

2020-004866

Klamath County, Oregon

04/16/2020 12:05:26 PM

Fee: \$267.00

WHEN RECORDED RETURN TO:

Umpqua Bank
1111 Third Avenue, Suite 2900
Seattle, Washington 98101
Attention: Brianne Nevill

LINE OF CREDIT TRUST DEED: The maximum principal amount to be advanced pursuant to the credit agreement secured by this line of credit trust deed is \$8,100,000. The maturity date of the credit agreement secured by this line of credit trust deed, exclusive of any option to renew or extend such maturity date, is May 1, 2039.

CONSTRUCTION MORTGAGE: The maximum principal amount to be advanced pursuant to the credit agreement secured by this line of credit trust deed may be exceeded by advances to complete construction pursuant to ORS 86.155(2)(c). This trust deed secures an obligation incurred for the construction of an improvement on land and constitutes a "**Construction Mortgage**" as such term is defined in ORS 79.0334(8).

The Tax Account No. for the real property covered by this deed of trust is 3909-01400-00104-000. 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 this 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** (this "Deed of Trust") is made as of April 16, 2020, by **KLAMATH HOUSING AUTHORITY**, an Oregon public body corporate and politic ("Ground Lessor"), whose address is 1445 Avalon Street, Klamath Falls, Oregon 97601, and **SUNRISE VISTA APARTMENTS, LLC**, an Oregon limited liability company ("Ground Lessee"), whose address is 1007 N.W. Rimrock Drive, Redmond, Oregon 97756, to **CHICAGO TITLE COMPANY OF OREGON** ("Trustee"), whose address is 1211 S.W. Fifth Avenue, Suite 2130, Portland, Oregon 97204, as trustee for the benefit of **ZIONS BANCORPORATION, NATIONAL ASSOCIATION** ("Beneficiary"), whose address is 1211 S.W. Fifth Avenue, Suite 1250, Portland, Oregon 97204, as bond trustee for the benefit of **UMPQUA BANK**, an Oregon banking corporation (the "Bondholder"), and the **STATE OF OREGON**, acting by and through its Treasurer and the Oregon Housing and Community Services Department ("Issuer"), with respect to certain rights described herein, pursuant to that certain Trust Indenture dated as of April 1, 2020, between Beneficiary and Issuer (the "Trust Indenture").

Deed of Trust, Security Agreement, Assignment
of Leases and Rents, and Fixture Filing -1-

214703-0016/4847-7100-6390.4

W I T N E S S E T H :

That Ground Lessor and Ground Lessee (hereinafter referred to together as "Grantor") do hereby irrevocably GRANT, BARGAIN, SELL, and CONVEY TO TRUSTEE IN TRUST, WITH POWER OF SALE, for the benefit of Beneficiary, (a) all of Ground Lessor's fee interest in and to that certain real property in the City of Klamath Falls, County of Klamath, and State of Oregon, described on Exhibit A attached hereto and by this reference incorporated herein (the "Real Property"), together with any and all buildings and improvements now or hereafter erected thereon (the "Improvements"), 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"); and (b) all of Ground Lessee's leasehold estate, right, title, and interest in, to, and under the Property pursuant to that certain Lease Agreement dated April 16, 2020, between Ground Lessor and Ground Lessee with respect to the Property (together with all addendums, the "Ground Lease");

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 to the Property, and all tenements, hereditaments and appurtenances of and to the Property, 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, insurance proceeds, 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 and all proceeds thereof;

Together With all right, title, and interest of Grantor in the funds deposited pursuant to Section 1.6 or 1.8 hereof and all funds deposited with Beneficiary pursuant to the Trust Indenture;

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, instruments, 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." Capitalized terms used by not defined herein shall have the meaning ascribed to such term in that certain Construction and Term Loan Agreement dated as of April 1, 2020, between Ground Lessee and Bondholder (as may be amended, restated, replaced, supplemented, or otherwise modified from time to time, the "Construction Loan Agreement").

FOR THE PURPOSE OF SECURING:

1. Payment of indebtedness in the total principal amount of up to \$8,100,000 with interest thereon (the "Loan"), evidenced by a Convertible Bond in the amount of \$2,450,000 with a maturity date of May 1, 2039, and a Construction Bond (together with the Convertible Bond, the "Bonds") in the amount of \$5,650,000 with a maturity date of May 1, 2022, as each maturity date may be extended, and further evidenced by that certain loan agreement (the "Loan Agreement") dated as of April 1, 2020, between Ground Lessee, Beneficiary, and Issuer, that has been assigned by Issuer to Beneficiary pursuant to the Trust Indenture, and any and all modifications, extensions, and renewals thereof. The maturity date of the Construction Bond may, upon satisfaction of certain conditions, be extended for six months. The interest rate, payment terms, or the balance due under the Bonds, the Loan Documents, and the indebtedness evidenced thereby may be indexed, adjusted, renewed, or renegotiated without affecting the priority of this Deed of Trust.

2. Payment of all sums which may become due (a) from Grantor, including without limitation, for Grantor's liability for waste on the Property or for wrongful retention of any Cash Collateral, insurance proceeds, or condemnation awards or (b) for advances by Beneficiary or its successor; in each case, 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 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 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 United States Bankruptcy Code, 11 USC § 101 et seq., as the same may be amended (the "Bankruptcy Code") 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.

3. Payment and performance by Ground Lessee of all of the obligations of Grantor under the Loan Agreement and the Trust Indenture.

4. Payment and performance by Grantor of all of the obligations of Ground Lessee under those certain "Bond Documents" as defined in the Trust Indenture, including the Bonds, for the benefit of Bondholder and, with respect to certain Reserved Rights (as defined in the Trust Indenture), for the benefit of Issuer.

5. Payment and performance by Ground Lessee of all of the obligations of Grantor under the Construction Loan Agreement, the Loan Documents (defined below), and all other Indebtedness (as defined below).

