



**2016-005602**  
Klamath County, Oregon  
05/27/2016 01:21:25 PM  
Fee: \$202.00

WHEN RECORDED RETURN TO:

Washington Federal, National Association  
425 Pike Street, 4th Floor  
Seattle, Washington 98101  
Attention: Commercial Loan Servicing

**DEED OF TRUST, SECURITY AGREEMENT,  
ASSIGNMENT OF LEASES AND RENTS,  
AND FIXTURE FILING**

**EAGLERIDGE HIGH SCHOOL**

**Grantor**

**AMERITITLE, INC.**

**Trustee**

**WASHINGTON FEDERAL, NATIONAL ASSOCIATION**

**Beneficiary**

The Tax Account Nos. for the real property covered by this deed of trust are: R476728 and R17378. In the event of any conflict between the description of the real property included in this deed of trust and the foregoing tax account number, the description in the deed of trust shall control.

**DEED OF TRUST, SECURITY AGREEMENT,  
ASSIGNMENT OF LEASES AND RENTS,  
AND FIXTURE FILING**

This DEED OF TRUST, SECURITY AGREEMENT, ASSIGNMENT OF LEASES AND RENTS, AND FIXTURE FILING (hereinafter called "Deed of Trust") is made as of May 27, 2016, by EAGLERIDGE HIGH SCHOOL, an Oregon nonprofit corporation, whose address is 514 Walnut Avenue, Klamath Falls, Oregon 97601 (hereinafter called "Grantor"); in favor of AMERITITLE, INC., whose address is 300 Klamath Avenue, Klamath Falls, Oregon 97601 (hereinafter called "Trustee"); for the benefit of WASHINGTON FEDERAL, NATIONAL ASSOCIATION, a national banking association, whose address is 803 Main Street, Klamath Falls, Oregon 97601 (hereinafter called "Beneficiary").

**W I T N E S S E T H :**

Grantor does hereby irrevocably GRANT, BARGAIN, SELL, and CONVEY TO TRUSTEE IN TRUST, WITH POWER OF SALE, for the benefit of Beneficiary, all of its right, title and interest in and to, that certain real property in the City of Klamath Falls, County of Klamath, State of Oregon, described on Exhibit A attached hereto (the "Real Property"), together with any and all buildings and improvements now or hereafter erected thereon, including, but not limited to, the fixtures, attachments, appliances, equipment, machinery, and other articles attached to such buildings and improvements (herein collectively called, together with the Real Property, the "Property");

**Together With** all interests, estate or other claims, both in law and in equity, which Grantor now has or may hereafter acquire in the Property;

**Together With** all easements, rights of way and rights used in connection therewith or as a means of access thereto, and all tenements, hereditaments and appurtenances thereof and thereto, and all water rights and shares of stock evidencing the same;

**Together With** all right, title and interest of Grantor, now owned or hereafter acquired, in and to any land lying within the right of way of any street, open or proposed, adjoining the Property; and any and all sidewalks, alleys, and strips and gores of land adjacent to or used in connection with the Property;

**Together With** all right, title and interest of Grantor in and to all tangible personal property (the "Personal Property") now or hereafter owned or leased by Grantor and now or at any time hereafter located on or at the Property or used in connection therewith, including, but not limited to, all construction and building materials, goods, machinery, tools, equipment (including fire sprinklers and alarm systems, office air conditioning, heating, refrigerating, electronic monitoring, window or structural cleaning rigs, maintenance, and all other equipment of every kind), lobby and all other indoor and outdoor furniture, rugs, carpets, and other floor coverings, all inventory related to the operation of the Property and any business operated thereon by Grantor, draperies, drapery rods and brackets, awnings, window shades, venetian blinds, curtains, lamps, chandeliers and other lighting fixtures, and building maintenance and other supplies, but excluding tangible personal property, the receipt of which or

the acquisition of which was made subject to restrictions on the disposition of such property by Grantor imposed by the donor, funding source, or by law;

**Together With** all right, title, and interest of Grantor in the funds deposited pursuant to Section 1.8 hereof;

**Together With** all the estate, interest, right, title, other claim or demand, including claims or demands with respect to the proceeds of insurance in effect with respect thereto, which Grantor now has or may hereafter acquire in the Property, and any and all awards made for the taking by eminent domain or by any proceeding or purchase in lieu thereof of the whole or any part of the Property, including, without limitation, any awards resulting from a change of grade of streets and awards for severance damages;

**Together With** Grantor's right, title, and interest in any and all existing and future leases (including subleases), whether written or oral, rental agreements and all future agreements for use and occupancy, and any and all extensions, renewals and replacements thereof, upon all or relating to any part of the Property (hereinafter collectively referred to as the "Leases") and any and all guaranties of a tenant's performance under any and all of the Leases;

**Together With** the immediate and continuing right to collect and receive all of the rents, income, receipts, revenues, issues, profits and other income of any nature now due or which may become due or to which Grantor may now or hereafter (including any income of any nature coming due during any redemption period) become entitled to or may make demand or claim for, arising or issuing from or out of the Leases or from or out of the Property or any part thereof, including but not limited to, minimum rents, additional rents, percentage rents, parking or common area maintenance contributions, tax and insurance contributions, deficiency rents and liquidated damages following default in any Lease, all accounts receivable and general intangibles related to the operation of the Property and any business operated thereon by Grantor and all proceeds thereof, and all proceeds payable under any policy of insurance covering loss of rents resulting from untenability caused by destruction or damage to the Property, together with any and all rights and claims of any kind which Grantor may have against any tenant under the Leases or any subtenants or occupants of the Property (all such monies, rights and claims described in this paragraph being hereinafter called "Cash Collateral"), excepting therefrom, any sums which by the express provisions of any of the Leases are payable directly to any governmental authority or to any other person, firm or corporation other than the landlord under the Leases;

**Together With** all of Grantor's interest in and to all contracts and general intangibles relating to the Property and/or the construction of improvements thereon, including without limitation, any and all construction contracts, architect contracts and plans and specifications created thereunder, development contracts, and property management contracts;

**Together With** all additions, accessions, replacements, substitutions, proceeds, and products of the Property and related collateral described herein;

**Together With** all books and records pertaining to any and all of the Property and related collateral, including records relating to tenants under any Leases and the qualifications of

such tenants and any certificates, vouchers, and other documents in any way related thereto and records relating to the application and allocation of any federal, state, or local tax credits or benefits, and including computer-readable memory and any computer hardware or software necessary to access and process such memory;

**Subject, However,** to a license hereby granted by Beneficiary to Grantor, but limited as hereinafter provided, to collect and receive all of the Cash Collateral.

The entire estate, property, and interest hereby conveyed to Trustee may hereafter be referred to as the "Trust Estate."

#### **FOR THE PURPOSE OF SECURING:**

1. Payment, performance and observance by Grantor of all of the covenants and conditions in the Loan Agreement between Grantor and Beneficiary dated as of May 27, 2016 (the "Loan Agreement") and any and all modifications, extensions and renewals thereof. Reference to said Loan Agreement is hereby made to the same extent as if it was set forth in full herein.

2. Payment of indebtedness (the "Loan") in the total principal amount of \$2,400,000 with interest thereon, evidenced by a Promissory Note dated May 27, 2016, in the amount of \$2,400,000 (the "Note") with a maturity date of May 27, 2041, subject to mandatory prepayment under the terms of the Note on the reset dates described therein, and any and all modifications, extensions and renewals thereof.

3. Payment of all sums which may become due from Grantor or advances by Beneficiary or its successor, with interest thereon at the rate set forth herein, which include but are not limited to, fire and other hazard insurance and taxes upon the real property herein described, according to the terms of this Deed of Trust; payment by the Grantor of all attorney fees and costs incurred by the Trustee or Beneficiary in foreclosing this Deed of Trust or realizing upon any of the collateral for the obligations which this Deed of Trust secures; payment by Grantor of all attorney fees and costs incurred by Trustee or Beneficiary in defending the priority or validity of this Deed of Trust or the title to the Property; payment by Grantor of all sums advanced by Beneficiary to or on behalf of Grantor for the purpose of clearing encumbrances or defects from the title to the Property described in this Deed of Trust (other than any Permitted Encumbrances unless otherwise provided in this Deed of Trust) where Beneficiary, in good faith, believes such encumbrances to be superior to the lien of the Deed of Trust, including, without limitation, payment of ad valorem taxes and mechanics' or materialmen's liens which may have gained priority over the lien of this Deed of Trust; payment by Grantor of all attorney fees and costs incurred by Trustee or Beneficiary in any bankruptcy proceedings or any reorganization or arrangement proceeding under the Bankruptcy Act affecting Grantor or this Deed of Trust, and payment of all other sums advanced by Beneficiary to protect the Trust Estate, with interest thereon at the rate set forth herein.

