

**FREE RECORDING IN ACCORDANCE  
WITH CALIFORNIA GOVERNMENT  
CODE SECTION 27383 and 27388.1.**

RECORDING REQUESTED BY,  
AND WHEN RECORDED MAIL TO:

State of California  
Department of Housing and  
Community Development  
P.O. Box 952052  
Sacramento, CA 94252-2052  
Attn: **Legal Affairs Division**  
Veterans Housing &  
Homelessness Prevention  
(VHHP) Program  
\_\_\_-VHHP-\_\_\_

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**DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT  
VETERANS HOUSING AND HOMELESSNESS PREVENTION (VHHP) PROGRAM**

NOFA of December 2016

**DEED OF TRUST, ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND  
FIXTURE FILING (PERMANENT FINANCING)**

LOAN NUMBER \_\_\_-VHHP-\_\_\_

**THIS DEED OF TRUST**, dated \_\_\_\_\_ 20\_\_ for reference purposes only, is executed and delivered by \_\_\_\_\_, a \_\_\_\_\_ (the "**Borrower**"), whose address is listed herein, to \_\_\_\_\_, as trustee (the "**Trustee**"), whose address is \_\_\_\_\_, California, \_\_\_\_\_ for the benefit of the Department of Housing and Community Development, a public agency of the State of California (the "**Lender**"), whose mailing address is Attention: VHHP Program, P.O. Box 952052, Sacramento, CA 94252-2052, and whose principal place of business is 2020 West El Camino Avenue, Sacramento, CA 95833.

**A. Grant In Trust.** Borrower, in consideration of the indebtedness herein recited and the trust herein created, hereby **irrevocably grants, conveys and assigns to Trustee, in trust for the benefit of Lender, with power of sale and the right of entry and possession, all of Borrower's present and future right,**

title and interest in and to each and all of the following (including without limitation all option, first refusal and similar rights, if any, with respect thereto) (collectively, the **"Property"**):

(i) that certain real property located in the County of \_\_\_\_\_, State of California more particularly described on Exhibit A, attached hereto and made a part hereof, (the **"Real Property"**), which has the address of \_\_\_\_\_, California (the **"Property Address"**);

***[-add following if a ground leasehold interest-]***

,including without limitation all of Borrower's right, title and interest in and to the Real Property under and in connection with that certain Ground Lease dated as of \_\_\_\_\_, 201\_\_ between \_\_\_\_\_, as ground lessor, and Borrower, as ground lessee, a recorded memorandum of which was recorded in the Official Records of \_\_\_\_\_ County, California on \_\_\_\_\_, 201\_\_ as Instrument No. \_\_\_\_\_, as amended and supplemented by that certain Lease Rider of even date herewith executed by the ground lessor, Borrower and Lender to be recorded in such Official Records immediately prior to the recordation of this Deed of Trust, (such ground lease, as may from time to time be further amended, modified, extended, replaced or assigned, being the **"Ground Lease"**), including without limitation, any and all options to extend or renew the Ground Lease (and the leasehold estate for the term of such extension or renewal), and any and all options and rights of refusal contained therein to purchase the real property which is the subject of the Ground Lease. If Borrower acquires fee title to any portion of the Real Property subject to the Ground Lease, this Deed of Trust shall automatically be a lien on such fee title;

(ii) all buildings and improvements now or hereafter erected or located on the Real Property, including without limitation, the Development;

(iii) all other improvements and fixtures now or hereafter erected or located on the Real Property, including but not limited to any and all apparatus, equipment, appliances and other property used in the operation or occupancy of the Real Property and/or the Development, including, but not limited to, all gas and electric fixtures, engines and machinery, radiators, heaters, furnaces, heating equipment, steam and hot water boilers, stoves, ranges, dishwashers, elevators and motors, bathtubs, sinks, water closets, basins, pipes, faucets and other plumbing and heating equipment, cabinets, mantels, refrigerating plant and refrigerators, whether mechanical or otherwise, cooking apparatus and appurtenances, furniture, shades,

awnings, screens, Venetian blinds and other furnishings, now or hereafter attached to or located on the Real Property and/or the Development, including all replacements thereof and additions thereto, it being intended by the parties that all such items shall be conclusively considered to be part of the Real Property, whether or not attached or affixed thereto;

(iv) all easements, rights, appurtenances, and rights of way appurtenant, related or pertaining to the Real Property and/or the Development;

(v) all streets, ways, roads and alleys used in connection with or pertaining to the Real Property and/or the Development;

(vi) all development rights (including without limitation, all governmental and other third party consents, approvals, certificates of occupancy, variances, zoning or use designations, building or other entitlements, permits and similar rights), air rights, ground rights, water, water rights and water stock, credits and reimbursements related to the Real Property and/or the Development;

(vii) all rents, income, revenues, issues, royalties, profits, earnings, products and proceeds generated by the Real Property, the Development and/or any other Property, and any improvements located thereon, or any portion thereof or interest therein, including without limitation all sales proceeds generated by the sale or other conveyance thereof, all space or unit rentals thereof, and any and all other benefits paid or payable for the use, licensing, leasing, occupancy, conveyance or selling of the same, or any portion thereof or interest therein, together with the right to collect and apply the same to any indebtedness secured hereby, (subject, however, to the right given herein to Borrower to collect and apply such rents prior to an Event of Default);

(viii) without limiting the generality of clause (vii) immediately preceding, all leases of the Real Property, the Development and/or other Property, and any improvements located thereon, or any part thereof, including without limitation the Tenant Leases, now or hereafter entered into, and all right, title and interest of Borrower in and to the Payments;

(ix) all refundable utility, tenant, escrow and governmental fees and deposits, and all refundable fees and deposits of every other nature related to the Real Property, the Development and/or other Property;

(x) all mineral, oil and gas, and other hydrocarbon substances in, on or under the Real Property, and all royalty and other rights of pertaining

thereto;

(xi) all bank, reserve and/or other accounts, accounts receivable, contract rights, general intangibles, chattel paper, money, instruments, documents notes, drafts, letters of credit, insurance policies, and insurance and condemnation claims, demands, rights, awards and proceeds arising from or related to the Real Property, the Development or other Property, including without limitation the Awards;

(xii) all construction, architectural, engineering, management, maintenance and other drawings, renderings, certifications, reports, contracts and agreements, and all surveys, reports and studies, related to the assessment, construction, operation, administration, valuation, use or maintenance of the Real Property, the Development or other Property;

(xiii) all third-party representations, warranties, indemnities, claims and causes of action relating to the Real Property, the Development or other Property, including without limitation, the design, improvement, construction, operation or maintenance thereof; and

(xiv) all replacements and proceeds of the foregoing property and all additions, accretions and accessions thereto.

The listing of specific rights or property set forth in this Section A shall not be interpreted as limiting the generality of the foregoing grants, or the collateral intended to be covered thereby.

