beneficiary in the name of Grantor, and Beneficiary is hereby irrevocably appointed attorney-in-fact (the appointment being coupled with an interest) to enter into the contract, incur such obligations, enforce contracts or loan agreements theretofore made by or on behalf of Grantor, and to do any and all things necessary or proper to complete the work of construction, including the signing of Grantor's name to such contracts and documents as may be deemed necessary by counsel for Beneficiary. In no event will Beneficiary be required to use its own funds to complete the Project if undisbursed Loan funds are insufficient, but Beneficiary may, at its option, advance such funds. Any funds so advanced will be payable to Beneficiary by Grantor on demand together with interest thereon at the Default Rate under the Note and will be secured by this Trust Deed.
- 6.15.2. Beneficiary will have the right to suspend or terminate its obligation to make further disbursement of Loan proceeds.

- 6.16. **Interest on Default.** Upon the occurrence of any Event of Default, interest will accrue under the Note on the unpaid principal balance from the date of the Event of Default, or if the Event of Default is a payment default, from the date the first unpaid payment was due, at a rate equal to the lesser of six percent per annum or the maximum interest which may be collected from the holder of the Note under applicable law the "**Default Rate**". If the unpaid principal balance and all accrued interest are not paid in full on the Maturity Date, the unpaid principal balance and all accrued interest will bear interest from the Maturity Date at the Default Rate.

6.17. **Rights and Remedies Cumulative.** All rights and remedies described in Section 6 are cumulative and in addition to any other remedy Beneficiary may have by agreement, at law, or in equity. Partial exercise of any right or remedy will not limit or restrict Beneficiary's subsequent exercise of such right or remedy nor will it restrict Beneficiary's contemporaneous or subsequent exercise of any other right or remedy.

6.18. **No Waiver.** No failure or delay of Beneficiary in exercising any right hereunder will operate as a waiver of that right or any other right. No modification or waiver of any provision of this Trust Deed or any other Loan Document will be effective unless in writing, and then only in specific instance and for the purpose given. No notice or demand on Grantor will entitle Grantor to any other notice or demand in other similar circumstances.

6.19. **Payment of Costs of Collection.** In case of an Event of Default, or in case litigation is commenced to enforce or construe any term of this Trust Deed, the Note, or any other Loan Document, the losing party will, to the extent permitted by law, pay to the prevailing party such amounts as will be sufficient to cover the cost and expense of collection or enforcement, including, without limitation, reasonable attorney fees and costs prior to and at any arbitration proceeding or at trial, on appeal, or in any bankruptcy proceeding.

7. CONDEMNATION AND CASUALTY

7.1. **Assignment of Proceeds.** All claims, compensation, awards, damages, payments, rights of action, and proceeds, including the proceeds of any insurance affecting the Property, arising out of any taking or damage by reason of any public or private improvement, eminent domain, condemnation proceeding, zoning change or conveyance in lieu thereof, fire, earthquake or other casualty (collectively, the "Proceeds"), are hereby assigned to and will be paid to Beneficiary. Beneficiary may, at its discretion apply the Proceeds to satisfaction of the Obligations secured hereby in any order that Beneficiary may determine or apply the same to the repair or restoration of the Property; provided, however, Beneficiary will elect to apply the Proceeds to repair or restoration if the Proceeds, together with any funds from Grantor are sufficient, in Beneficiary's judgment, to complete such repair or restoration. Grantor agrees to execute such further assignments to Beneficiary of any Proceeds as Beneficiary or Trustee may require. In the event any Proceeds are paid to Grantor, such Proceeds will promptly (within five (5) days of receipt thereof) be paid over to Beneficiary for the purposes set forth in this Section 7.1. Notwithstanding the above, if the Proceeds plus any additional funds of Grantor will permit the damaged or taken Improvements to be replaced with Improvements of equal or greater value, then the Proceeds (less certain administrative and legal costs of Beneficiary) will be disbursed to Grantor for such replacement through a Beneficiary-controlled account on any terms and conditions that Beneficiary may require, including but not limited to prior approval of plans and release or waiver of liens, and provided it is economically

and legally feasible to do so, in the reasonable judgment of Beneficiary. No condemnation Proceeds will be released if an Event of Default has occurred and is continuing.