The word "Indebtedness" means the indebtedness evidenced by the Bonds and all other Loan Documents (defined below), including all principal and interest together with all other Indebtedness and costs and expenses for which Grantor is responsible under this Deed of Trust or under any of the other Loan Documents (defined below).

This Deed of Trust, the Bond, the Loan Agreement, the Trust Indenture, the Construction Loan Agreement, the "Loan Documents" (as defined in the Construction Loan Agreement), the other "Bond Documents" (as defined in the Trust Indenture), and any other agreement executed in connection therewith or instrument given to evidence or further secure the payment and performance of any obligation secured, as such agreements may be amended, modified, supplemented or restated, hereby may hereafter be referred to as the "Loan Documents."

Notwithstanding anything to the contrary in this Deed of Trust or any of the other Loan Documents, Grantor's obligation to indemnify and hold Bondholder harmless in accordance with the terms of that certain Hazardous Materials Certificate and Indemnity of even date herewith shall not be secured by this Deed of Trust or the Trust Estate.

ARTICLE I 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 so that the value of the Property shall be maintained. Grantor shall not commit or permit any waste on the Property, including without limitation, any act or failure to act that impairs the value of the Trust Estate. 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. 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 Beneficiary.

1.2 **Required Insurance.** Grantor shall at all times provide, maintain, and keep in force, or cause to be provided, maintained, and kept in force, insurance as set forth in the Construction Loan Agreement and such other insurance and in such amounts as may, from time to time, be required by Beneficiary including, without limitation, business interruption insurance or insurance covering loss of rents and flood insurance where applicable.

1.3 **Delivery of Policies; Payment of Premiums; Distribution of Proceeds.**

(a) All policies of insurance shall be issued by companies and in amounts in each company satisfactory to Bondholder. All policies of insurance shall have attached thereto a lender's loss payable endorsement for the benefit of Bondholder in form satisfactory to Bondholder. Grantor shall furnish (i) Bondholder with an original of all policies of required insurance and (ii) Bondholder and Beneficiary with a certificate of insurance describing such policies. If Bondholder consents to Grantor providing any of the required insurance through blanket policies carried by Grantor and covering more than one location, then Grantor shall furnish Bondholder and Beneficiary with a certificate of insurance for each such policy setting forth the coverage, the limits of liability, the name of the carrier, the policy number, and the expiration date.

(b) At least 30 days prior to the expiration of each such policy, Grantor shall furnish Bondholder with evidence satisfactory to Bondholder of the payment of premium and the reissuance of a policy continuing insurance in force as required by this Deed of Trust. All such policies shall contain a provision that such policies will not be canceled or materially amended, which term shall include any reduction in the scope or limits of coverage, without at least 30 days' prior written notice to Bondholder. In the event Grantor fails to provide, maintain, keep in force, or deliver and furnish to Bondholder the policies of insurance required and certificates by this section, Bondholder may procure such insurance or single-interest insurance for such risks covering Beneficiary's interest, and Grantor will pay all premiums thereon promptly upon demand by Bondholder and, until such payment is made by Grantor, the amount of all such premiums shall be secured by this Deed of Trust.

(c) If Grantor shall fail to obtain the insurance required by Section 1.2, make the payments required by Section 1.6, or perform or observe any of its other covenants or agreements under this Deed of Trust, Beneficiary may, without obligation to do so, obtain or pay the same or take other action that it deems appropriate to remedy such failure. All sums, including reasonable attorney fees, so expended to maintain the lien or estate of this Deed of Trust or its priority, or to protect or enforce any of Beneficiary's rights, or to recover any indebtedness secured by this Deed of Trust, shall be a lien on the Property, shall be secured by this Deed of Trust, and shall be paid by Grantor upon demand, together with interest at the Default Rate. No payment or other action by Beneficiary under this section shall impair any other right or remedy available to Beneficiary or constitute a waiver of any default. 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.

(d) In the event of a loss to the Property, all insurance proceeds and rights of action related to the loss are hereby assigned to Bondholder. Grantor agrees to execute such further assignments to such proceeds and rights of action as Bondholder may require. Grantor shall give immediate written notice to Bondholder, and Bondholder may, but is not obligated to, make proof of loss. At its option, in its own name, Bondholder 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. Each insurance carrier is hereby authorized and directed to make payment for such loss to Bondholder. Bondholder's right to payment of insurance proceeds shall exist whether or not any such loss results in any impairment to the security of Bondholder. The insurance proceeds shall be applied in accordance with Section 1.22 below. The payment to Bondholder of such insurance proceeds shall not cure or waive any default or notice of default hereunder. Notwithstanding such loss, all payments under the Construction Loan Agreement, the Bond, 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.

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 or any of its directors, officers, employees, agents, and representatives (together with Beneficiary, hereafter collectively referred to as the "Indemnitees") 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 Indemnitees harmless from all liability, loss, cost, or damage, by reason of said litigation, including attorney fees and expenses incurred by Indemnitees in any such litigation, whether or not any such litigation is prosecuted to judgment.

(b) Grantor waives any and all right to claim or recover against Indemnitees 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 Indemnitees; (vi) any default or failure on the part of Indemnitees 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.

(d) The indemnification provisions set forth in this Section 1.5 shall survive the termination of this Deed of Trust and the resignation or removal of Beneficiary.

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 Deed of Trust, Security Agreement, Assignment of Leases and Rents, and Fixture Filing - 8 -

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.

