

2023-003219

Klamath County, Oregon

04/28/2023 11:37:03 AM

Fee: \$137.00

When Recorded, Return to:

Tritalent Funding Group, Inc.
8555 SW Apple Way, Suite 330
Portland, OR 97225

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

GRANTOR: Sapphire at Shasta Place, LLC
305 NE 102nd Avenue, Suite 250
Portland, OR 97220

BENEFICIARY: Jennifer Imbriani, Roger Imbriani, Norm Daniels Family Trust III,
Terry Newsom, Thomas E. and Cynthia R. Mulflur Revocable Living Trust dtd 6/9/11
and Edward A. Barkett 2014 Revocable Trust
c/o Tritalent Funding Group, Inc.
8555 SW Apple Way, Suite 330
Portland, OR 97225

TRUSTEE: Terry DeSylvia, Esq.
8555 SW Apple Way, Suite 330
Portland, OR 97225

STREET ADDRESS OF PROPERTY: 151 N. Williams Avenue, Klamath Falls, OR

ASSESSORS TAX ACCOUNT NO. OF PROPERTY: R441338

LOAN NO.: 2023-010

1. Conveyance. Grantor irrevocably grants and conveys to Trustee in trust, with power of sale, all of Grantor's right, title and interest in the real property legally described in Exhibit A attached.

2. **Obligations Secured.** This Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing (the "Trust Deed"), is given to secure: the payment and performance of all obligations of Grantor under this Trust Deed; the Loan Agreement between the parties entered into on April 27, 2023; all sums advanced by Beneficiary to protect the Real Property or to pay or perform any obligations of Grantor hereunder; all sums due under Grantors' Promissory Note to Beneficiary dated April 27, 2023, in the principal sum of \$2,000,000.00, as modified, supplemented, extended, renewed or replaced from time to time (the "Note"), the final payment of which, if not sooner paid, extended or renewed, is due and payable January 1, 2024; any other obligations of Grantor to Beneficiary evidenced by promissory note(s) or agreements which reference being secured by this Trust Deed; and all obligations, debts, claims and liabilities of Grantor to Beneficiary (individually or collectively), regardless of whether recovery is barred by any statute of limitations or are otherwise unenforceable, plus interest thereon, now existing or hereafter arising, voluntary or involuntary, due or not due, direct or indirect, absolute or contingent, liquidated or non-liquidated (including those in which Grantor is obligated as guarantor, surety, accommodation party or otherwise) (collectively referred to herein as the "Obligations").

3. Assignment of Rents and Security Interest. As additional security for the Obligations, Grantor, grants and assigns to Beneficiary: (a) All of Grantor's right, title and interest in all present and future leases of the Real Property; (b) A Uniform Commercial Code Security Interest in: the rents or other income relating to or arising from any lease of the Real Property; standing timber, crops, minerals and sand, gravel and other similar earth materials on or under the Real Property; fixtures and other articles of personal property located on or attached or affixed to the Real Property; together with: accessions, parts, additions, replacements and substitutions to such property; products from such property; and proceeds (including without limitation all insurance proceeds and refunded premiums) from any damage to or sale or other disposition of such property; (c) A Uniform Commercial Code Security Interest in all architectural and engineering plans, specifications and drawings, construction contracts, as built plans, building permits, governmental approvals, schedules and all other such documents used or useable in connection with the construction of improvements to the Real Property.

As used hereafter, the term "Collateral" shall mean collectively the Real Property and/or personal property subject to the above security interest.

4. Taxes, Liens and Assessments. Grantor shall pay before delinquent all taxes, liens, encumbrances, charges and assessments affecting the Collateral.

5. Trust Expenses. Grantor shall pay all costs, fees and expenses of this trust and all lawful charges, costs and expenses of any reinstatement of this Trust Deed following a default.

6. Fire Insurance. Grantor shall, at Grantor's expense, maintain in force fire and extended coverage insurance (including flood and earthquake coverage) on the Collateral as required by Beneficiary, with loss payable to Beneficiary, with such insurance coverage to contain a waiver of the insurer's right of subrogation against Beneficiary and a 30 day notice to Beneficiary of cancellation provision.

7. Liability Insurance. Grantor shall, at Grantor's expense, maintain in force policies of liability insurance in amounts required by Beneficiary, with Beneficiary as an additional insured thereunder, insuring against any claims related to or arising from the use, occupancy or condition of the Collateral.