**B. Secured Obligations.** The interests herein granted, conveyed and assigned are for the purpose of securing to Lender all of the following obligations (collectively, the "**Secured Obligations**"):

(1) the repayment of the indebtedness evidenced by, and the performance of the other covenants contained in, that certain **[Limited]** Recourse Promissory Note Secured by Deed of Trust Loan Number \_\_\_-VHHP-\_\_\_ of even date herewith executed by Borrower to the order of Lender, in the original principal amount of \_\_\_\_\_ dollars (\$\_\_\_\_\_), as the same may hereafter be amended, modified or extended, (the "**Note**");

(2) the payment and the performance of the sums, covenants and agreements of Borrower contained in this Deed of Trust, as the same may hereafter be amended, modified or extended, including without limitation, the repayment of any and all sums advanced and any and all cost, fees and expenses incurred by Lender in protecting or enforcing its rights and

interests under this Deed of Trust or to any of the Property encumbered hereby;

(3) the payment and the performance of the sums, covenants and agreements of Borrower contained in the Regulatory Agreement (defined in Section C below), as the same may hereafter be amended, modified or extended; and

(4) any other obligation or other evidence of indebtedness of Borrower to Lender now or hereafter created, whether acquired by assignment from third parties, or otherwise, where such obligation specifically recites that it is secured by this Deed of Trust.

The term "obligations" is used herein in its broadest and most comprehensive sense and shall be deemed to include, without limitation, all principal, interest, charges, late fees, advances, prepayment fees (if any), and other fees, costs, expenses and amounts at any time evidenced by, or accruing, assessed or incurred with respect to, any of the Secured Obligations. All of the terms of the Secured Obligations, and of the documents evidencing the same, are incorporated herein by this reference, and all persons who may now have or hereafter acquire an interest in the Property shall be deemed to have notice thereof.

**C. Nature of Loan.** The Note is evidence of the loan made by Lender to Borrower (the "**Loan**") pursuant to the Veterans Housing and Homelessness Prevention Program (the "**Program**") for the development on and as part of the Real Property of *[affordable multifamily supportive housing, affordable transitional housing, affordable rental housing]* and/or related facilities for veterans and their families (the "**Development**"). The Program is established and governed by the Veterans Housing and Homelessness Prevention Act, Division 4, Chapter 6, Article 3.2, commencing with Section 987.001 of the California Military and Veteran's Code (the "**Act**"), together with the Veterans Housing and Homelessness Prevention (VHHP) Program Guidelines (the "**Guidelines**") applicable thereto with respect to the Loan, all as amended and in effect from time to time.

The Loan is further subject to the provisions of that certain Standard Agreement (\_\_\_VHHP\_\_\_) dated\_\_\_\_\_, 20\_\_ between \_\_\_\_\_ and Lender (the "**Standard Agreement**") and that certain Regulatory Agreement of even date herewith between Lender and Borrower (the "**Regulatory Agreement**"). The Standard Agreement, the Note, this Deed of Trust and the Regulatory Agreement are collectively referred to herein as the "**Loan Documents**". The Loan Documents, among other things, govern, regulate and restrict the continued occupancy, operation, management and ownership of the Real Property and the Development for the period of time as set forth in the

Regulatory Agreement. The Regulatory Agreement shall be recorded in the Official Records of the county recorder for the county in which the Property is located as a separate and independent lien and encumbrance on the Property pursuant to Section 119(b) of the Guidelines. The lien of this Deed of Trust shall at all times be and remain a lien and charge on the Property that is subject and subordinate to the lien and charge of the Regulatory Agreement; and the Regulatory Agreement shall continue in full force and effect as a lien and charge against the Property, and shall continue to be secured by this Deed of Trust, notwithstanding the repayment or other satisfaction of the Note.

**D. Title.** Borrower hereby represents, warrants and covenants to Lender: (1) that Borrower is the sole and lawful owner of, and has full and sole possession of, the estate and Property hereby conveyed, (2) that Borrower has the sole and exclusive right, without limitation, to grant, convey, encumber, assign and grant the security interests the Property as provided herein, and (3) that Borrower shall warrant and defend generally the title of the Property against all liens, encumbrances, claims, actions, causes of action and demands, subject only to any liens, encumbrances, declarations, easements or restrictions listed in a schedule of exceptions to coverage in any title insurance policy accepted by Lender insuring Lender's interest in the Property under this Deed of Trust.

**NOW, THEREFORE,** Borrower hereby covenants and agrees as follows:

1. Payment and Performance of Secured Obligations. Borrower shall fully and timely pay and perform as and when due each and all of the Secured Obligations in accordance with their respective terms, time being of the essence thereof.

2. Charges, Liens & Encumbrances.

2.01 Payment of Taxes and Assessments. Borrower shall fully and timely pay prior to delinquency all income, real property and other taxes, assessments, levies and other charges, fines and impositions attributable to or levied or assessed against or with respect to the Property, the Payments or any other income, proceeds or revenues generated thereby, by Borrower making payment thereof, as and when due, directly to the payee thereof. Borrower shall promptly furnish to Lender all notices of amounts due under this paragraph, and in the event Borrower shall make payment directly to the party or parties to whom the same are owed, Borrower shall promptly furnish to Lender receipts evidencing such payments. Borrower shall have the right, upon written notice to Lender, to contest in good faith any claim, lien or payment due with respect to any of the foregoing, provided that Borrower does so diligently and without prejudice to Lender.

2.02 Payment and Performance of Other Liens. Additionally, Borrower shall fully and timely pay and perform as and when due all other debts, obligations, encumbrances, liens, covenants, charges, and liens approved by Lender in writing, now or hereafter secured by, encumbering or otherwise affecting the Property or any portion thereof or interest therein in strict accordance with the terms thereof, regardless of whether the same have priority over or are subject and subordinate to this Deed of Trust or the Regulatory Agreement and regardless of to whom such obligations are owed, including without limitation, any other promissory notes, deeds of trust, regulatory agreements, restrictive covenants, disbursement agreements or standard agreements held by or benefiting the Lender which secure, evidence or otherwise relate to any other loans or grants provided by the Lender with respect to the Real Property, the Development or other Property, or any infrastructure, transportation, program, predevelopment or other costs associated therewith.

Without in any manner affecting or limiting the prohibitions of Section 12 below, immediately upon demand by Lender, Borrower shall pay and discharge in full, regardless of their respective maturity or payment dates, any and all deeds of trust, security agreements and other claims, liens and/or encumbrances on the Property, or any portion thereof, and the indebtedness secured thereby, not expressly approved by Lender in writing and cause the same to be fully and immediately released and reconveyed as a lien against the Property, regardless of whether the same have priority over or are subject and subordinate to this Deed of Trust or the Regulatory Agreement.

2.03 No Assessments or Community Facilities Districts. Without Lender's express prior written consent, Borrower shall not cause to become effective or otherwise consent to the formation of any assessment district or community facilities district which includes any or all of the Property or the Development pursuant to: (i) the Mello-Roos Community Facilities Act of 1982; (ii) the Municipal Improvement Act of 1913, or (iii) or any other comparable or similar statutes or regulations. Borrower shall not cause or otherwise consent to the levying of special taxes or assessment against the Property, or any portion thereof, by any such assessment district or community facilities district.