1.7 **Liens.** Grantor shall maintain the Trust Estate free of any liens except for "Permitted Encumbrances" as defined in Section 1.11 and the lien of taxes and assessments not delinquent. 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.** At any time Bondholder may require Grantor to maintain reserves for payment of taxes (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 Bondholder of an amount determined by Bondholder 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 Bondholder 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, Bondholder, 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 Bondholder may permit Grantor to furnish a certificate of insurance rather than deposit the policy as required above. If at any time Bondholder holds an insufficient amount in the insurance reserve to cover the premium for the entire package policy, Bondholder 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, Bondholder 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. Bondholder shall not charge a service charge for collecting reserves and paying taxes and insurance premiums. The reserves shall not constitute a trust. Grantor agrees that Bondholder may commingle reserve funds with other funds of Bondholder and need not invest them for the benefit of Grantor. Grantor agrees that Bondholder need not pay Grantor interest on reserves, unless applicable statutes require payment of interest notwithstanding any contrary agreement.

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 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 Ground Lessor holds merchantable title to the Property in fee simple (the "Fee Title Estate") and that Ground Lessee holds a merchantable leasehold title to the Property (the "Leasehold Estate"), free of all encumbrances 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. In the event any action or proceeding is commenced that questions Grantor's respective title or the interest of Beneficiary under this Deed of Trust, Grantor shall defend the action at Grantor's expense. 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 or foreclose any Permitted Encumbrance.

1.12 **Condemnation.** In the event any of the 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 in accordance with Section 1.22 below. Should said proceeds exceed said balance owing, any such excess shall be paid to Grantor. All such proceeds and rights of action are hereby assigned to Beneficiary, and Beneficiary shall be entitled, along with Grantor, 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.

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.** Ground Lessee 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. Ground Lessee shall permit Bondholder to examine the books of account and other records of Ground Lessee, to discuss the affairs, finances and accounts of Ground Lessee and to be informed as to the same by Ground Lessee, all at such reasonable times and intervals as Bondholder may desire. Ground Lessee will, at its own cost and expense, furnish to Bondholder all financial statements, tax returns, rent rolls, financial reports, and information as set forth in Section 8.17 of the Construction Loan Agreement. In the event Ground Lessee fails to furnish any of the financial statements, tax returns, rent rolls, financial reports, or other information hereinabove required, Bondholder may, after the expiration of any applicable notice and cure period, cause an audit to be made of Ground Lessee's books and records, at Ground Lessee's sole cost and expense. The records required to be kept under this section are not in lieu of records required under the other Loan Documents or the Bond Documents.

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 10 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, including attorney fees at trial and on appeal.

1.18 **Use of Property.** The Property is not used principally for agricultural purposes and is not Grantor's residence.

1.19 **Use of Loan Proceeds.** The proceeds of the credit evidenced by the Loan Documents will not be used for personal, family, or household purposes.

1.20 **Access Laws.**

(a) Ground Lessee agrees that the Property shall at all times required by law strictly 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 after completion of construction of the Property, Beneficiary may require Ground Lessee 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, Ground Lessee shall not alter or permit any tenant or other person to alter the Property in any manner which would increase Ground Lessee'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) Ground Lessee 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) Ground Lessee 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 Ground Lessee under this section shall survive any termination, satisfaction, assignment, judicial or nonjudicial foreclosure, or delivery of a deed in lieu of foreclosure.

1.21 **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, unless such acts conform with permits issued in compliance with such laws.

1.22 **Restoration After Condemnation or Casualty; Application of Insurance Proceeds; Remargining.**

(a) Any proceeds collected ("Proceeds") under any casualty insurance policy or as a result of condemnation proceedings or settlements described in this Deed of Trust shall be held in the Bank-Restricted Account under the Construction Loan Agreement and disbursed by Bondholder to Ground Lessee as provided below, but only upon fulfillment of each of the following conditions ("Restoration Conditions") within 120 days following the occurrence of the damage for which the Proceeds are collected:

(i) Ground Lessee shall have demonstrated to Bondholder's reasonable satisfaction that the Proceeds (together with amounts deposited by Ground Lessee pursuant to subparagraph (b)) will be adequate to complete the Project (as defined in the Construction Loan Agreement) or to repair or replace the Improvements and to restore the value of the Property, within a time period reasonably determined by Bondholder, to at least the value it had immediately prior to sustaining the damage or condemnation giving rise to the Proceeds.

Such demonstration shall include delivery to Bondholder of (i) plans and specifications reasonably satisfactory to Bondholder and (ii) a construction contract in form and content, and with a contractor, reasonably satisfactory to Bondholder.

(ii) To the extent that the Proceeds are insufficient to accomplish the restoration required above, Ground Lessee shall have delivered funds to Bondholder ("Shortfall Funds") in the amount of such shortfall, which funds shall be assigned to Bondholder as security for Ground Lessee's obligation hereunder and held and disbursed in the same manner as, and pro rata with, the Proceeds.

(iii) Ground Lessee shall have executed such documents as Bondholder requires to evidence and secure Ground Lessee's obligation to use all amounts disbursed for the diligent restoration of the Property.

(iv) No Event of Default shall remain uncured (other than any Event of Default which relates to such casualty and will be cured by completion of the repair or restoration).

(b) Any Proceeds and Shortfall Funds shall be held by Bondholder in the Bank-Restricted Account under the Construction Loan Agreement and disbursed in accordance with the disbursement procedures thereof and related provisions of this Deed of Trust and all other disbursement provisions then customarily required by Bondholder. Any amounts remaining undisbursed following completion of such restoration shall be returned to Ground Lessee up to the amount of any Shortfall Funds deposited by Ground Lessee, and any other amounts remaining shall either be paid to Ground Lessee or applied, at Bondholder's direction, against any obligations to Bondholder that are secured by a lien on the Property, as Bondholder elects in its absolute discretion.

(c) Subject to subparagraph (e) below, in the event that Ground Lessee cannot or fails to fulfill the Restoration Conditions within 120 days (unless a longer period is necessary due to a delay in receipt of insurance proceeds or otherwise agreed to in writing by Bondholder prior to the 120th day) following the date on which the damage occurs, the Proceeds shall be applied against any obligations to Bondholder that are secured by a lien on the Property, and the selection of which such obligations to apply the Proceeds against shall be made by Bondholder in its absolute discretion.