7.2. **Notification of Damage, Injury, Loss or Condemnation Proceedings.** Grantor shall immediately notify Beneficiary in writing if: (i) any damage occurs or any injury or loss is sustained in the amount of \$25,000 or more to all or part of the Property, or any action or proceeding relating to any such damage, injury or loss is commenced; or (ii) any offer is made, or any action or proceeding is commenced, which relates to any actual or proposed condemnation or taking of all or part of the Property. If Beneficiary chooses to do so, it may in its own or Grantor's name commence, appear in or prosecute any action or proceeding to enforce any cause of action based on warranty, or for damage, injury or loss to all of part of the Property, and it may make any compromise or settlement of the action or proceeding. Beneficiary, if it so chooses, may participate in any action or proceeding relating to condemnation or taking of all or part of the Property, and may join Grantor in adjusting any loss covered by insurance. If the Property is taken in its entirety by condemnation, all Obligations secured by this Trust Deed, at Beneficiary's election, will become immediately due and collectible.

8. MISCELLANEOUS

8.1. **Indemnity.** Grantor must indemnify, hold harmless, save, and (subject to ORS chapter 180) defend the State of Oregon, OHCS and their officers, agents, employees, members and assigns, from all suits, actions, claims, losses or damages of whatsoever nature, kind or description related to the Project or resulting from or arising out of the acts, omissions, neglect or misconduct of Grantor or its subcontractors, agents, or employees under this Agreement or related to the Project.

8.2. **Severability.** If any of the provisions contained in this Trust Deed shall be invalid, illegal or unenforceable in any respect, the validity of the remaining provisions in this Trust Deed will not be affected.

8.3. **Attorney Fees.** In the event a lawsuit is instituted regarding this Agreement, the prevailing party in any dispute arising under this Agreement will, to the extent permitted by law and this Agreement, be entitled to recover from the other its reasonable attorney fees and all costs and disbursements incurred at trial and on appeal. Reasonable attorney fees will not exceed the rate charged OHCS by its counsel and OHCS' liability for attorney fees will be subject to the limitations under Article XI, Section 7 of the Oregon Constitution.

8.4. **Governing Law; Venue; and Consent to Jurisdiction.** This Agreement will be governed by the laws of the State of Oregon law without regard to principles of conflicts of law and the laws of the United States of America, as applicable. Any claim, action, suit or proceeding (collectively, "Claim") among the "Parties or with any third-party beneficiary related to this Agreement or the Project will be conducted

exclusively within the Circuit Court of Marion County, Oregon (unless Oregon law requires that it be brought and conducted where the Property is located) or, if necessary, the United States District Court for the District of Oregon. BORROWER, BY EXECUTION OF THIS AGREEMENT, HEREBY EXPRESSLY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS. In no event will this provision be construed as a waiver by the State of Oregon of any form of defense or immunity, whether it is sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any Claim or from the jurisdiction of any court.

8.5. **Recourse Provision.** The Obligations under the Note, including the obligations secured by this Trust Deed, are with recourse to the Grantor and its managing member(s) or general partner(s), as applicable, unless and until the Loan is converted to the Permanent Loan. Upon conversion of the Loan to the Permanent Loan, notwithstanding any other provision of the Note or the Loan Agreement, but subject to the qualifications set forth below in this section, the obligation to pay the indebtedness evidenced by or arising under the Note will be nonrecourse as to Grantor and its members or partners except as to their rights, if any, in the collateral described in this Trust Deed, and no personal judgment may be obtained against Grantor or its members or partners contrary to this limitation provided, however, that Grantor and its managing member(s) or general partner(s), as applicable, will be personally liable for (a) failure to pay taxes, assessments, or other charges which could result in liens (including construction liens) against the collateral described in this Trust Deed, (b) retention by Grantor or its managing member(s) or general partner(s) of any rental or other income or insurance or condemnation proceeds arising with respect to such collateral which, under the terms of this Trust Deed, should have been paid to Beneficiary, and (c) any liability or losses incurred by Beneficiary as a result of any fraud or deceit by Grantor in connection with this Loan.