8. Indemnification of Trustees and Beneficiary. Grantor shall hold Trustee and Beneficiary harmless from and indemnify them for any claims raised by any third party against Trustee or Beneficiary resulting from their interests hereunder or the acts of Grantor. Such indemnification shall include reasonable attorneys' fees and costs.

9. Right of Beneficiary or Trustee to Pay or Perform Obligations of Grantor. If Grantor fails or refuses to pay or perform any obligation due to Lender, Beneficiary or Trustee shall have the right, but not the obligation, to pay or perform any act necessary to protect the Beneficiary's interest in the Collateral. The amount of such sums paid by Beneficiary or Trustee, and the cost of any such action, together with interest thereon at the lesser rate of 2%, shall added to the balance due on the Note. The payment by Beneficiary or Trustee of any such sum, or the performance of any such action, shall be prima facie evidence the payment of performance was reasonable and necessary.

10. Condemnation. Any award of damages in connection with any condemnation or injury to any of the Collateral by reason of public use or for damages for private trespass or injury thereto are assigned and shall be paid to Beneficiary, to be applied to the payment of the Obligations in such manner as Beneficiary may elect. Any remaining balance shall be paid to Grantor. Beneficiary may, at Beneficiary's option, appeal from any such award in the name of Grantor. Unless Grantor and Beneficiary otherwise agree in writing, any application of such proceeds shall not extend or postpone the due dates of any installment payments of the Obligations or change the amount of such payments.

11. Care of Collateral. Grantor shall: (a) take reasonable care of the Collateral; (b) maintain the Collateral in good repair and condition; (c) not commit or permit waste to the Collateral; (d) do nothing which will impair or depreciate the value of the Collateral or affect its insurability. and (e) take any necessary action to maintain any water rights, power rights or other rights which are appurtenant to the Collateral.

12. Right to Inspect Collateral. Upon reasonable prior notice to Grantor, Beneficiary or Trustee shall have the right and license to go on and into the Collateral to inspect it in order to determine whether the provisions of this Trust Deed are being performed.

13. Due on Sale. Lender, may at anytime, declare all amounts secured by this Trust Deed to be immediately due and payable on a sale or transfer of any interest in the Collateral. For purposes of this Agreement, a sale or transfer shall be construed broadly to include without limitation, the sale, conveyance or assignment of all or any interest in the Collateral, including the granting of a security interest in the Collateral by mortgage, trust deed, security agreement or otherwise, voluntarily or involuntarily, whether by outright sale, installment contract, granting a leasehold interest not terminable on 30 days notice, lease option agreement, gift or consignment.

14. Event of Default. A default in the payment or performance of the Obligations shall include, without limitation: (a) the failure of Grantor to pay or perform the Obligations or any term, obligation, covenant or condition in any other note or agreement between Grantor and Beneficiary on or before the due date thereof; (b) the failure of Grantor to perform any duty required by this Trust Deed; (c) the removal or attempted removal by Grantor of any property included in the Collateral without the consent of Beneficiary; (d) the abandonment of the Collateral by Grantor; (e) a determination by Beneficiary the Collateral is inadequate or in danger of being impaired or threatened from any cause whatsoever; (f) sale or assignment of any interest in the Collateral (including without limitation, assignment for security purposes) without the prior written consent of Beneficiary, which may be granted, withheld or conditioned in Beneficiary's sole discretion; or (g) the filing, execution or occurrence of: (1) a petition in bankruptcy by or against Grantor, (2) a petition or answer seeking a reorganization, composition, readjustment, liquidation, dissolution or other relief of the same or different kind under any provision of the Bankruptcy Act, (3) the adjudication of Grantor as a bankrupt or insolvent, or insolvency in the bankruptcy equity sense, (4) an assignment by Grantor for the benefit of creditors, whether by trust, mortgage or otherwise, (5) a petition or other proceedings by or against Grantor for the appointment of a trustee, receiver, guardian, conservator or liquidator of Grantor with respect to all or substantially all its property, (6) Grantor's dissolution or liquidation or the taking of possession of Grantor's property by any governmental authority in connection with dissolution or liquidation.