(d) Nothing herein shall be construed to excuse Ground Lessee from repairing and restoring all damage to the Property in accordance with other Loan Document provisions, regardless of whether insurance proceeds are available or sufficient.

(e) In the event the Project cannot be so completed or the Improvements so rebuilt or restored, then the Proceeds shall be applied against the outstanding balance of principal, interest and other amounts owing (regardless of whether then payable) under the Construction Loan Agreement, the Bond, the other Loan Documents and this Deed of Trust. Should the Proceeds exceed such balance owing, any such excess shall be paid to Ground Lessee. Should the Proceeds be less than such balance owing, the deficiency shall be paid by Ground Lessee to Bondholder within 60 days of demand by Bondholder.

1.23 **Leasehold Mortgage Provisions.**

(a) **Representations, Covenants, and Warranties.** Grantor represents, covenants, and warrants:

(i) That the Ground Lease is in full force and effect and has not been modified or amended in any manner whatsoever;

(ii) That there are no defaults under the Ground Lease, and no event has occurred, that, with the giving of notice, the passage of time, or both, would constitute a default under the Ground Lease;

(iii) That all rents, additional rents, and other sums due and payable under the Ground Lease have been paid in full to the extent they were payable before the date of this Deed of Trust; and

(iv) That neither Ground Lessee nor the Ground Lessor has commenced any action or given or received any notice for the purpose of terminating the Ground Lease,

(b) **The Ground Lease.** Ground Lessee and Ground Lessor shall have the following duties and responsibilities:

(i) Ground Lessee shall: (A) pay or cause to be paid all rents, additional rents, and other charges required to be paid by Ground Lessee under and pursuant to the provisions of the Ground Lease, as and when those rents or other charges are payable; and (B) diligently perform and observe all of the terms, covenants, and conditions of the Ground Lease on the part of Ground Lessee thereunder, to be performed and observed promptly when due under the terms of the Ground Lease;

(ii) Ground Lessor and Ground Lessee shall promptly notify Bondholder of the giving of any notice by Ground Lessor to Ground Lessee of any default by Ground Lessee in the performance or observance of any of the terms, covenants, or conditions of the Ground Lease on the part of Ground Lessee under the Ground Lease, to be performed or observed, and deliver to Bondholder a true copy of each such notice.

(iii) Ground Lessor and Ground Lessee shall not, without the prior consent of Bondholder, surrender or accept surrender of the Leasehold Estate, or terminate or cancel the Ground Lease or modify, change, supplement, alter, or amend the Ground Lease, in any respect, either orally or in writing, and Ground Lessee hereby assigns to Bondholder, as further security for the payment of the obligations secured hereby and for the performance and observance of the terms, covenants, and conditions of this Deed of Trust, all of the rights, privileges, and prerogatives of Ground Lessee under the Ground Lease to surrender the Leasehold Estate or to terminate, cancel, modify, change, supplement, alter, or amend the Ground Lease, and any such surrender of the Leasehold Estate or termination, cancellation, modification, change, supplement, alteration, or amendment of the Ground Lease without the prior consent of Bondholder shall be null and void and of no force and effect.

(iv) Ground Lessor and Ground Lessee agree that if Ground Lessee shall default in the performance or observance of any term, covenant, or condition of the Ground Lease on the part of Ground Lessee, as ground lessee under the Ground Lease, to be performed or observed, then, without limiting the generality of the other provisions of this Deed of Trust, and without waiving or releasing Ground Lessee from any of its obligations hereunder, Bondholder or its designee shall have the right, but shall be under no obligation, to pay any sums and to perform any act or take any action as may be appropriate to cause all of the terms, covenants, and conditions of the Ground Lease on the part of Ground Lessee under the Ground Lease to be performed or observed or to be promptly performed or observed on behalf of Ground Lessee, to the end that the rights of Ground Lessee in, to, and under the Ground Lease shall be kept unimpaired and free from default, even if the existence of such event of default or its nature is questioned or denied by Ground Lessee or by any party on behalf of Ground Lessee. If Bondholder shall make any payment or perform any act or take any action in accordance with the preceding sentence, then the payment, performance, or action shall not remove or waive, as between Grantor and Bondholder, the corresponding default under the terms of this Deed of Trust. In any such event, subject to the rights of tenants and other occupants under the Leases, Bondholder and any person designated by Bondholder shall have, and are hereby granted, the right to enter upon the Real Property at any time and from time to time for the purpose of taking any such action. Bondholder may pay and expend such sums of money as Bondholder deems necessary for any such purpose and upon so doing shall be subrogated to any rights of Ground Lessor under the Ground Lease. Ground Lessee hereby agrees to pay to Bondholder immediately and without demand, all those sums so paid and expended by Bondholder, together with interest thereon from the day of that payment at the default interest rate under the Note. All sums so paid and expended by Bondholder and the interest on those sums shall be secured by this Deed of Trust.

(v) If Ground Lessor shall deliver to Bondholder a copy of any notice of default sent by Ground Lessor to Ground Lessee, as ground lessee under the Ground Lease, that notice shall constitute full protection to Bondholder for any action taken or omitted to be taken by Bondholder or its designee, in good faith, in reliance on that notice.

(vi) Ground Lessee will not subordinate or consent to the subordination of the Ground Lease or the Leasehold Estate to any mortgage, deed of trust, lease, or other interest on or in Ground Lessor's interest in all or any part of the Real Property, unless, in each such case, the written consent of Bondholder shall have been first had and obtained.