8.6. **Assignment; Successors and Assigns.** Except as expressly permitted herein, Grantor must not assign or otherwise transfer any interest in this Trust Deed or in Grantor (other than leases for the residential units in the Project) without the prior written consent of Beneficiary. Any attempted assignment or transfer in violation of this provision will be null and void. The provisions of this Trust Deed are binding upon and will run to the benefit of the parties to this Trust Deed and their respective successors and permitted assigns.

8.7. **Due on Sale or Transfer; No Change in Use.**

Subject to the terms and conditions of the Operating Agreement and transfers permitted hereunder, any sale or transfer (or any attempted sale or transfer) of all or any part of, or any interest in, the Property, or any beneficial interest in Grantor, without the prior written consent of Beneficiary (which Beneficiary may grant, condition, or withhold in its sole and absolute discretion) is prohibited, and upon any such prohibited sale or transfer, the Note and all other Obligations secured by this Trust Deed will become immediately due and payable in full. As

used herein, the term “sale or transfer” is used in its broadest sense, and includes, encumbrance, pledge, or grant of a security interest in all or any part of the Property, or any interest therein and with respect to the Property, a ground lease, master lease or other lease not in the ordinary course of business, land sale contract, foreclosure, deed in lieu of foreclosure, or transfer (by operation of law or otherwise) pursuant to any dissolution, liquidation, merger, reorganization or consolidation, and with respect to a beneficial interest in Grantor, a sale, gift or other transfer of any partnership, stock, membership or other ownership interest in Grantor other than a transfer upon death of the owner of such interest.

- 8.7.1. Notwithstanding who is the holder of the Note, Beneficiary reserves the right to approve a sale or transfer as described in this Section. Any transferee will be bound by the terms of this Trust Deed. Grantor will notify Beneficiary of any proposed or actual sale or transfer as required in the Operating Agreement.
- 8.7.2. Subject to the terms and conditions of the Operating Agreement, Beneficiary may attach any conditions to its consent under this Section 8.7.1 that Beneficiary may determine in its sole discretion, including without limitation an increase in the interest rate or the payment of transfer or assumption fees, and the payment of administrative and legal fees and costs incurred by Beneficiary.
- 8.7.3. Grantor will not change the use of the Property without Beneficiary’s prior written consent, which may be withheld or conditioned in Beneficiary’s sole and absolute discretion.

- 8.8. **Time of Essence.** Time is of the essence of each of Grantor’s obligations under this Trust Deed.
- 8.9. **Waivers by Grantor.** Without affecting any of Grantor’s obligations under the Loan Documents, Grantor waives the following: (a) any right to require Beneficiary to proceed against any specific party liable to sums due under the Loan Documents or to proceed against or exhaust any specific security for sums due under the Loan Documents; (b) notice of new or additional indebtedness of any Grantor or any other party liable for sums due under the Loan Documents to Beneficiary; (c) any defense arising out of Beneficiary entering into additional financing or other arrangements with Grantor or any other party liable for sums due under the Loan Documents and any action taken by Beneficiary in connection with any such financing or other arrangements or any pending financing or other arrangements; (d) any defense arising out of the absence, impairment, or loss of any or all rights of recourse, reimbursement, contribution or subrogation or any other rights or remedies of Beneficiary against any Grantor or any other party liable for sums due under the Loan Documents or the Property; and (e) any obligation of Beneficiary to see to the proper use and application of any proceeds advanced pursuant to the Loan Documents.
- 8.10. **Right of Subrogation.** Beneficiary is subrogated to the rights, whether legal or equitable, of all beneficiaries, mortgagees, lienholders and owners directly or

indirectly paid off or satisfied in whole or in part by any proceeds advanced by Beneficiary under the Loan Documents, regardless of whether such parties assigned or released of record their rights or liens upon payment.

8.11. **Joint and Several Liability.** If there is more than one Grantor of this Trust Deed, their obligations will be joint and several.