4. Payment and performance of all of the obligations of Grantor under the Loan Documents (as defined below).

Wherever the term "Loan Documents" is used herein, it shall mean the Loan Agreement, the Note, this Deed of Trust, and all other Related Documents (as defined in the Loan Agreement). The interest rate, payment terms and/or the balance due under the Loan Documents, and the indebtedness evidenced thereby may be indexed, adjusted, renewed, or renegotiated without affecting the priority of this Deed of Trust.

## **ARTICLE 1 COVENANTS AND AGREEMENTS OF GRANTOR**

Grantor hereby covenants and agrees:

**1.1     Maintenance of the Property.** The Property shall be maintained in good condition at all times. Grantor shall promptly make all necessary repairs, replacements, and renewals (subject to reasonable wear and tear) so that the condition of the Property shall be maintained. Grantor shall not commit or permit any waste on the Property. Grantor shall comply with all laws, ordinances, regulations, and private restrictions affecting the Property. To the extent that the Property constitutes commercial property, Grantor shall operate the Property in such manner as to prevent deterioration of the land and improvements including fences, except for reasonable wear and tear from proper use. Grantor shall not demolish or remove any improvements from the Property without the written consent of Beneficiary, other than as may be required for Tenant improvements, remodeling, and maintenance in the ordinary course of business. Grantor shall not consent to, nor affirmatively seek to accomplish in any way, any subdivision of the Property, any partition of the Property, including without limitation any partition under ORS Chapter 105, or any zoning change or variance affecting the Property without the prior written consent of the Beneficiary.

**1.2     Required Insurance.**

(a) Grantor will, at its expense, keep the Property adequately insured at all times against such risks as are customarily insured against by entities engaged in similar businesses. Without limiting the foregoing, Grantor will (i) keep the Property fully insured against fire, theft and extended coverage risks (all hazards included within an ISO Special Form Policy, formerly known as "all risks coverage") and, if the Property is determined to be in a flood plain or flood prone area, flood insurance, with such insurance to be in an amount sufficient to prevent Grantor or Beneficiary from becoming a co-insurer of any partial loss under applicable insurance policies and in any event not less than 100 percent of the full replacement value (actual replacement value without deduction for physical depreciation, but exclusive of the cost of excavation, footings, foundation and underground utilities) thereof, subject to deductibles acceptable to Beneficiary; (ii) maintain all such workers' compensation or similar insurance as may be required by law and cause all contractors working on the Property to do the same; (iii) maintain rental interruption insurance coverage equal to or greater than six months of income from the Property; (iv) maintain personal property insurance in an amount as Beneficiary shall reasonably request; and (v) maintain general public liability insurance in respect of the Property against claims for personal and bodily injury, death, or property damage occurring in or about the Property, and liability insurance covering the operations of Grantor conducted on or about the Property. All policies of liability insurance shall be in amounts as are reasonably acceptable to Beneficiary, shall be written on an "occurrence" basis, and shall name Beneficiary as an

additional insured. Grantor shall also cause any contractor working on the Property to maintain comparable liability insurance as required of Grantor in this Section. All policies of property insurance shall have attached thereto the standard form of mortgage clause, without contribution, in favor of Beneficiary. All policies of insurance shall be placed with insurance companies acceptable to Beneficiary and shall be delivered to and be held by Beneficiary, which policies shall provide that no cancellation, modification, termination, or lapse thereof shall be effective until at least 30 days after receipt by Beneficiary of written notice thereof. This Deed of Trust shall operate as an assignment to Beneficiary of said policies, whether delivered or not.

(b) Grantor shall provide evidence of fully paid insurance at least 15 days prior to the expiration date of any insurance policy. Upon the failure of Grantor to provide the aforesaid insurance, Beneficiary shall have the option (but not the duty) to procure and maintain such insurance or a Beneficiary interest policy without notice to Grantor. Any sums so expended by Beneficiary shall at once become indebtedness owing from Grantor to Beneficiary and shall immediately become due and payable by Grantor with interest thereon at the Default Rate set forth in the Loan Agreement. The following notice is given pursuant to ORS 746.201:

#### **WARNING**

**Unless Grantor provides Beneficiary with evidence of the insurance coverage as required herein, Beneficiary may purchase insurance at Grantor's expense to protect Beneficiary's interest. This insurance may, but need not, also protect Grantor's interest. If the collateral becomes damaged, the coverage Beneficiary purchases may not pay any claim Grantor makes or any claim made against Grantor. Grantor may later cancel this coverage by providing evidence that Grantor has obtained property coverage elsewhere.**

**Grantor is responsible for the cost of any insurance purchased by Beneficiary. The cost of this insurance may be added to the indebtedness secured hereby. If the cost is added to the indebtedness secured hereby, the interest rate on the indebtedness secured hereby will apply to this added amount. The effective date of coverage may be the date the prior coverage lapsed or the date Grantor failed to provide proof of coverage.**

**The coverage Beneficiary purchases may be considerably more expensive than insurance Grantor can obtain on Grantor's own and may not satisfy any need for property damage coverage or any mandatory liability insurance requirements imposed by applicable law.**

If Beneficiary acquires title to the Property by foreclosure proceedings or otherwise, any unearned premiums on any hazard insurance covering the Property is hereby assigned to and shall belong to Beneficiary. If at any time during the term of this Deed of Trust, any insurance policies shall be cancelled and returned premiums available, these returned premiums shall be retained by Beneficiary to the extent required to reimburse Beneficiary for any sums advanced

by Beneficiary to purchase insurance required by this section and the balance may be used by Beneficiary to satisfy any other defaults by Grantor hereunder. Any rights of Beneficiary to any insurance proceeds shall in no way be affected or impaired by reason of the fact that Beneficiary may have instituted foreclosure proceedings hereunder.

### **1.3 Distribution of Insurance Proceeds; Restoration.**

(a) In the event of a loss to the Property, all insurance proceeds and rights of action related to the loss are hereby assigned to Beneficiary as security for all of Grantor's obligations under the Loan Documents. Grantor agrees to execute such further assignments to such proceeds and rights of action as Beneficiary may require. Grantor shall give immediate written notice to Beneficiary, and Beneficiary may, but is not obligated to, make proof of loss. At its option, in its own name, Beneficiary shall be entitled to commence, appear in and prosecute any action or proceedings or to make any compromise or settlement in connection with any such loss, which shall be binding on Grantor and Beneficiary jointly. Each insurance carrier is hereby authorized and directed to make payment for such loss to Beneficiary. Beneficiary's right to payment of insurance proceeds shall exist whether or not any such loss results in any impairment to the security of Beneficiary. The payment to Beneficiary of such insurance proceeds shall not cure or waive any default or notice of default hereunder. Notwithstanding such loss, all payments under the Note and the other Loan Documents shall be made without reduction, modification or interruption and all applicable terms and conditions of this Deed of Trust shall be applicable to Grantor without modification or interruption.

(b) If Grantor elects to restore and repair the Property after a loss, any proceeds collected ("Proceeds") under any casualty insurance policy described in this Deed of Trust shall be held by Beneficiary in a bank-controlled account and disbursed to Grantor as provided below, but only upon fulfillment of each of the following conditions ("Restoration Conditions"): (1) Grantor shall have demonstrated to Beneficiary's reasonable satisfaction that the Proceeds, together with any Shortfall Funds (described below) will be adequate to repair or replace the improvements and to restore the value of the Property, within a time period reasonably determined by Beneficiary, to at least the value it had immediately prior to sustaining the damage giving rise to the Proceeds; (2) to the extent that the Proceeds are insufficient to accomplish the restoration required above, Grantor shall have delivered funds ("Shortfall Funds") in the amount of such shortfall, which funds shall be assigned to Beneficiary as security for Grantor's obligations under the Loan Documents and held and disbursed in the same manner as the Proceeds; (3) Grantor shall have executed such documents as Beneficiary requires to evidence and secure Grantor's obligation to use all amounts disbursed for the diligent restoration of the Property; and (4) no Event of Default shall remain uncured.

(c) Any Proceeds and Shortfall Funds shall be held by Beneficiary and disbursed in accordance with the provisions of this Deed of Trust and all other disbursement provisions then customarily required by Beneficiary. To the extent the Proceeds include "business interruption" or similar coverage intended to provide funds to Grantor to rent other premises to carry on its educational program while the Property is restored or repaired, Beneficiary will disburse proceeds to Grantor for that purpose up to the amount of the insurance proceeds provided for that purpose. Any amounts remaining undisbursed following completion of such restoration shall be returned to Grantor up to the amount of any Shortfall Funds

deposited by Grantor, and any other amounts remaining shall either be paid to Grantor or applied, at Beneficiary's direction, against any obligations to Beneficiary that are secured by a lien on the Property, as Beneficiary elects in its sole discretion.