(c) Leases. Each Lease hereafter made and entered into by Ground Lessee shall provide that:

(i) In the event of the termination of the Ground Lease, the Lease shall not terminate or be terminable by the tenant under the Lease;

(ii) In the event of any action for the foreclosure of this Deed of Trust, the Lease shall not terminate or be terminable by the tenant under the Lease by reason of the termination of the Ground Lease unless the tenant is specifically named and joined in any such action and unless a judgment is obtained therein against the tenant; and

(iii) If the Ground Lease is terminated as aforesaid, the tenant shall attorn to Ground Lessor or to the purchaser at the sale of the Leasehold Estate on such foreclosure, as the case may be.

(d) No Merger of Fee Title Estate and Leasehold Estate. So long as any obligations are outstanding under the Loan Documents, unless Bondholder shall otherwise consent in writing, the Fee Title Estate and the Leasehold Estate shall not merge but shall always be kept separate and distinct, notwithstanding the union of such estates in Ground Lessor, Ground Lessee, Bondholder, or in any other person by purchase, operation of law, or otherwise. Bondholder reserves the right, at any time, to release from the lien of this Deed of Trust portions of the Property, including, but not limited to, the Leasehold Estate or the Fee Title Estate, with or without consideration, at Bondholder's election, without waiving or affecting any of its rights hereunder or under the Loan Documents, and any such release shall not affect Bondholder's rights in connection with the portion of the Property not so released.

(e) Ground Lessee's Acquisition of Fee Estate. If Ground Lessee, so long as the obligations under the Loan Documents remain outstanding, shall become the owner and holder of the Fee Title Estate, the lien of this Deed of Trust shall be spread to cover Ground Lessee's interest in the Fee Title Estate. In such event, Ground Lessee agrees, at its sole cost and expense, to: (i) execute any and all documents or instruments necessary to subject its Fee Title Estate to the lien of this Deed of Trust; (ii) provide Bondholder a title insurance policy which shall insure that the lien of this Deed of Trust is a first lien on Ground Lessee's Fee Title Estate; and (iii) pay all reasonable attorney fees incurred by Bondholder in connection with the above.

(f) Bankruptcy. If the Ground Lessor or Ground Lessee become the subject of a proceeding under the Bankruptcy Code or any other law affecting creditor's rights:

(i) Ground Lessor and Ground Lessee, immediately after obtaining notice thereof, shall give notice thereof to Bondholder;

(ii) If the Ground Lease is terminated for any reason in the event of the rejection or disaffirmance of the Ground Lease under the Bankruptcy Code or any other law affecting creditor's rights, any property not removed by Grantor as permitted or required by the Ground Lease, shall at the option of Bondholder be deemed abandoned by Grantor, provided that Bondholder may remove any such property required to be removed by Grantor pursuant to the Ground Lease, and all costs and expenses associated with such removal shall be paid by Grantor within five days of receipt by Grantor of an invoice for the costs and expenses associated with such removal; and

(iii) If the Ground Lease is for any reason whatsoever terminated before the natural expiration of its term, and if, under any provisions of the Ground Lease or otherwise, Bondholder or its designee shall acquire from Ground Lessor another lease of the Real Property, Ground Lessee shall have no right, title, or interest in or to such other lease or the leasehold estate created thereby.

(g) Lender Provisions. In the event of any conflict between the terms of the Ground Lease and this Deed of Trust, the terms of this Deed of Trust shall control.

ARTICLE II SECURITY AGREEMENT; FIXTURE FILING

2.1 **Creation of Security Interest.** Ground Lessee hereby grants to Beneficiary a security interest in (a) the Personal Property, including without limitation any and all property of similar type or kind hereafter located on or at the 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 Ground Lessee contained in any of the Loan Documents. Ground Lessee hereby consents to the filing by Beneficiary and Bondholder 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 Bondholder, and will pay the cost of filing the same in all public offices wherever filing is deemed by Beneficiary and Bondholder to be necessary or desirable.

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

(a) Except for the security interest granted hereby or by any of the Permitted Encumbrances, Ground Lessee 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. Ground Lessee 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, subject to the Permitted Encumbrances that are listed as Senior Liens on the attached Exhibit B.

(b) Ground Lessee will not lease (other than the lease of the residential units, parking spaces, storage rooms, and commercial space in the ordinary course of business), 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 Deed of Trust.

(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 Ground Lessee 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 Ground Lessee with an article of equal suitability owned by Ground Lessee free and clear of any lien or security interest except for Permitted Encumbrances or such as may be approved in writing by Beneficiary.

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

(f) At the request of Beneficiary, Ground Lessee 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 Bondholder, and will pay the cost of filing the same in all public offices wherever filing is deemed by Beneficiary and Bondholder to be necessary or desirable.

(g) All covenants and obligations of Ground Lessee 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.

2.3 **Fixture Filing.** This Deed of Trust constitutes a financing statement filed as a fixture filing in the Official Records of the County in which the Property is located with respect to any and all fixtures included within the term "Trust Estate" as used herein and with respect to any goods or other personal property that may now or hereafter become such fixtures.

ARTICLE III ASSIGNMENT OF LEASES AND RENTS

3.1 **Assignment.** Ground Lessor hereby assigns to Beneficiary and grants to Beneficiary a security interest in the Ground Lease, and Ground Lessee hereby assigns to Beneficiary and grants to Beneficiary a security interest in all Leases (including the Ground Lease), in each case as security for performance of all obligations secured by this Deed of Trust.

3.2 **Representations and Warranties.** Ground Lessee represents and warrants as follows:

(a) Ground Lessee has good right, title and interest in and to the Leases and Cash Collateral, and good right to assign the same, and that no other person has any right, title or interest therein, except as disclosed by the Permitted Encumbrances.

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

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

(d) Ground Lessee 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 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, and payment of any of same has not otherwise been anticipated, waived, released, discounted, set off or otherwise discharged or compromised.

(f) Ground Lessee 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 material default of any of the terms thereof. Collateral

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

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

(b) Ground Lessee 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) Ground Lessee 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 Ground Lessee or any tenant thereunder at the expense of Ground Lessee.