8.12. **Statement of Amount Owing.** Grantor within fifteen (15) days after request by Beneficiary will furnish Beneficiary a written statement of the amount due under the Loan Documents, any offsets or defenses against the amount claimed by Grantor, and such other factual matters as Beneficiary may reasonably request. If Grantor fails to provide this statement within the time allowed, Beneficiary will be authorized, as Grantor's attorney-in-fact, to execute and deliver the statement. On request, Grantor will also use its best efforts to obtain and deliver to Beneficiary a written certificate from each lessee of all or any portion of the Property that its lease is in effect, that there are no defaults by the lessor under the lease, and that rent is not paid more than thirty (30) days in advance.

8.13. **Controlling Document.** In the event of a conflict or inconsistency between the terms and conditions of this Trust Deed and the terms and conditions of any other of the Loan Documents (except for any separate assignment of the Rents or Leases and the Loan Agreement which shall prevail over this Trust Deed), the terms and conditions of this Trust Deed will prevail.

8.14. **Notice.** Any notice required or permitted under this Agreement will be in writing and will be deemed effective; (1) when actually delivered in person, (2) one business day after deposit with a commercial courier service for "next day" delivery, or (3) three business days after having been deposited in the United States mail as certified or registered mail, addressed to the Parties as follows:

Beneficiary: Oregon Housing and Community Services Department
Attn: Portfolio Administration Section
725 Summer St NE, Suite B
Salem, OR 97301-1266

With a copy to: Oregon Department of Justice
1162 Court St. NE
Salem, OR 97301
Attn: OHCS Contact Counsel

Grantor:
[Name]
[Address]
[Address]
Attention: _____
E-mail: _____
Telephone: _____

With a copy to:

[Name]
[Address]
[Address]
Attention: [REDACTED]
E-mail: [REDACTED]
Telephone: [REDACTED]

or to such other address a party may indicate to the other pursuant to this subsection. Any notice so addressed and mailed will be effective five (5) days after mailing. Any notice by personal delivery will be deemed to be given when actually delivered.

- 8.15. **Standard for Discretion.** If this Trust Deed is silent on the standard for any consent, approval, determination, or similar discretionary action, the standard will be sole and unfettered discretion as opposed to any standard of good faith, fairness, or reasonableness.
- 8.16. **Substitute Trustee.** Beneficiary may at any time substitute one or more trustees to execute the trust created by this Trust Deed, and the new trustee or trustees will succeed to all the powers and duties of the prior trustee or trustees.
- 8.17. **Trust Deed Binding on Successors and Assigns.** This Trust Deed is binding upon and inures to the benefit of the successors and assigns of Grantor, Trustee, and Beneficiary. Except as expressly permitted herein, Borrower must not assign or otherwise transfer any interest in this Agreement or in Borrower (other than leases for the residential units in the Project) without the prior written consent of Lender. Any attempted assignment or transfer in violation of this provision will be null and void.
- 8.18. **Captions.** The captions or headings in this Agreement are for convenience only and in no way define, limit, or describe the scope or intent of any provisions of this Agreement.
- 8.19. **Exhibits.** Any exhibits attached to this Agreement and referred to herein are incorporated in this Agreement as if they were fully set forth in the text hereof.
- 8.20. **Third-Party Attorney Fees.** Notwithstanding any other provision in this Agreement (including the Declaration), third-party beneficiaries neither have any right to the award of attorney fees or costs hereunder nor are they subject hereunder to an award of attorney fees or costs in favor of any others.
- 8.21. **Statutory Notice.** BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND

SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010. THIS INSTRUMENT DOES NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92.010 OR 215.010, TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL, TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES, AS DEFINED IN ORS 30.930, AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010.

(Signature page follows)

SAMPLE

By signing below, Grantor accepts and agrees to the terms and covenants contained in this Trust Deed and in any Exhibits attached hereto.

GRANTOR:

[Legal Name of Owner Entity],
an Oregon [type of entity]
Tax ID: [tax id #]

By: _____

The foregoing instrument was acknowledged before me this [day] day of [Month], 20__ by [name of signor, title of entity, type of entity, role of entity (see signature block)] of Grantor, for and on behalf of Grantor.

NOTARY PUBLIC FOR OREGON
My Commission Expires: _____

EXHIBIT A
(Legal Description)

[Insert Legal Description]

EXHIBIT B
(Permitted Exceptions)