3. Leasehold Estate. If the estate conveyed in trust by this Deed of Trust includes a ground leasehold interest, Borrower hereby undertakes and agrees as follows:

- (i) Borrower shall fully and timely perform, observe and fulfill all its obligations under the Ground Lease creating such leasehold interest,

(ii) Borrower shall not enter into, agree to or otherwise suffer any termination, modification or amendment to the Ground Lease without the prior written consent of Lender, in its sole and absolute discretion;

(iii) Borrower shall not waive any rights or remedies it may have against the ground lessor under the Ground Lease or in any way release the ground lessor under the Ground Lease of any of its obligations thereunder;

(iv) Borrower shall not subordinate the Ground Lease, or the leasehold interest granted thereunder, to any deed of trust or other encumbrance of, or lien on, any interest in the real property subject to the Ground Lease or on which the Development or other improvement are located without the prior written consent of Lender, in its sole and absolute discretion;

(v) Borrower shall not further encumber its interest in the Ground Lease without the prior written consent of the Lender, in its sole and absolute discretion;

(vi) Borrower shall timely exercise any option to renew or extend the Ground Lease prior to the expiration or termination of any such right, shall give Lender immediate written notice of such exercise, and shall execute, deliver and record any and all documents requested by Lender to evidence the continuation of the lien of this Deed of Trust on such extended or renewed lease term; and

(vii) Borrower hereby represents and warrants to Lender with respect to the Ground Lease, as follows:

(A) The Ground Lease is in full force and effect;

(B) Borrower owns the entire tenant's interest in the Ground Lease and has the right thereunder to execute this Deed of Trust and encumber such leasehold interest; and

(C) No default under the Ground Lease remains uncured, nor has any event occurred which, with the passage of time or the giving of notice, or both, would constitute such a default.

4. Insurance. At all times during the term of the Loan and the Regulatory Agreement, Borrower shall obtain and maintain in full force and effect, at its sole cost and expense, all of the following insurance policies as provided herein:

#### 4.01 Hazard Insurance.

a. Borrower shall keep the Development and the other improvements and other Property now or hereafter erected or located on the Real Property insured against loss from fire or hazards under a policy approved by Lender, which provides "special form" coverage in an amount at least equal to the full replacement value of the improvements. If the Development or any other improvements, or any part thereof, are at any time during the term of the Loan or Regulatory Agreement designated as being located within a one-hundred year flood plain by the Federal Emergency Management Agency (FEMA), Borrower shall further keep said improvements insured against loss by flood to eighty percent (80%) of replacement cost. In addition, Borrower shall insure against: (i) loss of all furniture, equipment and other personal property owned by Borrower related to the use and operation of the Property, (ii) loss of rents (including the Payments) and other income generated by the Property, and (iii) all other risks and coverage required under the terms of the Regulatory Agreement. The insurance carrier providing the insurance shall be chosen by Borrower subject to the prior written approval of Lender. All premiums on insurance policies shall be fully and timely paid by Borrower making payment, as and when due, directly to the insurance carrier, or in such other manner agreed to by the Lender in writing.

b. The Lender must be named on all applicable insurance policies subject to the Lender's approval covering all sites pursuant to Uniform Multifamily Regulation Section 8303(b), including but not limited to title insurance policies, and other policies with coverage for hazard and liability insurance for the Rental Housing Development, including flood insurance if applicable. All insurance policies and renewals shall name the Lender as a loss payee or an additional insured on all such policies, and Borrower shall promptly furnish to Lender all renewal notices and all receipts of paid premiums. In the event of loss, Borrower shall give prompt written notice to the insurance carrier and Lender at the same time. Lender may make proof of loss if not made promptly by Borrower. All proceeds, payments and other benefits due, payable and/or paid with respect to or enjoyed under any and all of the foregoing insurance policies are hereby absolutely and irrevocably assigned by Borrower to Lender and, at the request of Lender shall be paid and disbursed by the insurance carrier directly to Lender. This assignment constitutes a present assignment, not just an assignment for security purposes.

c. Unless Lender and Borrower otherwise expressly agree in writing, any proceeds from the foregoing insurance, which shall be applied pursuant to Section 9 hereof, shall not extend or postpone the due date of the payment or payments specified in the Note or other Secured Obligations, change the amount of such payments, or alter any of the other obligations of Borrower

thereunder. If the Property is acquired by Lender or any third party by foreclosure or otherwise, all right, title and interest of Borrower in and to any insurance policies and in and to the proceeds thereof resulting from damage to the Property prior to the sale or acquisition shall pass to Lender or such third party.

4.02 Liability Insurance. Borrower shall obtain and maintain comprehensive liability insurance for the Property insuring against claims for personal injury (including without limitation bodily injury and death) and property damage occurring in, on or about the Real Property, the Development and/or the adjoining streets and sidewalks, or arising from or in connection with the ownership or leasing of the Property and/or the Development, or the use, operation or maintenance thereof, which insurance shall in be in such form, in such amounts and of such type as may from time to time be reasonably required by Lender. The insurance carrier providing such insurance shall be chosen by Borrower subject to the prior written approval of Lender, and Lender shall be named as an additional insured under all such policies.

4.03. Workers' Compensation Coverage. Borrower shall obtain and maintain all applicable workers' compensation insurance as and to the extent required by law.

4.04. Other Insurance. Borrower shall obtain and maintain such other insurance against such other risks or hazards, for such periods and in such amounts, as may from time to time be reasonably required by Lender.

4.05. Periodic Adjustment of Coverage. From time to time during the term of the Loan, but not more frequently than once every two (2) years, Lender shall have the right, upon written notice to Borrower, to request an increase in the dollar amount(s) of any insurance coverage(s) or a change in types of coverages being maintained by Borrower pursuant to this Section 4 which Lender in its reasonable discretion deems necessary; and Borrower shall, at its sole cost and expense, within thirty (30) calendar days of such request by Lender obtain such increased, new or additional coverage and provide Lender with written certification thereof.

4.06 Generally. All policies of insurance contemplated herein shall be in such form and amount, and shall be issued by such companies admitted to do business in California with such ratings, as reasonably acceptable to Lender in writing, shall contain the "standard non-contributory mortgagee clause" and the "standard lenders' loss payable clause," or their equivalents, in favor of Lender, and shall provide that the proceeds thereof shall be payable to Lender to the extent of its interest. Lender shall be listed as a loss payee and/or an additional insured, as applicable, on all such policies; and Lender shall be furnished with a certificate

of insurance for each policy required to be provided by Borrower hereunder, which policy shall provide that it shall not be modified or canceled without thirty (30) days' prior written notice to Lender. Borrower shall furnish Lender with receipts for the payment of premiums on all such insurance policies or other evidence of such coverage reasonably satisfactory to Lender. If Borrower does not deposit with Lender a certificate of insurance with evidence of payment of premium thereon at least thirty (30) days prior to the expiration of any expiring policy or otherwise fails to procure or maintain any insurance coverage described herein, then Lender may, but shall not be obligated to, procure such insurance at Borrower's expense; and Borrower shall pay or reimburse Lender, as applicable, for the premiums and other expenses incurred by Lender in connection therewith promptly upon demand, together with interest thereon at a rate equal to the lesser of (i) ten percent (10%) annum compounded annually or (ii) the maximum rate permitted by law from the date such costs are incurred by Lender until paid. Any such amounts advanced by Lender, together with interest therein, shall become additional indebtedness of Borrower secured by this Deed of Trust. Lender shall not, by the fact of approving, disapproving, accepting, obtaining or failing to obtain any such insurance, incur any liability for the form or legal or economic sufficiency of any insurance contracts, solvency of insurers, or payment of losses, or any other matter whatsoever; and Borrower hereby expressly assumes full responsibility therefor and all liability, if any, thereunder. Purchase of insurance by the Lender shall not be considered a waiver by Lender of any default, right or remedy under this Deed of Trust. All insurance proceeds and payments shall be applied as provided for in Section 9 below.