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

(a) Ground Lessee shall not receive or collect any Cash Collateral (except for reasonably required security deposits) from any present or future tenant of the Property or any part thereof for a period of more than one month 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) Ground Lessee 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 of 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.

3.5 **License to Collect Cash Collateral.** As long as there shall exist no default by Ground Lessee 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, Ground Lessee 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. G Ground Lessee shall receive such Cash Collateral and hold the Cash Collateral, together with the right and license herein granted as a trust fund to be applied, and Ground Lessee hereby covenants to so apply them, as required by Beneficiary, first to the payment of taxes and assessments upon the Property before penalty or interest is due thereon; second to the costs of insurance, maintenance and Deed of Trust, Security Agreement, Assignment of Leases and Rents, and Fixture Filing

repairs required by the terms of this Deed of Trust; third to satisfaction of all obligations under the Leases; and fourth to the payment of interest, principal and any other sums becoming due under the Loan Agreement, the Construction Loan Agreement, this Deed of Trust, and any other Loan Document before using any part of the same for any other purposes. Upon the conveyance by Ground Lessee and its successors and assigns of Ground Lessee's interest in the Property, all right, title, interest and powers granted under the license aforesaid shall automatically pass to and may be exercised by each subsequent owner.

ARTICLE IV 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 amount due under the Loan Agreement, the Bonds, 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
- (c) Grantor fails to perform any other covenant contained in this Deed of Trust; 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) Any guaranty of the obligations secured hereby ceases to be in full force and effect or any such guarantor dies, is dissolved or terminated, or asserts that any guaranty is not in full force and effect; or

(j) 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, will become uninsured, 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 portion of the Trust Estate, or any estate that 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 attorney 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:

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

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

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

(iv) 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;

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

(vi) 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 all persons whose interests in the Trust Estate are subordinate to this Deed of Trust, 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

(vii) 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.

(viii) 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 Default Rate. 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, the Construction Loan Agreement or any other Loan Documents, or under applicable law.

4.3 **Limited Recourse.** Notwithstanding any provisions in this Deed of Trust to the contrary (except as provided below), it is expressly understood and agreed that if the Bondholder takes action to enforce the collection of the Indebtedness secured hereby after the Conversion Date, the Bondholder will proceed to foreclose this Deed of Trust and any other security interest granted under the Loan Documents prior to instituting suit against Grantor under the Loan Documents to collect the Indebtedness. If a lesser sum is realized from the foreclosure of the Deed of Trust and sale of the Trust Estate after the Conversion Date than the amount of principal, interest, fees, costs, and expenses then due and owing under the Loan Documents, the Bondholder will not institute any action, suit, claim, or demand in law or in equity against Grantor's members or partners for or on account of the deficiency. Nothing contained herein will in any way affect or impair the lien of the Deed of Trust or any representation or warranty of title made in the Deed of Trust, which will remain in full force and inure to the benefit of the Bondholder. Further, the following are excluded and excepted from the provisions of this section and the Bondholder may recover directly against Grantor or its members or partners at any time for the following:

(a) all losses, damages, or liabilities suffered by the Bondholder arising out of any fraud or willful or intentional misrepresentation by Grantor or any of Grantor's members or partners in connection with the Loan Documents or the Project;

(b) all Cash Collateral derived from the Property after a default by Ground Lessee (whether or not notice of such default has been given) under any of the Loan Documents or on deposit on the date such default occurs in one or more accounts used by Ground Lessee or its agents, representatives, or property manager in connection with the operation of the Property, except to the extent properly applied (as documented by evidence reasonably satisfactory to the Bondholder) to the normal and customary expenses and operations of the Property;

(c) all security deposits collected by Ground Lessee and not properly refunded to tenants and all advance rents collected by Ground Lessee and not properly applied in due

course; proper refunding or application must be documented by evidence reasonably satisfactory to the Bondholder;

(d) the replacement cost of any items of personalty or any fixtures removed from the Property after a default under any of the Loan Documents;

(e) all losses, damages, or liabilities suffered by the Bondholder arising from any acts of commission or omission by Grantor or any of Grantor's members or partners that result in waste upon the Trust Estate

(f) all payments the Bondholder makes to preserve the Trust Estate pursuant to express provisions of this Deed of Trust;

(g) all mechanic's liens, materialmen's liens, or any other liens arising from work performed on or materials delivered to the Property prior to foreclosure of this Deed of Trust and sale of the Property but only to the extent the Bondholder had advanced funds to pay for such work or materials;

(h) any insurance or condemnation proceeds attributable to the Property that are not applied in accordance with the terms of this Deed of Trust and any insurance or condemnation proceeds attributable to the Property that were not paid to the Bondholder when required under the terms of this Deed of Trust;

(i) All legal costs and expenses reasonably incurred by the Bondholder for any violation or alleged violation of law described under subparagraph (l) below;

(j) Any amounts owing to the Bondholder under indemnity provisions contained in the Loan Documents (including without limitation Section 8.22 of the Construction Loan Agreement) and any amounts owing to the Bondholder under any hazardous substances, access, or other indemnities;

(k) The amount, if any, by which the sum of all amounts realized by the Bondholder through the sale (or other disposition) of all assets pledged or assigned to the Bondholder under the Loan Documents is exceeded by the obligations secured thereunder, but only to the extent that any deficiency is directly attributable to Grantor's failure to insure any asset in accordance with the requirements of the Loan Documents; and

(l) Any monetary loss or damage incurred by the Bondholder arising from violations or alleged violations of criminal laws or as a result of criminal activity whether or not in the nature of conspiracy.

4.4 **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, the Loan Agreement, the Construction 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, Deed of Trust, Security Agreement, Assignment of Leases and Rents, and Fixture Filing - 24 -

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.