(d) Notwithstanding the foregoing, in the event the Restoration Conditions are satisfied and the amount of loss is less than \$500,000, Beneficiary will permit Grantor to hold and disburse the Proceeds and any Shortfall Funds to restore and repair the Property. Grantor shall repair or replace the improvements and restore the value of the Property, within a time period reasonably determined by Beneficiary, to at least the value it had prior to the loss.

(e) In the event (i) Grantor fails to fulfill the Restoration Conditions, (ii) Grantor does not elect to restore or repair the Property, or (iii) the Proceeds remain unexpended for 180 days after Beneficiary's receipt of the Proceeds, the proceeds shall be paid directly to Beneficiary and applied against the outstanding balance of principal, interest and other charges owing (regardless of whether then payable) under the Note, the other Loan Documents and this Deed of Trust. Should said proceeds exceed such balance owing, any such excess shall be paid to Grantor. Should said proceeds be less than such balance owing, the deficiency shall be paid by Grantor to Beneficiary within 60 days of demand by Beneficiary.

**1.4 Assignment of Policies Upon Foreclosure.** In the event of foreclosure of this Deed of Trust or other transfer of title or assignment of the Trust Estate in extinguishment, in whole or in part, of the debt secured hereby, all right, title, and interest of Grantor in and to all policies of insurance required by Section 1.2 shall inure to the benefit of and pass to the successor in interest to Grantor or the purchaser or grantee of the Trust Estate.

**1.5 Indemnification; Subrogation; Waiver of Offset.**

(a) If Beneficiary is made a party defendant to any litigation concerning this Deed of Trust or the Trust Estate or any part thereof or interest therein, or the occupancy thereof by Grantor, then Grantor shall indemnify, defend, and hold Beneficiary and its directors, officers, employees, agents, and representatives (hereafter referred to as the "Indemnitees") harmless from all liability, loss, cost, or damage, by reason of said litigation, including reasonable attorney's fees and expenses incurred by Beneficiary in any such litigation, whether or not any such litigation is prosecuted to judgment, except to the extent such loss was caused solely and directly by the gross negligence or willful misconduct of an Indemnatee.

(b) Grantor waives any and all right to claim or recover against Beneficiary, its officers, employees, agents, and representatives, for loss of or damage to Grantor, the Trust Estate, Grantor's property, or the property of others under Grantor's control from any cause insured against or required to be insured against by the provisions of this Deed of Trust.

(c) All sums payable by Grantor hereunder shall be paid without notice, demand, counterclaim, setoff, deduction, or defense and without abatement, suspension, deferment, diminution, or reduction; and the obligations and liabilities of Grantor hereunder shall in no way be released, discharged, or otherwise affected (except as expressly provided herein) by reason of (i) any damage to or destruction of or any condemnation or similar taking of the Trust Estate or any part thereof; (ii) any restriction or prevention of or interference with any use of the



Trust Estate or any part thereof; (iii) any title defect or encumbrance or any eviction from the Property or the Improvements or any part thereof by title paramount or otherwise; (iv) any bankruptcy, insolvency, reorganization, composition, adjustment, dissolution, liquidation, or other like proceeding relating to Beneficiary, or any action taken with respect to this Deed of Trust by any trustee or receiver of Beneficiary, or by any court, in any such proceeding; (v) any claim which Grantor has or might have against Beneficiary; (vi) any default or failure on the part of Beneficiary to perform or comply with any of the terms hereof or of any other agreement with Grantor; or (vii) any other occurrence whatsoever, whether similar or dissimilar to the foregoing and whether or not Grantor shall have notice or knowledge of any of the foregoing. Except as expressly provided herein, Grantor waives all rights now or hereafter conferred by statute or otherwise to any abatement, suspension, deferment, diminution, or reduction of any sum secured hereby and payable by Grantor.

**1.6 Taxes.** Grantor shall pay, prior to delinquency, all of the following (collectively, the "Impositions"): (a) all general and special real property taxes if not abated or otherwise exempted and assessments due and owing on the Property; (b) all other due and owing taxes and assessments and charges of every kind that are assessed upon the Property (or upon the owner and/or operator of the Property) and that create or may create a lien upon the Property (or upon any personal property or fixtures used in connection with the Property), including without limitation non-governmental levies and assessments pursuant to applicable covenants, conditions or restrictions; and (c) all license fees, taxes and assessments imposed on Beneficiary which are measured by or based upon (in whole or in part) the amount of the obligations secured by the Property. If permitted by law, Grantor may pay any Imposition in installments (together with any accrued interest). Immediately upon request of Beneficiary, Grantor shall establish with Beneficiary an escrow account or other impound in form and substance satisfactory to Beneficiary with respect to any Imposition (whether or not delinquent) and thereafter commence monthly deposits thereto in the amount specified by Beneficiary as necessary to pay such Impositions from time to time when due and payable. Upon written demand by Beneficiary from time to time, Grantor shall (i) deliver to Beneficiary within 30 days following the due date of any Imposition, evidence of payment reasonably satisfactory to Beneficiary, and (ii) furnish to Beneficiary a written contract with a tax reporting service for the Property of a type and duration and with an independent reporting service reasonably satisfactory to Beneficiary. Notwithstanding the foregoing, Grantor may withhold payment of any Imposition in connection with a good faith dispute over the obligation to pay, so long as Beneficiary's interest in the Trust Estate is not jeopardized. If a lien arises or is filed, Grantor shall within 15 days after the lien arises or, if a lien is filed, within 15 days after Grantor has notice of the filing, secure the discharge of the lien or deposit with Beneficiary cash or a sufficient corporate surety bond or other security satisfactory to Beneficiary in an amount sufficient to discharge the lien plus any costs, attorney fees, or other charges that could accrue as a result of a foreclosure or sale under the lien.

**1.7 Liens.** Grantor shall maintain the Trust Estate free of any liens having priority over or equal to the interest of Beneficiary under this Deed of Trust except for "Permitted Encumbrances" as defined in Section 1.11, the lien of taxes and assessments not delinquent, and except as hereinafter otherwise provided. Grantor may withhold payment of any tax, assessment, or claim in connection with a good faith dispute over the obligation to pay, so long as Beneficiary's interest in the Trust Estate is not jeopardized. If a lien arises or is filed as a result

of nonpayment, Grantor shall within 15 days after the lien arises or, if a lien is filed, within 15 days after Grantor has notice of the filing, secure the discharge of the lien or deposit with Beneficiary cash or a sufficient corporate surety bond or other security satisfactory to Beneficiary in an amount sufficient to discharge the lien plus any costs, attorney fees, or other charges that could accrue as a result of a foreclosure or sale under the lien.

**1.8 Reserves.** After the occurrence of, and during the continuance of, an Event of Default, the Beneficiary may require Grantor to maintain reserves for payment of taxes (if any) (including special assessments and other charges against the Trust Estate by governmental or quasi-governmental bodies) or premiums on property insurance or both. The reserves shall be created by payment each month to Beneficiary of an amount determined by Beneficiary to be sufficient to produce by the date they are due amounts equal to the estimated taxes and insurance premiums to be paid. If at the time that payments are to be made the reserve for either taxes or insurance premiums is insufficient, Grantor shall upon demand pay such additional sum as Beneficiary shall determine to be necessary to cover the required payment. If Grantor desires to carry a package plan of insurance that includes coverage in addition to that required under this Deed of Trust, Beneficiary, if allowed by law, may at its option establish and administer a reserve for that purpose. In such event the premium attributable to the required insurance coverage shall be quoted separately, and Beneficiary may permit Grantor to furnish a certificate of insurance rather than deposit the policy as required above. If at any time Beneficiary holds an insufficient amount in the insurance reserve to cover the premium for the entire package policy, Beneficiary may, at its discretion, pay only that portion of the premium attributable to the required insurance coverage. If the blanket policy does not permit such partial payment, Beneficiary may use the reserve funds for the premium on a new, separate policy providing the required insurance coverage and allow the package policy to lapse. Beneficiary shall not charge a service charge for collecting reserves and paying taxes and insurance premiums.

**1.9 Expenditures by Beneficiary.** If Grantor shall fail to comply with any provision of this Deed of Trust, Beneficiary may, at its option, on Grantor's behalf take the required action and any amount that it expends in so doing shall be added to the indebtedness secured hereby. Amounts so added shall be payable on demand with interest at the rate specified in the Loan Agreement as the Default Rate (the "Default Rate") from the date of expenditure. The rights provided for in this section shall be in addition to any other rights or any remedies to which Beneficiary may be entitled on account of the default, and Beneficiary shall not by taking the required action cure the default so as to bar it from any remedy that it otherwise would have had.