5. Operation and Maintenance of the Property. Borrower covenants and agrees, at its sole cost and expense, as follows:

(i) To keep the Property in a good and decent, safe, sanitary, rentable, tenantable condition and repair, and permit no waste thereof;

(ii) Not to commit or suffer to be done or exist on, about or with respect to the Property any action or condition causing the Property to become less valuable, including without limitation any action or condition resulting in any waste of the Property;

(iii) Not to construct any buildings or improvements on the Real Property other than the buildings and improvements constituting the Development as contemplated in the Loan Documents, and not to add to, remove, demolish or structurally alter the buildings and improvements constituting the Development;

(iv) To complete, repair, restore or rebuild promptly and in a good and workmanlike manner any buildings or improvements on the Real Property that may become damaged or be destroyed while subject to the lien of this Deed of Trust;

(v) To fully and timely comply with all applicable laws, ordinances, rules, regulations, orders, standards, covenants and restrictions, whether public or private, of any nature now or hereafter applicable to or affecting the Property, or the ownership, leasing, improvement, use, operation, maintenance or repair thereof, or requiring any improvement or alteration thereof, including without limitation all including without limitation all federal, state and local environmental laws, rules, regulations or orders and all Program statutes and guidelines, including without limitation the Act and the Guidelines, (collectively “**Laws**”), and not to commit, suffer or permit any violations of any such Laws, nor of any covenant, condition or restriction affecting the Real Property, the Development or the other Property;

(vi) Not to initiate, allow, suffer or acquiesce in any termination, change, lapse, expiration or other alteration or modification of any zoning or other land use rights, development rights, entitlements, subdivision or legal classifications, permits, approvals, conditions, certificates of occupancy or consents which now or hereafter may affect or be applicable to the Real Property or the Development, or any portion thereof or interest therein;

(vii) Not to permit or suffer the use of any of the Property for any purpose other than the use for which the same was intended at the time this Deed of Trust was executed, and not to alter or supplement the use of all or any part of the Property;

(viii) To do all other acts which from the character or use of the Property may be reasonably necessary to maintain and preserve its value and/or protect the health, safety and wellbeing of all tenants, users and other occupants thereof;

(ix) To obtain and maintain all insurance with respect to the Property as contemplated herein, and to fully and timely observe and comply with all requirements of the insurance companies providing such insurance; and

(x) To fully and timely observe, perform and comply with all of its obligations under the Ground Lease and all of the Tenant Leases related to the Development.

6. Protection of Lender's Security. Borrower shall at its sole cost and expense: (i) protect, preserve and defend the Property, the title and right of possession thereto, the security hereof and all rights of Lender hereunder or under

the Regulatory Agreement against all adverse claims and actions, including without limitation, any and all claims, actions or proceedings purporting to affect the validity, attachment, perfection, priority or any other matter related to this Deed of Trust or the Regulatory Agreement, the covenants, liens, security interests and/or other security contained therein or granted thereby, or the rights, remedies and benefits of the Lender with respect to the Property, whether hereunder, under the Regulatory Agreement or otherwise, (ii) timely make all appearances necessary or desirable with respect to the foregoing, and (iii) indemnify, defend and hold Lender harmless from and against any and all claims, losses, actions or proceedings purporting to affect the validity, attachment, perfection, priority or any other matter related to the foregoing. Borrower shall give Lender prompt written notice of the assertion or filing of any such claim, action or proceeding, the occurrence of any damage with respect to any portion of the Property, or any condemnation offer or action with respect thereto.

7. Action by Lender.

7.01 Generally. If Borrower fails to perform any of the covenants or agreements contained in this Deed of Trust or the other Secured Obligations, or if any action or proceeding is commenced which materially affects Lender's rights, remedies or interest in the Property or under this Deed of Trust or the other Loan Documents, including, but not limited to, foreclosure, involuntary sale, eminent domain, insolvency, code enforcement, or arrangements or proceedings involving a bankrupt or decedent, then in addition to exercising any of its other rights and remedies under this Deed of Trust or otherwise, Lender shall have the right, but not the obligation, upon notice to Borrower, to make such appearances, to disburse and advance such sums and amounts and to take such other actions that Lender in its sole and absolute discretion deems necessary or desirable to cure such failures or defaults or protect Lender's interests, including, but not limited to, disbursements and advances for reasonable attorneys' fees and for all amounts, costs, fees and expenses incurred or advanced by Lender in connection with curing or addressing such defaults or protecting its interest, including without limitation entry upon the Property to make repairs.

7.02 Costs Incurred. Any amounts paid or incurred by Lender pursuant to this Section 7, shall be immediately due and payable, shall bear interest at a rate equal to the lesser of: (i) ten percent (10%) annum compounded annually or (ii) the maximum rate permitted by law from the date of such advance until repaid, and such amounts advanced, together with interest thereon, shall become additional indebtedness of Borrower secured by this Deed of Trust (i.e. shall become additional Secured Obligations). Unless Borrower and Lender expressly agree in writing to other terms of payment, all amounts contemplated by this Section 7 shall be due and payable immediately upon notice from Lender to

Borrower requesting payment thereof. Nothing contained in this Section 7 shall require Lender to incur any expense or take any action hereunder, or to incur any liability in the event it elects to incur or not to incur any such expense or take or not to take any such action. In no event or circumstance shall the exercise or non-exercise by Lender of its rights under this Section 7 in any way constitute or be deemed or interpreted as constituting, any termination, limitation, alteration or waiver by Lender of any right, benefit or remedy under this Deed of Trust or any other Loan Document.

8. Inspections. Lender may, at its sole election and discretion, from time to time make or cause to be made such reasonable entries upon and inspections and assessments of the Property, or any portion or portions thereof, including the Development, as Lender deems reasonably necessary or desirable, provided that Lender shall give Borrower reasonable notice prior to any such inspection. Any and all such entries and inspections shall be made solely and exclusively for Lender's own internal monitoring and other purposes, and for no other purposes. Lender shall not, by the fact of making or not making any such entries or inspections, or taking or failing to take any action in response thereto: (i) incur or undertake any obligation, duty or liability whatsoever, whether to Borrower or any other person, (ii) be deemed as approving or disapproving any matter related to the Property or the Development, including the ownership, leasing, improvement, use, operation, condition, status or maintenance thereof, or (iii) be deemed as approving or disapproving any matter related to the compliance of the Property or the Development with the Loan Documents, with applicable Laws or with any applicable agreements. Borrower hereby expressly assumes full and exclusive responsibility and liability for all matters related to the Property. In no event or circumstance shall the exercise or non-exercise by Lender of its rights under this Section 8 in any way constitute or be deemed or interpreted as constituting, any termination, limitation, alteration or waiver by Lender of any right, benefit or remedy under this Deed of Trust or any other Loan Document.