4.5 **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.**

(a) Grantor agrees and acknowledges that the indebtedness evidenced by the Loan Documents is personal to Grantor, and that Grantor's personal responsibility and/or control of the Property is a material inducement to Bondholder 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, any change in the legal or beneficial ownership or control of Grantor, any of its partners or members, or any guarantor of Grantor's obligations under the Loan Documents; or any transfer of capital stock, partnership interests or limited liability company interests in Grantor, any member or partner of Grantor or any guarantor that is an organization without Bondholder's prior written consent shall be deemed to increase the risk of Bondholder, and Bondholder or other holder may discontinue any advances under the Loan and 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 on the Loan, change the maturity date of the Loan, 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 Bondholder to increase monthly payments on the indebtedness evidenced by the Construction Loan Agreement and the other Loan Documents so as to retire the obligations within the originally stipulated time. The execution and delivery by Grantor of any joint venture agreement, partnership agreement, limited liability company operating agreement, declaration of trust, option agreement, or other instrument whereunder any other person or corporation, or other entity 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 Bondholder.

(b) In the event Grantor shall request the consent of Bondholder in accordance with the provisions of this Section 4.6, Grantor shall deliver a written request to Bondholder, together with such information as Bondholder may reasonably request regarding such conveyance, further encumbrance, lease or transfer of capital stock, partnership interest, or limited liability company interest and shall allow Bondholder 30 days to evaluate such request. In the event Bondholder approves such conveyance, encumbrance, lease, or transfer of capital stock, partnership interest, or limited liability company interest, Grantor shall pay Bondholder a processing fee in an amount to be determined by Bondholder but in no event less than Five Hundred Dollars to compensate Bondholder for its costs in processing such request. Consent as to any one transaction shall not be deemed to be a waiver of the right to require consent to any further or successive transaction.

(c) In the event ownership of the Property or any portion thereof becomes vested in a person other than Grantor, Beneficiary may, without notice to Grantor herein named, whether or not Beneficiary has given written consent to such change in ownership, deal with such successor or successors in interest with reference to this Deed of Trust and the obligations secured hereby, in the same manner as with Grantor herein named, without in any way vitiating or discharging Grantor's liability hereunder or the obligations hereby secured.

(d) Notwithstanding anything to the contrary contained in the Loan Documents, transfers of (i) equity interests in the Investor (as defined in the Construction Loan Agreement) and (ii) the Investor's interest in Grantor are permitted with written notice to the Bondholder and Beneficiary, so long as (x) the Investor remains under the control of Hunt Capital Partners, Inc., or (y) any transferee of the Investor's interest in Grantor is an Affiliate (as defined in the Construction Loan Agreement) of, and is and remains under the control of, Hunt Capital Partners, Inc. Notwithstanding anything to the contrary contained in the Loan Documents, the removal of Ground Lessee's managing member for cause in accordance with the Operating Agreement (as defined in the Construction Loan Agreement) and the admission of a substitute managing member that is an Affiliate of Hunt Capital Partners, Inc., shall require notice to, but not the consent of, Beneficiary or the Bondholder, and shall not constitute a default under any of the Loan Documents or accelerate the maturity of the Loan. If the Investor exercises its right to remove Ground Lessee's managing member, the admission of a substitute managing member that is not an Affiliate of Hunt Capital Partners, Inc., shall be subject to the prior written consent of the Bondholder. Notwithstanding the foregoing, the substitute managing member shall assume all the rights and obligations of the removed managing member under all the Loan Documents. The transfers permitted under this paragraph are referred to in the Loan Documents as "Permitted Transfers." Grantor may amend the Operating Agreement without the consent of the Bondholder solely to effectuate Permitted Transfers.

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
Deed of Trust, Security Agreement, Assignment
of Leases and Rents, and Fixture Filing

at trial, on any appeal, and in any bankruptcy proceeding. All 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, attorney 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.

4.8 **Surviving Obligations.** The obligations and liabilities of Grantor for waste on the Property or for wrongful retention of any Cash Collateral, insurance proceeds, or condemnation awards shall survive any termination, satisfaction, assignment, entry of judgment of foreclosure, delivery of trustee's deed in a nonjudicial foreclosure proceeding, or delivery of a deed in lieu of foreclosure.

ARTICLE V MISCELLANEOUS

5.1 **Governing Law.** This Deed of Trust shall be governed by the laws of the State of Oregon (without regard to the rules for conflict of laws). 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 **Reappraisal Requirements.** Grantor agrees that Bondholder shall have the right to obtain, at Grantor's expense, an appraisal of the Property prepared by an appraiser selected by and acceptable to Bondholder and in conformance with governmental regulations applicable to Bondholder and approved by Bondholder at any time that (a) an Event of Default has occurred hereunder, (b) any condemnation, damage or destruction of the Property occurs, (c) Bondholder determines in its sole reasonable opinion that the security for the Loan has been physically or financially impaired in any material manner, or (d) such appraisal is required by then current banking laws or regulations. In the event that Bondholder shall elect to obtain such an appraisal, Bondholder may immediately commission an appraiser acceptable to Bondholder, at Grantor's cost and expense, to prepare the appraisal and Grantor shall fully cooperate with Bondholder and the appraiser in obtaining the necessary information to prepare such appraisal. In the event that any appraisal shall determine that the then outstanding principal balance of the Loan, together with the undisbursed portion of the Loan which Bondholder may be obligated to disburse to Grantor in accordance with the terms and conditions hereof, is greater than 80 percent of the fair market value of the Project and Grantor fails to prepay, within 30 days after written notice from Bondholder to Grantor, the outstanding principal balance of the Loan to the extent necessary to reduce the sum of said principal balance and such amounts that Bondholder may be obligated to disburse to Grantor hereunder down to 80 percent of the fair market value, such event shall constitute an Event of Default.

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 [Reserved.]