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

**1.11 Warranty; Defense of Title.** Grantor warrants that Grantor holds a fee title interest in the Property and the interest of Beneficiary under this Deed of Trust is free of all encumbrances having priority over or equal to such interest other than the encumbrances described on Exhibit B attached hereto (hereinafter referred to as "Permitted Encumbrances"). Grantor warrants and will forever defend the title against the claims, other than Permitted

Encumbrances, of all persons. Grantor shall pay any sums and do any other acts necessary to prevent a default or prevent any action or condition which with the lapse of time, the giving of notice, or any other action of a creditor, would be a default or enable any creditor to declare a default under or foreclose any Permitted Encumbrance. In the event any action or proceeding is commenced that questions Grantor's title or the interest of Beneficiary under this Deed of Trust, including any proceeding to terminate Grantor's title to the Property, Grantor shall defend the action at Grantor's expense.

**1.12 Condemnation.** In the event any of the Real Property, or any part thereof, shall be damaged or taken by reason of any public improvement or condemnation proceedings, Grantor agrees that such proceeds or awards shall be payable to Beneficiary to be applied against the outstanding balance of principal, interest and other charges owing (regardless of whether then payable) under the Note, the other Loan Documents and this Deed of Trust. Should said proceeds exceed said balance owing, any such excess shall be paid to Grantor. Should said proceeds be less than such balance owing, the deficiency shall be paid by Grantor to Beneficiary within 60 days of demand by Beneficiary. All such proceeds and rights of action are hereby assigned to Beneficiary, and Beneficiary shall be entitled to commence, appear in and prosecute any action or proceedings or to make any compromise or settlement in connection with any such taking or damage. Grantor agrees to execute such further assignments of any such proceeds and rights of action as Beneficiary may require.

**1.13 Imposition of Tax.** The following shall constitute taxes to which this paragraph applies: (a) a specific tax upon deeds of trust or upon all or any part of the indebtedness secured by a deed of trust; (b) a specific tax on the owner of property covered by a deed of trust which the taxpayer is authorized or required to deduct from payments on the deed of trust; (c) a tax on premises covered by a deed of trust chargeable against Beneficiary under the deed of trust or the holder of the note secured; and (d) a specific tax on all or any portion of the indebtedness secured hereby or on payments of principal and interest made by a Grantor under a deed of trust. If any federal, state, or local tax to which this paragraph applies is enacted subsequent to the date of this Deed of Trust, this shall have the same effect as a default and Beneficiary may exercise any or all of the remedies available to it in the event of a default under this Deed of Trust unless the following conditions are met: (i) Grantor may lawfully pay the tax or charge imposed without causing any resulting economic disadvantage or increase of tax to Beneficiary or Trustee; and (ii) Grantor pays the tax or charge within 30 days after notice from Beneficiary that the tax law has been enacted. The Grantor's performance under this Section shall be subject to Grantor's rights of contest under Section 1.6.

**1.14 Inspections.** Beneficiary, or its agents, representatives or workmen, are authorized to enter at any reasonable time upon or in any part of the Property for the purpose of inspecting the same and for the purpose of performing any of the acts it is authorized to perform under the terms of any of the Loan Documents.

**1.15 No Waiver.** By accepting payment of any obligation herein mentioned after its due date, Beneficiary does not waive its right either to require prompt payment when due of all other obligations herein mentioned or to declare default for failure so to pay.

**1.16 Accounting.** Grantor will keep and maintain or will cause to be kept and maintained in accordance with sound accounting practice accurate and proper books of record and account relating to the Property. Grantor shall permit Beneficiary to examine the books of account and other records of Grantor, to discuss the affairs, finances and accounts of Grantor and to be informed as to the same by Grantor, all at such reasonable times and intervals as Beneficiary may desire. At the request of Beneficiary, Grantor will, at its own cost and expense, furnish to Beneficiary annual financial statements of Grantor and copies of the balance sheet and operating statements relating to the Property for such year, in reasonable detail and in form and substance satisfactory to Beneficiary. In the event Grantor fails to furnish any of the financial statements hereinabove required, Beneficiary may cause an audit to be made of Grantor's books and records, at Grantor's sole cost and expense.

**1.17 Repayment of Advances.** Upon receipt of written notice, Grantor shall repay immediately all sums expended or advanced under this Deed of Trust by or on behalf of Beneficiary or Trustee, with interest from the date of such advance or expenditure at the Default Rate, and the repayment thereof shall be secured hereby. Failure to repay such expenditure or advance and interest thereon within 15 days of such written notice will, at Beneficiary's option, constitute an event of default hereunder; or Beneficiary may, at its option, commence an action against Grantor for the recovery of such expenditure or advance and interest thereon, and in such event Grantor agrees to pay, in addition to the amount of such expenditure or advance, all costs and expenses incurred in such action, together with a reasonable attorney's fee at trial and on appeal.

**1.18 Hazardous Substances.**

(a) Grantor represents and warrants to Beneficiary that to the best of Grantor's knowledge and except as otherwise set forth in the environmental reports previously delivered to Beneficiary, no hazardous or toxic waste or substances are being stored on the Property or any adjacent property nor have any such waste or substances been stored or used on the Property or any adjacent property prior to Grantor's ownership, possession or control of the Property, except in compliance with applicable law and as previously disclosed in writing to Beneficiary. Grantor agrees to provide written notice to Beneficiary immediately upon Grantor becoming aware that the Property or any adjacent property is being or has been contaminated with hazardous or toxic waste or substances. Grantor will not cause nor permit any activities on the Property which directly or indirectly could result in the Property or any other property becoming contaminated with hazardous or toxic waste or substances. For purposes of this Deed of Trust, the term "hazardous or toxic waste or substances" means any substance or material defined or designated as hazardous or toxic wastes, hazardous or toxic material, a hazardous, toxic or radioactive substance or other similar term by any applicable federal, state or local statute, regulation or ordinance now or hereafter in effect.

(b) Grantor will indemnify and hold Beneficiary harmless from and against any and all claims, demands, damages, costs, expenses, losses, liens, liabilities, penalties, fines and lawsuits and other proceedings, (including attorneys' fees), arising directly or indirectly from or out of, or in any way connected with (i) the inaccuracy of the certifications contained herein or in any other Loan Document, (ii) any activities on the Property during Grantor's ownership, possession or control of the Property which directly or indirectly result in the Property or any

other property becoming contaminated with hazardous or toxic waste or substances, (iii) the discovery of hazardous or toxic waste or substances on the Property, or the discovery of hazardous or toxic waste or substances on any other property caused by activities on the Property, or (iv) the clean-up of hazardous or toxic waste or substances from the Property or the clean-up of hazardous or toxic waste or substances from any other property caused by activities on the Property. Grantor acknowledges that it will be solely responsible for all costs and expenses relating to the clean-up of hazardous or toxic waste or substances from the Property or from any other properties which become contaminated with hazardous or toxic waste or substances as a result of the contamination of or activities on the Property.

(c) Beneficiary and its representatives may enter the Property at any reasonable time for the purpose of conducting an environmental audit, committing only such injury to the Property as may be necessary to conduct the environmental audit. Grantor shall cooperate in all respects in the performance of the audit. Grantor shall pay the costs of any environmental audit if either a default exists under this Deed of Trust at the time Beneficiary arranges to have the audit performed or the audit reveals a default pertaining to hazardous substances. If Grantor refuses to permit Beneficiary or its representatives to conduct an environmental audit on the Property, Beneficiary may specifically enforce performance of this provision.

(d) The preceding shall not prohibit the ordinary use of hazardous or toxic waste or substances normally used in the operation or maintenance of properties similar to the Project, provided the amount of such hazardous or toxic waste or substances does not exceed the quantity necessary for the normal operation and maintenance of the Property in the ordinary course of business and the use, storage and disposal of such hazardous or toxic waste or substances strictly complies with all applicable environmental laws.

#### **1.19 Access Laws.**

(a) Except for non-compliance permitted by law due to changes in Access Laws (defined below) subsequent to the construction of certain buildings and improvements, Grantor agrees that the Property shall at all times comply with the applicable requirements of the Americans with Disabilities Act of 1990 (including, without limitation, the Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities); the Fair Housing Amendments Act of 1988; all other federal and state and local laws and ordinances related to disabled access; and all rules, regulations, and orders issued pursuant thereto; all as amended from time to time (collectively the "Access Laws"). At any time Beneficiary may require Grantor to provide a certificate of compliance with the Access Laws and indemnification in a form reasonably acceptable to Beneficiary. Beneficiary may also require a certificate of compliance with the Access Laws from an architect, engineer, or other third party acceptable to Beneficiary.

(b) Notwithstanding any provisions set forth herein or in any other Loan Document, Grantor shall not alter or permit any tenant or other person to alter the Property in any manner which would increase Grantor's responsibilities for compliance with the Access Laws without the prior written approval of Beneficiary. In connection with any such approval,

Beneficiary may require a certificate of compliance with the Access Laws from an architect, engineer, or other person acceptable to Beneficiary.