9. Application of Awards. All judgments, awards, payments, settlements, proceeds and claims paid and compensation made in connection with or in lieu of any of the following (collectively, "**Awards**"): (a) any condemnation, exercise of eminent domain or other police powers, or other taking of the Property, or any portion thereof including, or for conveyance in lieu of condemnation, (each a "**Taking**"); (b) any damage to or destruction of the Property or any part thereof by insured casualty; and/or (c) any other taking, injury or damage to all or any part of the Property, are hereby fully, irrevocably and unconditionally assigned to Lender, which assignment constitutes a present assignment, not merely an assignment for security purposes. At the request of Lender all Awards shall be paid and disbursed by the applicable insurance company, taking authority or other paying person directly to Lender. Lender shall be entitled to actively participate in all negotiations,

agreements, settlements, compromises and adjustments of any and all Awards and claims contemplated above, including all claims with respect to all insurance policies provided under this Deed of Trust and all Takings, and Lender may deduct and retain from the proceeds or awards of such insurance or Takings the amount of all expenses incurred by it in connection with any such settlement or adjustment, together with interest thereon as provided herein. Borrower shall not negotiate, agree to, settle, adjust, compromise or finalize any Award, or any rights, claims, circumstances or facts underlying the same, without the express prior written consent of Lender.

The Lender is authorized and empowered (but not required) to collect and receive any and all Awards directly from the persons paying the same and authorized to apply them in whole or in part against any and all of the Secured Obligations in such order and manner and at such time as the Lender shall determine in its sole and absolute discretion. Unless Lender and Borrower otherwise agree in writing, any such application of proceeds to principal shall not extend or postpone the due date of payment or payments specified in the Note or other Secured Obligations, change the amount or any of the other terms of such payment or payments, or otherwise amend or alter the terms of the Secured Obligations.

Alternatively, Lender may, at its election and in its sole discretion, agree to release all or any part of any Awards upon such terms and conditions as the Lender may in its sole and absolute discretion impose for their disbursement, disposition and/or ultimate use. Application of all or any part of Awards amounts collected and received by the Lender or the release thereof to Borrower shall not cure or waive any default under this Deed of Trust or in any way constitute or be deemed or interpreted as constituting, any termination, limitation, alteration or waiver by Lender of any right, benefit or remedy under this Deed of Trust or any of the other Loan Documents.

10. Assignment of Rents; Appointment of Receiver; Lender in Possession.

10.01 Assignment of Rents. As additional security hereunder, Borrower hereby fully, unconditionally and irrevocably assigns to Lender all of Borrower's right, title and interest in, to and under: (i) all leases of the Property or any portion thereof including the Development, and all other agreements related to the use or occupancy of all or any portion or unit thereof, whether now existing or entered into after the date hereof, together with any and all amendments, extensions, renewals or modifications thereto which are permitted thereunder, (collectively, the "**Tenant Leases**"), and (ii) all rents, revenues, income, issues, deposits and profits of the Property, including without limitation all rents and other amounts payable under, and all other rights and benefits accruing with respect to, the Tenant Leases (the

**“Payments”**). The term “Tenant Leases” shall also include all guarantees of and security for the tenants’ performance thereunder. The foregoing constitutes a present and absolute assignment by Borrower to Lender of Borrower’s right, title and interest in, to and under the Tenant Leases and the Payments, and the right to enforce, collect, apply and enjoy the same, not merely the granting of a security interest therein, subject only to the license granted to Borrower under Section 10.02 below to collect the same until the occurrence of an Event of Default.

10.02. License / Receiver. Lender hereby confers a license to Borrower to collect the Payments as and when they become due and apply them in accordance with the provisions of the Regulatory Agreement until the occurrence of and Event of Default. Upon any such default, or abandonment of the Property by Borrower, such license shall at Lender’s election be revoked, and Lender shall have the right, but not the obligation, to collect and apply the Payments as provided herein without notice and without taking possession of the Property. Additionally, Lender shall have the right to appoint a receiver in connection with the Payments, and Lender, in person, by agent or by judicially appointed receiver shall be entitled to enter upon, take possession of and manage the Property and to collect the all Payments including those past due. All rents collected by Lender or the Receiver shall be applied first to payment of the costs of management of the Property and collection of Payments including, but not limited to, receiver's fees, premiums on receiver's bonds, enforcement costs and reasonable attorneys' fees, and then to pay the sums secured by this Deed of Trust in such order and manner as determined by Lender in its sole and absolute discretion. Lender and the receiver shall be liable to account only for those rents actually received.

10.03 Notice to Tenants. Borrower hereby irrevocably authorizes and directs the tenants under the Tenant Leases to rely upon and comply with any notices or demands by Lender for the payment to Lender of the rents or other Payments which may from time to time become due under the Tenant Leases, or for the performance of the tenants’ undertakings thereunder, and such tenants shall have no duty to inquire as to the validity of any such demand by Lender or whether any Event of Default has actually occurred or is then existing. Borrower hereby relieves and releases the tenants from any liability to Borrower by reason of relying upon or complying with any such notice or demand by Lender.

10.04 Non-Liability of Lender. The assignment contained in this Section 10 shall not cause the Lender to be: (i) a mortgagee in possession; (ii) responsible or liable for the control, care, management or repair of the Property or for performing any of the terms, agreements, undertakings, obligations, representations, warranties, covenants and/or conditions of any agreements or obligations pertaining thereto, including without limitation, the Tenant Leases; or (iii) responsible for any waste committed on the Property by the tenants, for any

dangerous or defective condition of the Property, or for any negligence in the management, upkeep, repair or control of the Property resulting in loss or injury or death to any tenant, licensee, employee, invitee or other person. Lender and Trustee shall not directly or indirectly be liable to Borrower or any other person as a consequence of: (A) the exercise or failure to exercise by Trustee or Lender, or their respective employees, agents, contractors or subcontractors, of any rights or remedies granted under this Section 10 or elsewhere in this Deed of Trust, or (B) the failure or refusal of Lender to perform or discharge any obligation, duty or liability of Borrower under any agreements or obligations pertaining to the Property, including without limitation, the Tenant Leases.

10.05 Covenants re Leases. Borrower covenants and agrees, at its sole cost and expense, to: (i) perform all of Borrower's obligations under the Tenant Leases, and enforce by all available remedies the obligations of the tenants thereunder, (ii) give Lender notice of all events of default under any Tenant Leases, regardless of which party thereto is in default, (iii) exercise Borrower's best efforts to keep all the Development fully leased to the targeted renters and at the rental rates as contemplated by the Regulatory Agreement, and (iv) if requested by Lender: (A) provide Lender with copies of any Tenant Leases, and (B) obtain and record any subordination (or subordination, attornment and non-disturbance agreement) of any Tenant Lease to this Deed of Trust in form and substance acceptable to Lender. Additionally, Borrower shall not, after the date hereof, without the express prior written consent of Lender: (1) execute any further assignments of or grant any further security interest in the Tenant Leases or the Payments; (2) discount any Payments or collect the same in advance, other than to collect the rental one (1) month in advance of the time the same becomes due, or (3) terminate or modify the Tenant Leases other than in the ordinary course of business.

10.06 Estoppel Certificates. Within twenty (20) calendar days after written request by Lender, Borrower shall deliver to Lender and to any other persons designated by Lender estoppel certificates executed by Borrower and, to the extent requested by Lender, by any or all of the tenants under the Tenant Leases, certifying: (i) that the foregoing assignment and the Tenant Leases are in full force and effect; (ii) the date of each tenant's most recent rent payment, (iii) that there are no defenses, counterclaims or offsets outstanding with respect to such leases, or stating those claimed by Borrower or any tenant, as the case may be, and (iv) any other information reasonably requested by Lender.