5.12 **Limited Subordination to Tax Credit LURA.** Beneficiary agrees that its interest as Beneficiary pursuant to this Deed of Trust shall be, to the extent provided herein, subordinate and junior to the interests of the State of Oregon pursuant to such Tax Credit Extended Use Agreement and Land-Use Restrictive Covenant ("Tax Credit LURA") to be recorded in favor of the State of Oregon with regard to the Property: This subordination shall cease to be effective as of the earlier of: (a) the date the Property is acquired by foreclosure (or instrument in lieu of foreclosure), or (b) upon the termination of the "extended use period," as defined in Section 42(h)(6)(D) of the Internal Revenue Code, as amended, or any successor provision (the "Code"); or (c) for such other reason as may be permitted in Section 42(h)(6)(E) of the Code. Provided however, the limitation on the eviction of existing low-income tenants, for the term and to the extent provided in Section 42(h)(6)(E)(ii) of the Code, shall survive such foreclosure or other termination of the extended use period applicable to the Property. This subordination shall be interpreted to constitute a subordination of the interests of Beneficiary under this Deed of Trust to the extent, but only to the extent, necessary to meet the requirements established under Section 42(h)(6)(B)(v) of the Code.

5.13 **Beneficiary Actions.** Notwithstanding anything to the contrary contained herein, any consents, determinations, elections, approvals, waivers, acceptances, satisfactions, expressions of opinion, instructions or actions to be made or taken by Beneficiary under this Deed of Trust shall be made or taken solely by, or at the direction of, Bondholder.

5.14 **Consent To Jurisdiction and Venue; Waiver of Jury Trial.**

(a) Grantor consents to and submits to in personam jurisdiction and venue in the State of Oregon and in the federal district courts that are located in the City of Portland in the State of Oregon. This submission to jurisdiction is nonexclusive, and does not preclude either party from obtaining jurisdiction over the other in any court otherwise having jurisdiction.

(b) Grantor hereby waives its right to a jury trial of any claim or cause of action based upon or arising out of this Agreement, the other Loan Documents or any of the transactions contemplated hereby or thereby, including contract claims, tort claims, breach of duty claims, and all other common law or statutory claims.

5.15 **OREGON STATUTORY WARNING.** UNDER OREGON LAW, MOST AGREEMENTS, PROMISES AND COMMITMENTS MADE BY A FINANCIAL INSTITUTION CONCERNING LOANS AND OTHER CREDIT EXTENSIONS WHICH ARE

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 and the Construction Loan Agreement 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, and addressed to the addresses set forth in the Construction Loan Agreement (such notice to be sent to the Trustee at the address set forth at the beginning of this Deed of Trust). Any notice given to Beneficiary shall also be given to Bondholder at the address set forth in the Construction Loan Agreement. 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, a notice of such change in accordance with this Section 5.5.

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 Loan 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 held 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

NOT FOR PERSONAL, FAMILY OR HOUSEHOLD PURPOSES OR SECURED SOLELY BY THE GRANTOR'S PRINCIPAL RESIDENCE MUST BE IN WRITING, EXPRESS CONSIDERATION AND BE SIGNED BY THE FINANCIAL INSTITUTION TO BE ENFORCEABLE.

[Remainder of page intentionally left blank.]

[Signatures on the following pages.]

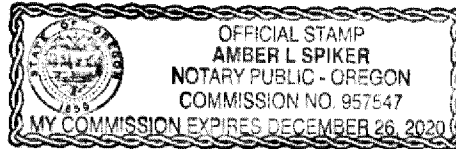
214703-0016/4847-7100-6390.4

GROUND LESSOR:

KLAMATH HOUSING AUTHORITY

By: 
Diana Otero, Executive Director

STATE OF OREGON)
COUNTY OF Klamath) SS



This instrument was acknowledged before me on April 9, 2020, by
Diana Otero as Executive Director of Klamath Housing Authority, on its behalf.



Notary Public for Oregon
My commission expires: December 26, 2020

EXHIBIT A

Legal Description

PARCEL 1:

Parcel 2 of Land Partition 2-17 Replat of Parcel 2 of Land Partition 8-00 situate in SE1/4 NE1/4 Section 14, Township 39 South, Range 9 East of the Willamette Meridian, Klamath County, Oregon, recorded May 8, 2017 in 2017-004773, Records of Klamath County, Oregon.

PARCEL 2:

60 foot Access Easement as designated and delineated on Land Partition 2-17 Replat of Parcel 2 of Land Partition 8-00 situate in SE1/4 NE1/4 Section 14, Township 39 South, Range 9 East of the Willamette Meridian, Klamath County, Oregon, recorded May 8, 2017 in 2017-004773, Records of Klamath County, Oregon.

EXHIBIT B

Permitted Encumbrances

Permitted Encumbrances Senior to Deed of Trust:

1.	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: California-Pacific Utilities Company Recorded: February 12, 1974 Volume: M74, page 2279
2.	Public Sanitary Sewer Easement as shown on the Partition Plat No. 02-17
3.	Public Storm Drain Easement as shown on the Partition Plat No. 02-17
4.	Public Utility Easement as shown on the Partition Plat No. 02-17
5.	Matters as disclosed by Survey by Adkins Engineering and Surveying. Dated: December 21, 2009 Revised: December 10, 2019 Revised: March 10, 2020 Revised: March 26, 2020 Job No: 3357-04 As Follows: Unknown Underground Communications Line Affects: As shown on said survey
6.	Regulatory Agreement by and among Oregon Housing and Community Services, Sunrise Vista Apartments, LLC, and Zions Bancorporation, National Association
7.	Pass-Through Revenue Bond Program, Low Income Housing Tax Credit Program, Local Innovation and Fast Track Program & Multifamily Energy Program Operating Agreement and Declaration of Restrictive Covenants by and between Oregon Housing and Community Services and Sunrise Vista Apartments, LLC

Permitted Encumbrances Subordinate to Deed of Trust are as shown in the Title Policy.