(c) Grantor agrees to give prompt notice to Beneficiary of any claims of violations of any Access Laws and of the commencement of any proceedings or investigations which relate to compliance with any of the Access Laws.

(d) Grantor shall indemnify and hold harmless Beneficiary from and against any and all claims, demands, damages, costs, expenses, losses, liabilities, penalties, fines, and other proceedings, including without limitation reasonable attorney fees and expenses arising directly or indirectly from or out of or in any way connected with any failure of the Property to comply with any of the Access Laws. The obligations and liabilities of Grantor under this section shall survive any termination, satisfaction, assignment, judicial or nonjudicial foreclosure, or delivery of a deed in lieu of foreclosure.

**1.20 Wetlands.** Grantor hereby covenants, represents, and warrants that, (a) to the best of Grantor's knowledge, it is in compliance with all federal, state, and local laws relating to "Wetlands" as defined in 33 C.F.R. Section 328.3, as hereinafter amended, and in any comparable state and/or local law, statute or ordinance, rule or regulation pertaining to such Wetlands, and (b) Grantor shall not perform or cause to be performed any excavation or fill activity or other acts which would in any way destroy, eliminate, alter, obstruct, interfere with or otherwise affect any Wetlands.

## **ARTICLE 2 SECURITY AGREEMENT**

**2.1 Creation of Security Interest.** Grantor hereby grants to Beneficiary a security interest in (a) the Personal Property, (b) the Cash Collateral, and (c) any other item or portion of the Trust Estate in which a security interest may be granted under the Oregon Uniform Commercial Code for the purpose of securing all obligations of Grantor contained in any of the Loan Documents. Grantor hereby consents to the filing by Beneficiary of one or more financing statements and renewals and amendments thereof pursuant to the Uniform Commercial Code of Oregon in form satisfactory to Beneficiary, and will pay the cost of filing the same in all public offices wherever filing is deemed by Beneficiary to be necessary or desirable.

**2.2 Warranties, Representations, and Covenants of Grantor.** Grantor hereby warrants, represents and covenants as follows:

(a) Except for the security interest granted hereby, Grantor is, and as to portions of the Trust Estate to be acquired after the date hereof will be, the sole owner of the Trust Estate, free from any adverse lien, security interest, encumbrance or adverse claims thereon of any kind whatsoever, other than the Permitted Encumbrances. Grantor will notify Beneficiary of, and will defend the Trust Estate against, all claims and demands of all persons at any time claiming the same or any interest therein.

(b) Grantor will not lease, sell, convey, or in any manner transfer the Personal Property, the Cash Collateral, or any other portion of the Trust Estate without the prior written consent of Beneficiary unless otherwise permitted by this Trust Deed or by the Loan Agreement.

(c) The Personal Property is not used or bought for personal, family or household purposes.

(d) The Personal Property will be kept on or at the Property and Grantor will not remove the Personal Property from the Property without the prior written consent of Beneficiary, except such portions or items of Personal Property which are consumed or worn out in ordinary usage, all of which shall be promptly replaced by Grantor with an article of equal suitability owned by Grantor free and clear of any lien or security interest except for Permitted Encumbrances or such as may be approved in writing by Beneficiary.

(e) Grantor maintains a place of business in the State of Oregon, and Grantor will immediately notify Beneficiary in writing of any change in its place of business.

(f) At the request of Beneficiary, Grantor hereby authorizes Beneficiary to file one or more financing statements and renewals and amendments thereof pursuant to the Uniform Commercial Code of Oregon in form satisfactory to Beneficiary, and will pay the cost of filing the same in all public offices wherever filing is deemed by Beneficiary to be necessary or desirable.

(g) All covenants and obligations of Grantor contained herein relating to the Trust Estate shall be deemed to apply to the Personal Property and the Cash Collateral, whether or not expressly referred to herein.

(h) This Deed of Trust constitutes a security agreement and a fixture filing as those terms are used in the Uniform Commercial Code of Oregon.

### **ARTICLE 3 ASSIGNMENT OF LEASES AND RENTS**

**3.1 Assignment.** Grantor hereby assigns to Beneficiary and grants to Beneficiary a security interest in all Leases as security for performance of all obligations secured by this Deed of Trust.

**3.2 Representations and Warranties.** Grantor represents and warrants as follows:

(a) Grantor has good right, title and interest in and to the Leases and good right to assign the same, and that no other person has any right, title or interest therein.

(b) Grantor has duly and punctually performed in all material respects all and singular the terms, covenants, conditions and warranties of the Leases on Grantor's part to be kept, observed and performed.

(c) The existing Leases, if any, are valid and are in full force and effect.

(d) Grantor has not previously sold, assigned, transferred, mortgaged, pledged or granted a security interest in the Cash Collateral, whether now due or hereafter to become due.

(e) None of the Cash Collateral due and issuing from the Property or from any part thereof has been collected for any period in excess of one month from the date hereof (other than the collection of a security deposit and the last month's rent), and that payment of any of same has not otherwise been anticipated, waived, released, discounted, set off or otherwise discharged or compromised.

(f) Grantor has not received any funds or deposits from any tenant for which credit has not already been made on account of accrued Cash Collateral.

(g) None of the tenants under any existing Leases is in default of any of the terms thereof, except as disclosed to Beneficiary in writing.

**3.3 Covenants of Performance.** Grantor covenants and agrees as follows:

(a) Grantor shall observe, perform, and discharge, duly and punctually, all of the obligations of the Leases on the part of Grantor to be kept, observed, and performed; and shall give prompt notice to Beneficiary of any failure on the part of Grantor to observe, perform, and discharge same.

(b) Grantor shall enforce the performance of each and every obligation, term, covenant, condition, and agreement in the Leases by any tenant to be performed, and shall notify Beneficiary of the occurrence of any material default under any commercial Lease.

(c) Grantor shall appear in and defend any action or proceeding arising under, occurring out of, or in any manner connected with the Leases or the obligations, duties, or liabilities of Grantor or any tenant thereunder at the expense of Grantor.

**3.4 Prior Approval for Actions Affecting Leases.** Grantor, without the prior written consent of Beneficiary, further covenants and agrees as follows:

(a) Grantor shall not receive or collect any Cash Collateral (except for reasonably required security deposits and personal incidental funds for some assisted living residents) from any present or future tenant of the Property or any part thereof for a period of more than three months in advance (whether in cash or by promissory note) nor pledge, transfer, mortgage, grant a security interest in, or otherwise encumber or assign future payments of Cash Collateral.

(b) Grantor shall not waive, forgive, excuse, condone, discount, set off, compromise, or in any manner release or discharge any tenant under any Leases having a term in excess of one year or from any obligations, covenants, conditions, and agreements by such tenant to be kept, observed, and performed, including the obligation to pay the Cash Collateral thereunder in the manner and at the place and time specified therein.

(c) Grantor shall not cancel, terminate, or consent to any surrender of any of the Leases having a term in excess of one year, nor commence any action of ejectment or any summary proceedings for dispossession of the tenant under any such Leases, nor exercise any right of recapture of the Property provided in any such Leases, nor modify or in any way alter the terms thereof.



**3.5 Assignment Absolute; License to Collect Cash Collateral.** This assignment of Leases is absolute and effective immediately. Notwithstanding the foregoing, as long as there shall exist no default by Grantor in the payment of any indebtedness secured hereby or in the observance and performance of any other obligation, term, covenant or condition or warranty herein or in the other Loan Documents or contained in the Leases, Grantor shall have the right under a license granted hereby (but limited as provided in this section) to collect, but not prior to accrual, all of the Cash Collateral arising from or out of said Leases or any renewals, extensions and replacements thereof, or from or out of the Property or any part thereof. Grantor shall receive such Cash Collateral and so long as no Event of Default has occurred and is continuing, shall be entitled to apply the Cash Collateral to payment of its operating expenses.

**3.6 Right to Collect.** Upon the occurrence of an Event of Default, Beneficiary may, at its option, without notice to Grantor, receive and collect all Cash Collateral as it becomes due, from the Property and under any and all Leases of all or any part of the Property. Beneficiary shall thereafter continue to receive and collect all Cash Collateral, as long as such Event of Default shall exist, and during the pendency of any foreclosure proceedings, and if there is a deficiency, during any redemption period.

**3.7 Attorney-in-Fact.** Grantor hereby irrevocably appoints Beneficiary its true and lawful attorney with full power of substitution and with full power for Beneficiary in its own name and capacity or in the name and capacity of Grantor, from and after any Event of Default not having been cured, to demand, collect, receive, and give complete acquittances for any and all Cash Collateral accruing from the Property and at Beneficiary's discretion to file any claim or take any other action or proceeding and make any settlement of any claims, in its own name or otherwise, which Beneficiary may deem necessary or desirable in order to collect and enforce the payment of the Cash Collateral. Lessees of the Property is are hereby expressly authorized and directed to pay any and all amounts due Grantor pursuant to the Leases directly to Beneficiary or such nominee as Beneficiary may designate in writing delivered to and received by such lessees who are expressly relieved of any and all duty, liability, or obligation to Grantor in respect of all payments so made.