11. Uniform Commercial Code Security Agreement, Financing Statement and Fixture Filing.

11.01. Grant of Security Interest. This Deed of Trust is a security agreement and financing statement under the Uniform Commercial Code for the benefit of Lender as secured party for any of the items specified above as part of the Property which, under applicable law, may be subject to a security interest pursuant to the Uniform Commercial Code, and Borrower hereby grants the Lender a lien on and security interest in said items. This Deed of Trust is filed as a fixture filing and covers goods, which are or are to become fixtures. The address of the principal place of business of Lender (secured party) from which information concerning the security interest may be obtained and the mailing address of Borrower (debtor) are set forth in this Deed of Trust. The types or items of collateral are described in Section A of this Deed of Trust. Borrower agrees that the Lender may alone file any appropriate documents in the appropriate index, including, without limitation all necessary financing statements, as well as extensions, renewals, continuation statements and amendments thereof, and reproductions of this instrument, in such form as the Lender may require to perfect a security interest with respect to said items and to continue such perfection. In addition, Borrower agrees to execute and deliver to the Lender, upon the Lender's request, any financing statements, as well as extensions, renewals, continuation statements and amendments thereof, and reproductions of this instrument in such form as the Lender may require to perfect a security interest with respect to said items and to continue such perfection. Borrower shall pay all costs of filing such financing statements and any extensions, renewals, amendments, and releases thereof, and shall pay all reasonable costs and expenses of any record searches for financing statements, and releases thereof, as the Lender may reasonably require. Without the prior written consent of the Lender, Borrower shall not create or suffer to be created pursuant to the Uniform Commercial Code any other security interest in said items, including replacements and additions thereto, except as otherwise expressly permitted by Lender in writing in its sole and absolute discretion. Upon acceleration as provided in this Deed of Trust, the Lender shall, in addition to all other rights and remedies under this Deed of Trust, have the rights and remedies of a secured party under the Uniform Commercial Code and, at the Lender's option, may also invoke the other remedies provided in this Deed of Trust and Loan Documents as to such items. In exercising any of said remedies, the Lender may proceed against the items of real property and any items of personal property specified above as part of the Property separately or together and in any order whatsoever, without in any way affecting the availability of the Lender's rights or remedies under the Uniform Commercial Code or of the other remedies provided in this Deed of Trust, in the Loan Documents, or by law, equity or otherwise.

11.02. Intent of Parties. Borrower agrees that the filing of any financing statement in the records normally having to do with personal property shall not be construed as in any way derogating from or impairing this Deed of Trust and the

intention of the parties hereto that those portions of the Property herein declared part of the real estate are, and at all times and for all purposes and in all proceedings both legal or equitable shall be, regarded as part of the real estate irrespective of whether any such item is physically attached to the improvements or any such item is referred to or reflected in any such financing statement so filed at any time.

11.03. No alteration of Rights / Priorities. The mention in any such financing statement of: (1) compensation for damage to or destruction of the Property by insured casualty, or (2) any judgment, award, or other compensation for a Taking of the Property by eminent domain, or (3) the rents, royalties, issues, accounts and profits of the Property under leases, shall never be construed as anyway altering any of the Lender's rights as determined by this Deed of Trust or impugning the priority of the Lender's lien granted hereby or by any other recorded document. However, such mention in the financing statement is declared to be for the protection of the Lender in the event that any court or judge shall at any time hold with respect to (1), (2) or (3) of this paragraph that notice of the Lender's priority of interest to be effective against a particular class of person, including without limitation the federal government or any subdivision or entity thereof, must be filed as provided for in the Uniform Commercial Code.

12. Due on Transfer. As a material inducement for Lender making the Loan, Borrower agrees that except as may be expressly permitted in the Regulatory Agreement, Borrower shall not sell, convey, exchange, encumber, pledge, option or otherwise transfer or alienate of the Property, the Development or any other collateral encumbered by the Deed of Trust, or any portion thereof or interest therein, whether voluntarily or involuntarily, directly or indirectly, by operation of law or otherwise, without Lender's express prior written consent, which may be withheld and/or conditioned in Lender's sole and absolute discretion. Upon any violation of the foregoing, then the entire outstanding principal balance of the Note, all accrued but unpaid interest (including deferred interest) and other amounts due or outstanding thereunder, together with all other amounts secured by this Deed of Trust, shall at the election and discretion of the Department be accelerated and become immediately due and payable.

13. Acceleration. Upon any violation of Section 12 above or the occurrence of any Event of Default as contemplated herein, then the entire principal and accrued but unpaid interest (included deferred interest), together with all other charges and amounts, due or outstanding under the Note or other Secured Obligations, regardless of their stated maturity date, shall at the option of Lender be accelerated and become immediately all due and payable, without necessity for presentment, demand, or notice of protest, demand, dishonor or nonpayment, all of which are hereby expressly waived by Borrower. Failure to exercise any such acceleration

right at any time shall not constitute a waiver of the right of Lender to exercise the same in the event of any subsequent default or acceleration event. Lender may exercise this acceleration right regardless of any prior delay or forbearance. All amounts due after acceleration shall bear interest at the rate set forth in Section 2.f of the Note.

14. Default.

14.01 Events of Default. For purposes hereof, the term “**Event of Default**” shall mean and include the following: (i) any Event of Default as defined or described in Section 8 of the Note, and (ii) any other breach or failure by Borrower, subject to any applicable cure periods, under any of the other Secured Obligations.

14.02 Rights and Remedies. Upon an Event of Default, Lender shall be entitled, at its option and in its sole and absolute discretion, to exercise any and/or all of the following rights and remedies, with or without notice, all of which shall be distinct, cumulative and non-exclusive, and may be exercised concurrently, independently or successively, at lender’s election in its sole and absolute discretion, to the maximum extent permitted by law:

a. Lender shall have the right to accelerate all of the Secured Obligations and declare the same to be immediately due and payable as provided for herein.

b. Without releasing Borrower from any Secured Obligation, without waiving or releasing any of its other rights and remedies under this Deed of Trust or any other Loan Documents and without becoming a mortgagee in possession, Lender shall have the right, but not the obligation, to cure any breach or default of the Borrower, and in connection therewith, to enter upon the Property and do such acts and things as the Lender deems necessary or desirable to protect the security hereof, including, without limitation: (i) to appear in and defend any actions or proceedings purporting to affect the security of this Deed of Trust, the Regulatory Agreement or the other Loan Documents, the collateral encumbered hereby or the rights or remedies of the Lender hereunder or thereunder; (ii) to pay, purchase, contest or compromise any encumbrance, lien, charge or claim which, in the sole judgment of Lender is or may be senior in priority to this Deed of Trust or the Regulatory Agreement, the judgment of Lender being conclusive as between the parties hereto; (iii) to take any and all action, make such advances or incur such costs, and make any and all decisions for and at the expense of Borrower that Lender in its sole and absolute discretion deems necessary or desirable to

cure such Event of Default; (iv) to otherwise exercise its rights under Section 7 above; and (v) to employ legal counsel, accountants, contractors and other appropriate persons in connection therewith. All costs, fees and expenses incurred by Lender in connection with undertaking any of the foregoing actions and/or in connection with the exercise of any and all other rights and remedies provided for herein, shall be immediately due and payable, shall bear interest at a rate equal to the lesser of ten percent (10%) per annum compounded annually or the maximum rate permitted by law from the date of such advance until repaid and such amounts advanced, together with interest thereon, shall become additional indebtedness of Borrower secured by this Deed of Trust.