15. Remedies on Default. On default, Beneficiary shall have all rights and remedies available under this Agreement or applicable law (all such rights and remedies to be cumulative) including without limitation: (a) to foreclose this Trust Deed as a Mortgage or by advertisement and sale under applicable Oregon law; (b) to exercise all rights of a secured creditor under the Uniform Commercial Code of Oregon; (c) to enter upon and take possession of the Collateral; (e) to collect any rents or other income from the Collateral, including that past due and unpaid; and apply the same, less costs and expenses of operation and collection, including reasonable attorneys' fees, upon any of the Obligations, and in such order as Beneficiary may determine; (f) the entering upon and taking possession of the Collateral, the collection of such rents and income and the application thereof, shall not cure or waive any default or notice of Trustee's Sale hereunder or invalidate any act done pursuant to such notice; (g) to have a receiver appointed by a Court to collect the rents and income as provided above; and (h) to declare all Obligations immediately due and payable.

16. Deficiency Judgment. Beneficiary shall be entitled to a deficiency judgment against Grantor if a sale of the Property after default yields an amount insufficient to fully satisfy the Obligations.

17. Acts of Trustee Affecting Collateral. If the Trustee, in its sole discretion, releases or conveys all or any portion of the Collateral such action shall not affect the personal liability of any person for payment of the Obligations and without affecting the security hereof for the full amount secured hereby on all remaining Collateral, and without the necessity that any sum representing the value or any portion thereof of the Collateral affected by Trustee's action be credited on the indebtedness.

18. Satisfaction of the Obligation. Upon written request of Beneficiary stating that all sums secured hereby have been paid, and upon surrender of this Trust Deed and the Obligations for cancellation, and upon payment of Trustee's fees, Trustee shall release and reconvey, without covenant or warranty, express or implied, the Collateral. The recitals in such reconveyance of any matters or facts shall be conclusive proof of the truthfulness thereof. The grantee in such reconveyance may be described as "the person or persons legally entitled thereto."

19. **Notices.** Copies of all notices and communications concerning this Trust Deed shall be mailed to the parties at the addresses specified in this Trust Deed. Any change of address shall be communicated to the other parties in writing. Any documents which may adversely affect the rights of any party to this Trust Deed shall be delivered by Certified Mail, Return Receipt Requested, facsimile, personal service or any other means which will reasonably result in actual notice.

20. **Headings.** The marginal or topical headings of the provisions herein are for convenience only and do not define, limit or construe the contents of these provisions.

21. **Interpretation.** In this Trust Deed, whenever the context so requires, masculine gender includes the feminine and neuter, and the singular includes the plural and vice versa.

22. **Applicable Law.** This Trust Deed shall be subject to and governed by the laws of the State of Oregon, even if one or more parties now is or may become a resident of a different state.

23. **Waiver.** Any waiver by any party of a breach of any provision of this Trust Deed shall not operate or be construed as a waiver of any subsequent breach hereof.

24. **Succession of Benefits.** The provisions of this Trust Deed shall benefit and bind the parties, their heirs, personal representatives and permitted assigns.

25. **Successor Trustee.** Beneficiary may appoint a Successor Trustee by delivering written notice of such appointment to the Successor Trustee, or in the manner prescribed by law. A Successor Trustee herein shall, without conveyance from the predecessor Trustee, succeed to all the predecessor's title, estate, rights, powers and duties. Trustee may resign by mailing or delivering notice thereof to Beneficiary and Grantor.

26. **Entire Agreement.** The terms of this Trust Deed constitute the entire agreement among the parties, and the parties represent that there are no collateral or side agreements not otherwise provided for within the terms of this Trust Deed.

27. **Time of Essence.** Time is of the essence in this Trust Deed and every term, condition, covenant and provision hereof.

28. **Modification.** No modification of this Trust Deed shall be binding unless evidenced by an agreement in writing and signed by all parties.

29. **Partial Invalidity.** If any provision of this Trust Deed is held to be invalid or unenforceable, all the remaining provisions shall nevertheless continue in full force and effect.