**3.8 Remedies.** From and after any Event of Default that has not been cured, Beneficiary is hereby vested with full power to use all measures, legal and equitable, deemed by it necessary or proper to enforce this assignment and to collect the Cash Collateral assigned hereunder, including the right of Beneficiary, its designee, or a receiver to enter upon the Property, or any part thereof, with or without force and with process of law, and take possession of all or any part of the Property together with all personal property, fixtures, documents, books, records, papers and accounts of Grantor relating thereto, and may exclude the Grantor, its agents and servants, wholly therefrom. Grantor hereby grants full power and authority to Beneficiary to exercise all rights, power and authority herein granted at any and all times after any Event of Default that has not been cured, without further notice to Grantor, with full power to use and apply all of the Cash Collateral to the payment of the costs of managing and operating the Property and of any indebtedness or liability of Grantor to Beneficiary, including but not limited to the payment of taxes, special assessments, insurance premiums, damage claims, the cost of maintaining, repairing, rebuilding and restoring the improvements on the Property or of making the same rentable, attorneys' fees incurred in connection with the enforcement of this assignment,

and of principal and interest payments due from Grantor to Beneficiary on the Loan Documents, all in such order as Beneficiary may determine according to provisions of the Loan Documents.

**3.9 Beneficiary's Liability.** Beneficiary shall be under no obligation to exercise or prosecute any of the rights or claims assigned to it hereunder or to perform or carry out any of the obligations of the lessor under any of the Leases and does not assume any of the liabilities in connection with or growing out of the covenants and agreements of Grantor in the Leases. It is further understood that this assignment shall not operate to place responsibility for the control, care, management or repair of the Property or leasehold interest therein, or parts thereof, upon Beneficiary, nor shall it operate to make Beneficiary liable for the performance of any waste of the Property by any lessee under any of the Leases or any other person, or for any dangerous or defective condition of the Property, or for any negligence in the management, upkeep, repair or control of the Property resulting in loss or injury or death to any lessee, licensee, employee or stranger, or for any environmental hazard on the Property. The acceptance by Beneficiary of this assignment, with all of the rights, powers, privileges, and authority so created shall not, prior to entry upon taking possession of the Property by Beneficiary, be deemed or construed to constitute Beneficiary a "mortgagee-in-possession." Grantor hereby agrees to indemnify and hold Beneficiary harmless from any and all liability, loss, damage, or expense which Beneficiary may incur under or by reason of this assignment; or for any action taken by Beneficiary hereunder; or by reason or in defense of any and all claims and demands whatsoever which may be asserted against Beneficiary arising out of the Leases.

## **ARTICLE 4 DEFAULT**

**4.1 Events of Default.** Any of the following events shall be deemed an event of default hereunder ("Event of Default"):

(a) Failure to pay any installment of principal or interest under the Loan Agreement, the Note, or any other Loan Document or any other sum secured hereby when due; or

(b) The Trust Estate or any portion thereof or other interest is transferred in violation of the terms of Section 4.6 of this Deed of Trust or Grantor fails to perform any other covenant contained in this Deed of Trust; or

(c) Any representation or warranty made in this Deed of Trust shall prove to have been incorrect in any material respect as of the time when the same shall have been made; or

(d) A writ of execution or attachment or any similar process shall be issued or levied against all or any part of or interest in the Trust Estate, or any judgment involving monetary damages shall be entered against Grantor which shall become a lien on the Trust Estate or any portion thereof or interest therein and such execution, attachment or similar process or judgment is not released, bonded, satisfied, vacated or stayed within 30 days after its entry or levy; or

(e) Grantor or any guarantor of the indebtedness secured hereby as applicable shall file a voluntary petition in bankruptcy or such a petition shall be filed against Grantor or any guarantor and is not dismissed within 60 days after filing; or Grantor or any guarantor shall file any petition or answer seeking or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief for itself under any present or future federal, state, or other statute, law, or regulation relating to bankruptcy, insolvency, or other relief for debtors; or a court of competent jurisdiction shall enter an order, judgment, or decree approving a petition filed against Grantor or any guarantor seeking any such relief and such order, judgment, or decree shall remain unvacated and unstayed for an aggregate of 60 days (whether or not consecutive) from the first date of entry thereof; or

(f) Grantor or any guarantor shall seek or consent to or acquiesce in the appointment of any trustee, receiver, or liquidator of Grantor, any guarantor, or of all or any part of the Trust Estate, or of any or all of the royalties, revenues, rents, issues, or profits thereof, or any trustee, receiver, or liquidator of Grantor or any guarantor or of all or any part of the Trust Estate, or of any or all of the royalties, revenues, rents, issues, or profits thereof, shall be appointed without the consent or acquiescence of Grantor or any affected guarantor and such appointment shall remain unvacated and unstayed for an aggregate of 60 days (whether or not consecutive); or

(g) Grantor or any guarantor shall make any general assignment for the benefit of creditors, or shall admit in writing its inability to pay its debts generally as they become due; or

(h) There has occurred a breach of or default under any term, covenant, agreement, condition, provision, representation, or warranty contained in any other Loan Document (after expiration of any applicable cure period contained therein); or

(i) There has occurred a breach or default, subject to any applicable cure period, under any mortgage, trust deed, or lien on the Property that is either senior or subordinate to this Deed of Trust.

Notwithstanding the foregoing, if during any cure period Beneficiary reasonably determines that during such cure period all or any material portion of the Trust Estate will be lost, misappropriated, destroyed, or damaged or that for any other reason the value of the Trust Estate will materially decline, then Beneficiary may proceed immediately to declare that an Event of Default exists and thereafter to exercise any remedy available to it.

**4.2 Rights and Remedies on Default.** Upon the occurrence of any event of default and at any time thereafter, Beneficiary may exercise any one or more of the following rights and remedies:

(a) The right at its option by notice to Grantor to declare the entire indebtedness secured hereby immediately due and payable.

(b) With respect to all or any part of the Property, the right to foreclose by judicial foreclosure in accordance with applicable law.

(c) The right to have the Trustee sell all or any part of that Trust Estate, or any estate which forms a part of the Trust Estate, in accordance with Oregon Revised Statutes Sections 86.705 through 86.795 and the Uniform Commercial Code of the State of Oregon where applicable, at public auction to the highest bidder. Any person except Trustee may bid at the Trustee's sale. The power of sale conferred by this Deed of Trust and the law is not an exclusive remedy and when not exercised, Beneficiary may foreclose this Deed of Trust as a mortgage. The Trustee is not obligated to notify any party hereto of a pending sale under any other deed of trust or of any action or proceeding in which Grantor, Trustee, or Beneficiary shall be a party, unless such action or proceeding is brought by the Trustee.

(d) With respect to all or any part of the Trust Estate that constitutes personalty, the rights and remedies of a secured party under the Oregon Uniform Commercial Code.

(e) The right, without notice to Grantor, to terminate the license granted to Grantor to collect the Cash Collateral without taking possession, and to demand, collect, receive, sue for, attach and levy against the Cash Collateral in Beneficiary's name; to give proper receipts, releases and acquittances therefor; and after deducting all necessary and proper costs and expenses of operation and collection as determined by Beneficiary, including reasonable attorneys' fees, to apply the net proceeds thereof, together with any funds of Grantor deposited with Beneficiary, upon any indebtedness secured hereby and in such order as Beneficiary may determine. In furtherance of this right, Beneficiary may require any tenant or other user to make payments of rent or use fees directly to Beneficiary, and payments by such tenant or user to Beneficiary in response to its demand shall satisfy the obligation for which the payments are made, whether or not any proper grounds for the demand existed.