c. Lender shall be entitled to apply to a court of competent jurisdiction for and obtain appointment of a receiver of the Property as a matter of strict right and without regard to the adequacy of the security for the repayment of the Secured Obligations, the existence of a declaration that the Secured Obligations are immediately due and payable, or the filing or recordation of a notice of default or any other notice, and Borrower hereby expressly consents to such appointment.

d. Lender shall be entitled to enter upon, possess, manage and operate the Property, or any part thereof, to take and possess all documents, books records, papers and accounts of Borrower or the then owner of the Property, to make, terminate, enforce or modify *[the Ground Lease (if applicable) and/or]* the Tenant Leases upon such terms and conditions as the Lender deems necessary or desirable, to make repairs, alterations and improvements to the Real Property including the Development, as necessary in Lender's sole and absolute judgment to protect or enhance the security hereof.

e. Lender shall be entitled to resort to and realize upon the security hereunder and any other security now or later held by Lender concurrently or successively and in one or several consolidated or independent judicial foreclosure or other actions or lawfully taken non-judicial foreclosure or other proceedings, or both, and to apply the proceeds received upon and against the costs incurred in connection with such enforcement and the Secured Obligations, all in such order and manner as Lender may determine in its sole and absolute discretion.

Without limiting the generality of the immediately preceding paragraph, if Lender invokes the power of sale granted hereunder, Lender shall execute or cause Trustee to execute a written notice of the occurrence of an event of default and of Lender's election to cause the Property to be sold and shall cause such notice to be recorded in each county in which the Property or some part thereof is located. Lender or Trustee shall mail copies of such notice in the manner

prescribed by applicable law to Borrower and to the other persons prescribed by applicable law. Trustee shall give public notice of sale to the persons and in the manner prescribed by applicable law. After the lapse of such time as may be required by applicable law, Trustee, without demand on Borrower, shall sell the Property at public auction to the highest bidder at the time and place and under the terms designated in the notice of sale in one or more parcels and in such order as Trustee may determine. Trustee may postpone sale of all or any parcel of the Property by public announcement at the time and place of any previously scheduled sale.

At the sale of the Property at any judicial or non-judicial foreclosure, Lender may credit bid (as determined by Lender in its sole and absolute discretion) all or any portion of the Secured Obligations. In determining such credit bid, Lender may, but is not obligated to, take into account all or any of the following in its sole and absolute discretion: (i) appraisals of the Property as the same may be discounted or adjusted by the Lender in its sole and absolute discretion, (ii) expenses and costs incurred by Lender with respect to the Property prior to foreclosure, (iii) expenses and costs which Lender anticipates will be incurred with respect to the Property after foreclosure but prior to resale, including without limitation, due diligence costs, carrying costs (e.g. taxes, insurance and debt service), maintenance, repair, retrofit refurbishing, clean-up costs and costs of defending or settling litigation, (iv) the costs incurred by Lender with respect to the Property prior to foreclosure, (v) declining trends in real property values generally and with respect to properties similar to the Property, and (vi) and such other factors as or matters that Lender, in its sole and absolute discretion, deems appropriate. In regard to the above Borrower acknowledges and agrees that: (A) Lender is not required to use any or all of the foregoing factors to determine the amount of its credit bid; (B) the foregoing does not impose upon Lender any additional obligations that are not imposed by law at the time the credit bid is made; (C) the amount of Lender's credit bid need not have any relation to any loan-to-value ratios specified in the Loan Documents or previously discussed between Lender and Borrower; and (D) Lender's credit bid may be (at Lender's sole and absolute discretion) higher or lower than any appraised value of the Property.

f. Other Rights and Remedies. Additionally, upon an Event of Default, Lender shall also be entitled to exercise any and all other rights and remedies contained herein, including, without limitation those contained in Paragraphs 10 and 11 hereof, as well as any and all other rights and remedies available to Lender under applicable law, in equity, under any of the other documents comprising the Secured Obligations, or otherwise.

14.03. Trustee's Deed / Application of Foreclosure Proceeds. Upon foreclosure, Trustee shall deliver to the purchaser a Trustee's deed conveying the

Property so sold without any covenant or warranty, expressed or implied. The recitals in the Trustee's deed shall be prima facie evidence of the truth of the statements made therein. After deducting all costs, fees and expenses of Trustee, and of this trust, including without limitation, costs of evidence of title and attorneys' fees in connection with the sale and costs and expenses of sale and of any judicial proceeding wherein such sale may be made, together with interest thereon at a rate equal to the lesser of ten percent (10%) per annum, compounded annually or the maximum rate permitted by law from the date incurred until paid, Trustee shall apply the proceeds of a foreclosure sale in the following order: (1) to repay all sums incurred by Lender under the terms hereof and not then repaid, with accrued interest at the rate set forth immediately preceding; (2) to the payment of all sums secured by this Deed of Trust; and (3) the excess, if any, to the person or persons legally entitled thereto.

14.04 Waivers. In connection with the enforcement by lender of its rights and remedies under this Deed of Trust, in addition to any other waivers contained in this Deed of Trust or elsewhere in connection with the Loan, Borrower hereby makes the following additional waivers to the fullest extent permitted by law:

a. Statute of Limitations. Borrower for itself, and for all parties claiming through or under Borrower, and for all parties acquiring a lien on or interest in the Property, hereby waives the defenses of laches and any applicable statutes of limitations.

b. Waiver of Marshalling Rights. Borrower for itself, and for all parties claiming through or under Borrower, and for all parties acquiring a lien on or interest in the Property, hereby waives all rights to have the Property and/or any other property which is now or hereafter security for any Secured Obligation marshalled upon any foreclosure or other enforcement of this Deed of Trust or on the foreclosure or other enforcement of any other lien or security interest against any security for any of the Secured Obligations. Lender shall have the right to order a sale of the Property and any or all of such other property security in whole or separate parcels, in any order and in any manner that Lender may designate in its sole and absolute discretion.

15. Forbearance by Lender Not a Waiver. Any delay or forbearance by Lender in exercising any right or remedy hereunder, or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any such right or remedy. The procurement of insurance, the payment of taxes or other liens or charges or the curing of any other Event of Default by Lender shall not be a waiver of Lender's right to accelerate the maturity of the indebtedness secured by this Deed of Trust or to exercise any other rights or remedies now or hereafter available to Lender. Any extension of time for payment of amounts due under the Note, granted by

Lender to Borrower, shall not operate as a waiver or release of Borrower's duties and obligations hereunder or under the Loan Documents.

16. Exculpation and Indemnification.

16.01 Exculpation. Neither Lender nor Trustee shall be directly or indirectly liable to Borrower or any other persons as a consequence of: (i) the exercise or non-exercise of any rights, remedies or powers granted to Lender in this Deed of Trust; (ii) the failure or refusal of Beneficiary to perform or discharge any obligation or liability of Borrower under this Deed of Trust or any other agreement related to the Property; or (iii) any loss or damages sustained by Borrower or any other persons resulting from Lender's failure (whether by malfeasance, nonfeasance or refusal to act) to lease the Property, or any portion thereof, after an Event of Default or from any other act or omission (regardless of whether the same constitutes negligence) of Lender in managing the Property, or any part thereof, after an Event of Default unless the loss is caused by the gross negligence or willful misconduct of Lender. No such liability shall be asserted against or imposed upon Lender or Trustee, and all such liability is hereby expressly waived and released by Borrower.