30. **Covenants, Representation and Warranties.** Grantor covenants, represents and warrants to Beneficiary: (a) Grantor is the owner of the Collateral free and clear of all liens and encumbrances. (b) The Collateral has not been used for the storage or disposal of hazardous materials. (c) Individuals signing this Trust Agreement on behalf of Grantor have the right and authority to do so. (d) The Property is not an occupied dwelling; and at no time prior to payment of the Loan in full, will any person occupy the Property as their personal dwelling. (e) There are no "wetlands" (as defined by applicable laws and regulations) located on the Property. (f) The Real Property is not used principally for agricultural or farming purposes. (g) This Trust Deed secures a loan, which was for business or commercial purposes only. (h) Grantor has full power and authority to own its property and assets and carry on its business as now being conducted. (i) The Real Property and its present and intended use comply with all applicable laws and zoning requirements. (j) Grantor is fully authorized to execute and deliver the Note and this Trust Deed and to perform the terms of this Trust Deed, none of which conflict with any provisions of law or regulations applicable to Grantor. (k) The Note and this Trust Deed are valid and binding legal obligations of Grantor and are enforceable in accordance with their terms. (l) The lien, security interest and assignments created by the Trust Deed will, when recorded, be valid, effective, properly perfected and enforceable liens, security interest and assignments. (m) The execution, delivery and performance by Grantor of the Note and Trust Deed will not result in any breach of the terms or conditions of, or constitute a default under any agreement, or instrument under which Grantor is a party or otherwise obligated. (n) All financial documents and information provided by Grantor to Beneficiary are true and correct and fairly represent the current financial condition of Grantor, and Grantor has no material liabilities, absolute, contingent or otherwise, except as disclosed in writing to Beneficiary. (o) No action, suit or proceeding is pending or threatened against Grantor that may materially and adversely affect the repayment of the Note and performance by Grantor under this Trust Deed or the financial conditions, business operations of Grantor. (p) Grantor will not

PAGE 4 - DEED OF TRUST, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING

commit, permit or suffer any use or occupancy of the Collateral which constitutes a public or private nuisance. (q) Grantor will not make any material alteration, improvement, addition, utility installation or the like to the Collateral, or remove or replace any item of personal property included in the Collateral, without the prior written consent of Beneficiary, which may be withheld, granted or conditioned in Beneficiary's sole discretion. (r) Grantor will not permit or suffer any liens or encumbrances against the Property, except for this Trust Deed.

31. **Miscellaneous.** (a) In the event of legal action or suit related to or arising from this Agreement, the prevailing party shall be entitled to recover, in addition to any other remedy or relief, their reasonable attorney fees as may be established by the Court at trial or on appeal; (b) If Beneficiary is made a Defendant to any litigation concerning this Trust Deed or the trust estate or any part hereof, Grantor shall indemnify, defend and hold Beneficiary harmless from all liability relating to or arising from such litigation, including reasonable attorney fees and expenses incurred by Beneficiary in any such litigation.

NOTICE REQUIRED BY ORS 746.201

WARNING

Unless Grantor provides Beneficiary with evidence of the insurance coverage as required by Beneficiary's Trust Deed, Beneficiary may purchase insurance at Grantor's expenses 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 Grantor's contract or loan balance. If the cost is added to Grantor's contract or loan balance, the interest rate, or default rate of interest, on the underlying Trust Deed will apply to this added amount. The effective date of coverage may be the date Grantor's prior coverage lapsed or the date Grantor failed to provide proof of coverage. The coverage purchased by Beneficiary 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.

"Grantor"

SAPPHIRE AT SHASTA PLACE, LLC

By: 
KEVIN M. RICKER, Manager

By: _____
ANDREW L. BECKER, Manager

By: _____
LISA J. HILTY, Manager

~~CALIFORNIA~~
~~STATE OF OREGON~~
County of RIVERSIDE

~~This instrument was acknowledged before me on
April 27, 2023, by Kevin M. Ricker, Andrew L. Becker and Lisa
J. Hilty, Managers of Sapphire at Shasta Place, LLC~~

~~Notary Public for the State of Oregon~~ ~~CALIFORNIA~~

Acknowledgment
ATTACHED

commit, permit or suffer any use or occupancy of the Collateral which constitutes a public or private nuisance. (q) Grantor will not make any material alteration, improvement, addition, utility installation or the like to the Collateral, or remove or replace any item of personal property included in the Collateral, without the prior written consent of Beneficiary, which may be withheld, granted or conditioned in Beneficiary's sole discretion. (r) Grantor will not permit or suffer any liens or encumbrances against the Property, except for this Trust Deed.