(f) The right to have a receiver appointed to take possession of any or all of the Trust Estate, with the power to protect and preserve the Trust Estate and to operate the Trust Estate preceding foreclosure or sale and apply the proceeds, over and above cost of the receivership, against the indebtedness secured hereby. The receiver may serve without bond if permitted by law. Beneficiary's right to the appointment of a receiver shall exist whether or not apparent value of the Trust Estate exceeds the indebtedness by a substantial amount. Grantor hereby irrevocably consents to the appointment of a receiver on the terms set forth herein. Employment by Beneficiary shall not disqualify a person from serving as receiver. Upon taking possession of all or any part of the Trust Estate, the receiver may:

(1) Use, operate, manage, control, and conduct business on the Trust Estate;

(2) Make expenditure for all maintenance, renewals, replacements, alterations, additions, and improvements to the Trust Estate as in its judgment are proper;

(3) Insure and reinsure the Trust Estate and all risks incidental to its possession, operation, and management of the Trust Estate;

(4) Collect the Cash Collateral and any other revenues and income from the Trust Estate and apply such sums to the expenses of use, operation, and management in

such priority as the receiver deems appropriate. Grantor shall promptly turn over to the receiver all documents, books, records, papers, and accounts, together with the amount of any deposits, rentals, and use fees from any tenant or other user. The receiver may appear in any proceeding or bring suit on Grantor's behalf, as necessary to enforce obligations of any tenant or other user, including actions for the recovery of rent and actions in forcible detainer;

(5) Cancel or terminate any Lease or agreement for any cause for which Grantor would be entitled to cancel the same;

(6) Extend or modify any Lease and make any new Lease on any portion of the Trust Estate. Any such instruments shall be binding upon Grantor and upon the purchaser or purchasers at any foreclosure sale, notwithstanding any redemption from sale, discharge, or indebtedness, satisfaction of the foreclosure decree or issuance of any certificate of sale or deed to any purchaser; or

(7) Complete any construction in progress on the Property, and in that connection, pay bills, borrow funds, employ contractors, and make any changes in plans or specifications as the receiver deems appropriate.

(8) If the revenues and income are insufficient to pay expenses, the receiver may borrow such sums as the receiver deems necessary for the purposes stated in this paragraph. The amounts borrowed shall bear interest from the date of expenditure until repaid at the same rate per annum as is accruing on such borrowing. Such sums shall become a part of the balance secured by this Deed of Trust and shall be payable by Grantor on demand.

(g) Any other right or remedy provided in this Deed of Trust, the Loan Agreement, any other Loan Documents, or under law.

**4.3 Foreclosure by Power of Sale.** Should Beneficiary elect to foreclose by exercise of the power of sale herein contained, Beneficiary shall notify Trustee and shall deposit with Trustee this Deed of Trust and the Loan Agreement and such receipts and evidence of expenditures made and secured hereby as Trustee may require.

(a) Upon receipt of such notice from Beneficiary, Trustee shall cause to be given such Notice of Default as then required by law. Trustee shall, without demand on Grantor, after lapse of such time as may then be required by law and after Notice of Sale having been given as required by law, sell the Trust Estate or any estate therein at the time and place of sale fixed by it in such Notice of Sale, either as a whole, or in separate lots or parcels or items as Trustee shall deem expedient, and in such order as it may determine, 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 such purchaser or purchasers thereof its good and sufficient 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 or facts shall be conclusive proof of the truthfulness thereof. Any person, including, without limitation, Grantor, Beneficiary or Beneficiary's assignee, may purchase at such sale.

(b) After deducting all costs, fees and expenses of Trustee and of this trust, including costs of evidence of title and reasonable counsel fees in connection with sale, Trustee

shall apply the proceeds of sale to payment of all sums expended under the terms hereof, not then repaid, with accrued interest, all other sums then secured hereby and the remainder, if any, to the person or persons legally entitled thereto.

**4.4 Application of Indebtedness Towards Purchase Price.** Upon any foreclosure sale, Beneficiary may bid for and purchase the Property, and upon compliance with the terms of sale, may hold, retain, possess and dispose of such Property at its own absolute right without further accountability. Any such purchase shall permit Beneficiary to apply to the purchase price any portion of or all sums due to Beneficiary under the Loan Documents in lieu of cash, to the amount which shall, upon distribution of the net proceeds of such sale, be payable thereon. In the event the sale proceeds from a judicial foreclosure after payment of expenses are not sufficient to satisfy all indebtedness secured hereby, Beneficiary shall be entitled to a judgment against Grantor in the amount of such deficiency.

**4.5 Sale of Personal Property.** Beneficiary shall 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 other intended disposition of the Personal Property is to be made. Reasonable notice shall mean notice given at least 10 days before the time of the sale or disposition.

**4.6 Due on Sale or Increase in Interest Rate on Sale.** Grantor agrees and acknowledges that the indebtedness evidenced by the Loan Documents are personal to Grantor, and that Grantor's personal responsibility and/or control of the Property is a material inducement to Beneficiary to agree to enter into this transaction. Any conveyance of the whole or any part of the Property, whether by deed, contract, or otherwise, lease of the same (other than a lease of any portion of the space in the improvements on the Property in the ordinary course of business without an option to purchase); any further encumbrance of the Property other than liens that constitute Permitted Encumbrances; or any transfer of capital stock, partnership interests or limited liability company interests in Grantor without Beneficiary's prior written consent shall be deemed to increase the risk of Beneficiary, and Beneficiary or other holder may declare all amounts due under the Loan Documents immediately due and payable, or, at its sole option, it may consent to such conveyance, encumbrance, or transfer of capital stock, partnership interest, or limited liability company interest in writing and may increase the interest rate under the Loan Documents, modify the terms, or impose whatever other conditions it shall deem necessary to compensate it for such increased risk. Any increase in interest shall entitle the holder to increase monthly payments on the indebtedness evidenced by the Loan Documents so as to retire the obligations within the original stipulated time. The execution and delivery by the Grantor of any joint venture agreement, partnership agreement, declaration of trust, option agreement, or other instrument whereunder any other person or corporation may become entitled, directly or indirectly, to the possession or enjoyment of the Property, or the income or other benefits derived or to be derived therefrom, shall in each case be deemed to be a conveyance or assignment of Grantor's interest in the Property for the purposes of this section, and shall require the prior written consent of Beneficiary.

**4.7 Attorney Fees.** In the event suit, action, or arbitration proceeding is instituted to enforce any of the terms of this Deed of Trust the prevailing party shall be entitled to recover from the other party such sum as the court or arbitrator may adjudge reasonable as attorney fees at trial, on any appeal, and in any bankruptcy proceeding. All reasonable expenses incurred by

Beneficiary that are necessary at any time in Beneficiary's opinion for the protection of its interest or the enforcement of its rights, including without limitation, the cost of searching records, obtaining title reports, surveyors' reports, demanding payment, attorneys' opinions, or title insurance, whether or not any court action is involved, shall become a part of the indebtedness secured hereby, payable on demand, and shall bear interest at the Default Rate from the date of expenditure until paid.

## **ARTICLE 5 MISCELLANEOUS**

**5.1 Governing Law.** This Deed of Trust shall be governed by the laws of the State of Oregon. In the event that any provision or clause of any of the Loan Documents conflicts with applicable laws, such conflicts shall not affect other provisions of such Loan Documents which can be given effect without the conflicting provision, and to this end the provisions of the Loan Documents are declared to be severable.

**5.2 Modification.** This Deed of Trust cannot be waived, changed, discharged or terminated orally, but only by an instrument in writing signed by the party against whom enforcement of any waiver, change, discharge or termination is sought.

**5.3 Inspections; Appraisals.** Beneficiary, its agents, or contractors may enter upon the Property from time to time, upon reasonable notice, to inspect or appraise the Property. If Grantor refuses to permit such inspection or appraisal, Beneficiary may specifically enforce performance of this provision. Grantor agrees to reimburse Beneficiary for the cost of an appraisal of the Property, prepared by an appraiser acceptable to Beneficiary and in conformance with governmental regulations applicable to Beneficiary, at any time that (a) an Event of Default has occurred hereunder, (b) any damage, destruction, or condemnation of all or a portion of the Property occurs, (c) Beneficiary determines in its sole opinion that the security for the Loan has been impaired in any material manner, or (d) such appraisal is required by then current banking laws or regulations applicable to Beneficiary. In the event that Beneficiary shall elect to obtain an appraisal, Grantor shall fully cooperate with Beneficiary and the appraiser in obtaining and providing the necessary information to prepare the appraisal. In the event that Grantor fails to cooperate with Beneficiary in obtaining an appraisal or in the event that Grantor shall fail to pay the cost of the appraisal, if required above, and Beneficiary's customary internal appraisal review fee, immediately upon demand, then either of such events shall constitute an Event of Default hereunder and Beneficiary shall be entitled to exercise all remedies available to it hereunder.

**5.4 Reconveyance by Trustee.** Upon written request of Beneficiary stating that all sums and other obligations secured hereby have been paid, and upon surrender of this Deed of Trust to Trustee for cancellation and retention and upon payment by Grantor of Trustee's fees, Trustee shall reconvey to Grantor, or the person or persons legally entitled thereto, without warranty, any portion of the Trust Estate then held hereunder. The recitals in such reconveyance of any matters or facts shall be conclusive proof of the truthfulness thereof. The grantee in any reconveyance may be described as "the person or persons legally entitled thereto."