16.02 Indemnification. Borrower shall and hereby does, at its sole cost and expense, indemnify, defend and hold Lender and the Trustee harmless from and against any and all damages, losses, liabilities, claims, causes of action, judgments, court costs, attorneys' fees and other legal expenses, cost of evidence of title, cost of evidence of value and other costs and expenses, except those arising from Lender's or Trustee's gross negligence or willful misconduct, which are threatened or asserted against Lender or Trustee, or which Lender or Trustee suffer or incur,: (i) by reason of this Deed of Trust; (ii) by reason of the execution of this Deed of Trust or in the performance of any act permitted or required hereunder or by Law; (iii) as a result of any failure of any representation or warranty of Borrower or any other person contained in any of the Loan Documents to be true, correct, complete or not misleading; (iv) as a result of failure of Borrower to observe any covenant or agreement relating to the Property, or any portion thereof, as provided herein or any of the other Loan Documents; or (v) by reason of any alleged obligation or undertaking on Lender's part to perform or discharge any of the representation, warranties, conditions, covenants or other obligations in any other agreement related to the Property, or any portion thereof. The obligations of Borrower under this Section 16.02 shall survive the payment and cancellation of the Secured Obligations and the full or partial release and reconveyance of this Deed of Trust.

17. Successors and Assigns Bound / Captions. The covenants and agreements herein contained shall bind, and the rights hereunder shall inure to the benefit of, the respective successors and assigns of Lender and Borrower, subject to the restrictions on transfer contained in this Deed of Trust. The captions and

headings of the paragraphs of this Deed of Trust are for convenience only and are not to be used to interpret or define the provisions hereof. Any rule of construction to the effect that ambiguities are to be construed against the drafting party (including, without limitation, California Civil Code Section 1654) shall not apply in interpreting this Deed of Trust and the Loan Documents and are hereby waived by Borrower. Borrower acknowledges and agrees that it has been represented by its own independent legal counsel in connection with the negotiation, drafting, and execution of this Deed of Trust and the Loan Documents and has had the same explained to it by such counsel, and fully understands the same.

18. Notice. Except for any notice required under applicable law to be given in another manner, any notices, demands or communications between the parties hereto shall be sufficiently given if, and shall not be deemed given unless, sent by certified mail, postage prepaid, return receipt requested or delivered by express delivery service with delivery receipt, to the address of the respective party as indicated herein, or to such other address as the respective party may have designated by written notice given to the other party in the manner provided herein. Such written notices, demands and communications shall be effective on the date shown on the delivery receipt as the date delivered, the date on which delivery was refused, or the date on which delivery was attempted.

19. Governing Law / Severability. The laws of the State of California shall govern this Deed of Trust. In the event that any provision or clause of this Deed of Trust or the Note conflicts with applicable law, such conflict shall not affect other provisions of this Deed of Trust or the Note which can be given effect without the conflicting provision, except as set forth in the Note and to this end the provisions of the Deed of Trust and the Note are declared to be severable.

20. Borrower's Copy. Borrower shall be entitled to a conformed copy of the Note and of this Deed of Trust at the time of execution or after recordation hereof.

21. Releases, Extensions, Modifications & Additional Security. Without notice to or the consent, approval or agreement of Borrower or any other person having any interest at any time in the Property or in any manner obligated under the Secured Obligations, Lender may, from time to time in its sole and absolute discretion, release any person from liability for the payment or performance of any Secured Obligation, take any action or make any agreement extending maturity or otherwise altering the terms of or increasing the amount of any Secured Obligation, or accept additional security or release any or all of the Property and other security for the Secured Obligations. None of the foregoing actions shall release or alter the liability of the Borrower or such other persons, or release, alter or impair the validity or priority of this Deed of Trust or the Regulatory Agreement as a lien on the Property.

22. Attorneys' Fees. Borrower agrees to pay, immediately upon demand of Lender, all costs, expenses, witness fees and attorneys' fees paid or incurred by the HCD or adjudged by a court in connection with: (1) the performance, collection or enforcement of the Note, any other Secured Obligation or this Deed of Trust, or any part thereof, whether or not suit is filed; (2) any action related to the validity, priority or perfection of the liens and security interests in the Property granted by this Deed of Trust or the Regulatory Agreement, or (3) any other litigation or controversy connected with the Note, any other Secured Obligation or this Deed of Trust or the other documents executed or delivered in connection herewith, or the security therefor, including, but not limited to, actions for declaratory or injunctive relief, actions for relief based on recession, actions to cancel the Note, this Deed of Trust, the Regulatory Agreement or any other documents that Lender is required to prosecute or defend, and any actions relating to any bankruptcy proceedings affecting Borrower.

23. Reconveyance. Upon the full payment and performance of all of the Secured Obligations, Lender shall request Trustee to reconvey the Property and shall surrender this Deed of Trust and the Note to Trustee. Trustee shall reconvey the Property without warranty and without charge to the person or persons legally entitled thereto. Such person or persons shall pay all costs of recordation, if any. The recitals in the reconveyance of any matters or facts shall be conclusive proof of the truthfulness thereof. Borrower acknowledges that notwithstanding any payment or other satisfaction of the Note, this Deed of Trust shall continue to secure the Regulatory Agreement for the full term of the Regulatory Agreement, and the mere repayment or other satisfaction of the Note shall not result in or cause the release or reconveyance of this Deed of Trust.

24. Substitute Trustee. Lender, at Lender's option, may from time to time remove Trustee and appoint a successor trustee to any Trustee appointed hereunder. Without conveyance of the Property, the successor trustee shall succeed to all the title, power and duties conferred upon the Trustee herein and by applicable law.

25. Request for Notice. Borrower requests that copies of the notice of default and notice of sale be sent to Borrower's address.

26. Statement of Obligation. Lender may collect a fee for furnishing a beneficiary statement or payoff demand statement (or a higher amount) as provided by section 2943 of the Civil Code of California as amended from time to time.

27. Regulatory Agreement. The Regulatory Agreement of even date between the Lender and Borrower, recorded concurrently herewith, shall be a separate and independent encumbrance on the Property prior and superior to the lien of this

Deed of Trust. All residential units included in the Property shall be rented at such rents, and to households having such incomes, as required under the Regulatory Agreement.

28. Merger. No merger shall as a result of Lender acquiring any other estate in, or any other lien on or interest in, the Property, or any portion thereof, unless Lender expressly consents to a merger in writing.

29. Joint and Several Liability. To the extent Borrower is comprised of more than one person, all of the obligations, covenants and agreements of Borrower under this Deed of Trust shall be the joint and several obligations of each constituent person comprising Borrower. Among other things, this means that each person comprising Borrower shall be both jointly and severally (independently) liable for the full payment and performance of all obligations of Borrower hereunder, and Lender may recover and enforce such full payment and/or performance from only one or any combination of one or more such persons, in any order or sequence without the need to join or pursue all such persons, all in Lender's sole and absolute discretion.

**IN WITNESS WHEREOF**, Borrower has executed this Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing as of the date first above written.

**BORROWER:**

**BORROWER'S ADDRESS:**

\_\_\_\_\_

\_\_\_\_\_

By: \_\_\_\_\_

\_\_\_\_\_

Title: \_\_\_\_\_

\_\_\_\_\_

**[All signatures must be acknowledged].**

**EXHIBIT A TO DEED OF TRUST**  
**LEGAL DESCRIPTION OF THE PROPERTY**

DRAFT