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"Grantor"

SAPPHIRE AT SHASTA PLACE, LLC

STATE OF OREGON

County of Multnomah

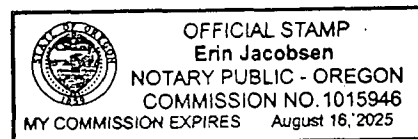
This instrument was acknowledged before me on
April 27, 2023, by ~~Kevin M. Ricker~~, Andrew L. Becker and Lisa
J. Hilty, Managers of Sapphire at Shasta Place, LLC

By: _____
KEVIN M. RICKER, Manager

By:  _____
ANDREW L. BECKER, Manager

By:  _____
LISA J. HILTY, Manager

 _____
Notary Public for the State of Oregon



ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of Riverside

On APRIL 27, 2023 before me, Molly Richardson, Notary Public
(insert name and title of the officer)

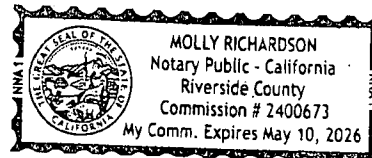
personally appeared KEVIN M. RICKER
who proved to me on the basis of satisfactory evidence to be the person~~(s)~~ whose name~~(s)~~ is/~~are~~ subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ authorized capacity~~(ies)~~, and that by his/~~her/their~~ signature~~(s)~~ on the instrument the person~~(s)~~, or the entity upon behalf of which the person~~(s)~~ acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature 

(Seal)



DEED OF TRUST

EXHIBIT "A"

The Land referred to herein below is situated in the County of Klamath, State of Oregon, and is described as follows:

A TRACT OF LAND SITUATED IN THE NORTH 1/2 SOUTHWEST 1/4 SOUTHEAST 1/4 SOUTHEAST 1/4 OF SECTION 28, TOWNSHIP 38 SOUTH, RANGE 9 EAST OF THE WILLAMETTE MERIDIAN, KLAMATH COUNTY, OREGON; MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF THE SOUTHEAST 1/4 SOUTHEAST 1/4 OF SAID SECTION 28; THENCE NORTH 00° 49' 52" EAST 333.61 FEET TO THE NORTHWEST CORNER OF THE SOUTHWEST 1/4 SOUTHWEST 1/4 SOUTHEAST 1/4 SOUTHEAST 1/4 OF SAID SECTION 28; THENCE SOUTH 89° 28' 52" EAST 30.00 FEET TO THE TRUE POINT OF BEGINNING OF THIS DESCRIPTION; THENCE CONTINUING SOUTH 89° 28' 52" EAST 301.12 FEET TO THE NORTHEAST CORNER OF SAID SOUTHWEST 1/4 SOUTHWEST 1/4 SOUTHEAST 1/4 SOUTHEAST 1/4; THENCE NORTH 00° 53' 52" EAST 46.50 FEET TO THE NORTHWEST CORNER OF THE HIGHLAND CARE CENTER TRACT; THENCE SOUTH 89° 30' 00" EAST, ALONG THE NORTH LINE OF THE HIGHLAND CARE CENTER TRACT, 331.17 FEET TO THE EAST LINE OF THE SOUTHEAST 1/4 SOUTHEAST 1/4 SOUTHEAST 1/4 OF SAID SECTION 28; THENCE NORTH 00° 57' 53" EAST 286.78 FEET TO THE NORTHEAST CORNER OF SAID SOUTHWEST 1/4 SOUTHEAST 1/4 SOUTHEAST 1/4; THENCE NORTH 89° 27' 44" WEST 633.01 FEET, MORE OR LESS, TO A POINT THAT IS SOUTH 89° 27' 44" EAST 30.00 FEET FROM THE NORTHWEST CORNER OF SAID SOUTHWEST 1/4 SOUTHEAST 1/4 SOUTHEAST 1/4; THENCE SOUTH 00° 49' 52" WEST 333.59 FEET TO THE TRUE POINT OF BEGINNING, WITH BEARINGS BASED ON THE SOUTH LINE OF SAID SECTION 28 AS BEING SOUTH 89° 30' 00" EAST.

NOTE: THIS LEGAL DESCRIPTION WAS CREATED PRIOR TO JANUARY 1, 2008.