**5.5 Notices.** Whenever Beneficiary, Grantor, or Trustee shall desire to give or serve any notice, demand, request or other communication with respect to this Deed of Trust, each

such notice, demand, request or other communication shall be in writing and shall be effective only if the same is delivered by personal service or mailed by registered or certified mail, postage prepaid, return receipt requested, addressed to the address set forth at the beginning of this Deed of Trust. Any communication which is mailed as provided above shall be deemed delivered 72 hours after mailing. Any party may at any time change its address for such notices by delivering or mailing to the other parties hereto, as aforesaid, a notice of such change.

**5.6     Acceptance by Trustee.** Trustee accepts this trust when this Deed of Trust, duly executed and acknowledged, is made a public record as provided by law.

**5.7     Captions.** The captions or headings at the beginning of each section hereof are for the convenience of the parties and are not a part of this Deed of Trust.

**5.8     Invalidity of Certain Provisions.** If the lien of this Deed of Trust is invalid or unenforceable as to any part of the debt, or if the lien is invalid or unenforceable as to any part of the Trust Estate, the unsecured or partially unsecured portion of the debt shall be completely paid prior to the payment of the remaining and secured 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 paid on and applied to the full payment of that portion of the debt which is not secured or fully secured by the lien of this Deed of Trust. Further, the invalidity or unenforceability of any portion or provision of this Deed of Trust shall in no way affect the validity or enforceability of the remainder hereof.

**5.9     Subrogation.** To the extent that proceeds of the Note or the Loan Agreement are used to pay any outstanding lien, charge or prior encumbrance against the Trust Estate, such proceeds have been or will be advanced by Beneficiary at Grantor's request and Beneficiary shall be subrogated to any and all rights and liens owed by any owner or holder of such outstanding liens, charges and prior encumbrances, irrespective of whether such liens, charges or encumbrances are released.

**5.10    No Merger.** If both the lessor's and lessee's estates under any lease or portion thereof which constitutes a part of the Trust Estate shall at any time become vested in one owner, this Deed of Trust and the lien created hereby shall not be destroyed or terminated by application of the doctrine of merger and, in such event, Beneficiary shall continue to have and enjoy all of the rights and privileges of Beneficiary as to the separate estates. In addition, upon the foreclosure of the lien created by this Deed of Trust on the Trust Estate pursuant to the provisions hereof, any leases or subleases then existing and created by Grantor shall not be destroyed or terminated by application of the law of merger or as a matter of law or as a result of such foreclosure unless Beneficiary or any purchaser at any such foreclosure sale shall so elect. No act by or on behalf of Beneficiary or any such purchaser shall constitute a termination of any lease or sublease unless Beneficiary or such purchaser shall give written notice thereof to such tenant or subtenant.

**5.11    WAIVER OF JURY TRIAL: GRANTOR BY SIGNING THIS DEED OF TRUST AND BENEFICIARY BY ACCEPTING THIS DEED OF TRUST HEREBY WAIVE ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING RELATING TO THIS INSTRUMENT AND TO ANY OF THE LOAN**



**DOCUMENTS, THE OBLIGATIONS HEREUNDER OR THEREUNDER, ANY COLLATERAL SECURING THE OBLIGATIONS, OR ANY TRANSACTION ARISING THEREFROM OR CONNECTED THERETO. GRANTOR AND BENEFICIARY EACH REPRESENTS TO THE OTHER THAT THIS WAIVER IS KNOWINGLY, WILLINGLY AND VOLUNTARILY GIVEN.**

*[Remainder of this page intentionally left blank.]*

In Witness Whereof, Grantor has executed this Deed of Trust as of the day and year first above written.

**EAGLERIDGE HIGH SCHOOL**

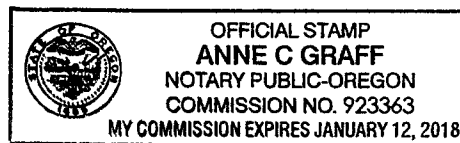
By: William Ganong  
Name: William-M. Ganong  
Title: Vice-President / Secretary

State of OREGON

County of Multnomah

This instrument was acknowledged before me on May 25, 2016, by William Ganong as Vice-President of EagleRidge High School.

Anne C. Graff  
Notary Public for the State of Oregon



## EXHIBIT A

### Legal Description

#### PARCEL 1:

Lots 11 to 16 inclusive in Block 3 and Lots 4 to 11 inclusive in Block 4 of HOLLISTER ADDITION to the City of Klamath Falls, Klamath County, Oregon, and also the vacated alley through Block 4 of said HOLLISTER ADDITION; and

#### PARCEL 2:

Also, that portion of vacated Willow Avenue lying between Block 3 and 4 of HOLLISTER ADDITION to the City of Klamath Falls, Klamath County, Oregon, and described as follows:

Beginning at the intersection of the Northwestern line of Willow Avenue with the Northeasterly line of Seventh Street; thence Northerly along the Northwestern line of Willow Avenue, a distance of 156 feet to the Northeasterly corner of Lot 16, Block 3, HOLLISTER ADDITION; thence, Southeasterly at right angles to Willow Avenue, a distance of 70.0 feet to the Northwestern corner of Lot 4, Block 4 of HOLLISTER ADDITION; thence Southwesterly along the Southeasterly line of Willow Avenue, a distance of 156 feet to the Northeasterly line of Seventh Street; thence, Northwesternly along the Northeasterly line of Seventh Street, a distance of 70.0 feet to the point of beginning.

#### PARCEL 3:

Lots 17, 18, 19 and 20 in Block 3 of HOLLISTER ADDITION to the City of Klamath Falls, Oregon, according to the official plat thereof on file in the office of the County Clerk of Klamath County, Oregon, and also the Northwesternly 35 feet of vacated Willow Avenue adjacent to said Lots 17, 18, 19 and 20 Block 3 of HOLLISTER ADDITION to the City of Klamath Falls, Klamath County, Oregon.

#### PARCEL 4:

The Southeasterly 35 feet of vacated Willow Avenue, adjacent to Lots 1, 2 and 3, Block 4, HOLLISTER ADDITION to the City of Klamath Falls, according to the official plat thereof on file in the office of the County Clerk of Klamath County, Oregon.

#### PARCEL 5:

Lots 1, 2, and 3, Block 4, HOLLISTER ADDITION TO THE CITY OF KLAMATH FALLS, according to the official plat thereof on file in the office of the County Clerk of Klamath County, Oregon.

PARCEL 6:

That portion of Block 15 of RAILROAD ADDITION TO THE CITY OF KLAMATH FALLS, in the County of Klamath, State of Oregon, according to the latest recorded plat thereof, lying between the Southeasterly extension of the Northeasterly line of 7th Street and the Northeasterly extension of the Northwesterly line of Lot 10, Block 4, HOLLISTER ADDITION TO THE CITY OF KLAMATH FALLS, being a strip of land one foot in width and 142 feet, more or less, in length; AND

ALSO, that portion of Block 15 of RAILROAD ADDITION TO THE CITY OF KLAMATH FALLS, in the County of Klamath, State of Oregon, according to the latest recorded plat thereof, lying between the Northeasterly extension of the Southeasterly line and the Southeasterly extension of the Northeasterly line of Lot 4, Block 4, HOLLISTER ADDITION TO THE CITY OF KLAMATH FALLS, being a strip of land one foot in width and 27 feet, more or less, in length; AND

ALSO that portion of Block 15 of RAILROAD ADDITION, lying between the Northeasterly extension of the Northwesterly line of Lot 10, Block 4, HOLLISTER ADDITION and the Northeasterly extension of the Southeasterly line of Lot 4, Block 4, HOLLISTER ADDITION TO THE CITY OF KLAMATH FALLS, in the County of Klamath, State of Oregon.

PARCEL 7:

Lots 1, 2, 3, 4, 5, 6, 7, 8, 9 and 10 in Block 3, of HOLLISTER ADDITION to the City of Klamath Falls, Klamath County, Oregon.

## EXHIBIT B

### Permitted Encumbrances

1.	Easements for utilities over and across the premises formerly included within the boundaries of Willow Avenue, now vacated, if any such exist.
2.	Easements for utilities over and across the premises formerly included within the boundaries of Alley in Block 4, now vacated, if any such exist.
3.	An Easement Agreement and Rescission of Easement Recording No. 2009-006796 including the terms and provisions thereof, affecting the portion of said premises and for the purposes stated therein as set forth in instrument: Recorded: July 13, 2009 Instrument No.: 2009-009534
4.	An easement including the terms and provisions thereof, affecting the portion of said premises and for the purposes stated therein as set forth in instrument: Granted To: Cal-Ore Communications Inc., a California Corporation Recorded: July 16, 2009 Instrument No.: 2009-009687
5.	An easement including the terms and provisions thereof, affecting the portion of said premises and for the purposes stated therein as set forth in instrument: Granted To: City of Klamath Falls Recorded: May 14, 2009 Instrument No.: 2009-006796