

PASSED

**IN THE BOARD OF COMMISSIONERS OF THE  
HOUSING AUTHORITY AND COMMUNITY SERVICES AGENCY  
OF LANE COUNTY, OREGON**

ORDER

02-5-29-1H

IN THE MATTER OF ENTERING INTO A LOAN AGREEMENT WITH THE NETWORK FOR OREGON AFFORDABLE HOUSING ("NOAH") FOR PERMANENT FINANCING OF THE SHELDON VILLAGE (PHASE I) AFFORDABLE HOUSING DEVELOPMENT, EUGENE, OREGON.

WHEREAS, HACSA serves as the General Partner of the Sheldon Village Limited Partnership and has completed the construction of Sheldon Village (Phase I).

WHEREAS, ORS 456.120 includes in the Powers of Authority as a Public Corporation the authority to enter in a partnership agreement with an individual, partnership, corporation or other association to finance, plan, undertake, construct, acquire or operate a housing project;

WHEREAS, in order to complete the development of the project, it is necessary to obtain long-term financing for the project;

WHEREAS, the Network for Oregon Affordable Housing ("Bank") is willing to provide permanent financing to the Sheldon Village (Phase I) Affordable Housing Development;

NOW IT IS HEREBY ORDERED:

- (1) That the Housing and Community Services Agency, as General Partner of and on Behalf of the Sheldon Village Limited Partnership, an Oregon Limited Partnership (The "Partnership"), Is Authorized to Borrow Money or Obtain Credit from Time to Time from the Network for Oregon Affordable Housing ("NOAH") at its Office at 1020 S.W. Taylor Street, Suite 585, Portland, Oregon 97205 for the Purpose of Obtaining Permanent Financing for the Partnership's 43-unit Multi-family Housing Development in the City of Eugene, Lane County, Oregon, Known as the Sheldon Village (Phase I) Affordable Housing Development, and That the Entire Amount of Borrowing or Credit under this Resolution Shall Not Exceed \$411,000 in Original Principal Amount (The "Permanent Loan");
- (2) That, Within the Aggregate Dollar Amount Set Forth in this Board Order, the Executive Director or the Deputy Director Is Authorized and Empowered , in the Name of the Housing and Community Services Agency as General Partner of and on Behalf of the Sheldon Village Limited Partnership to Execute and Deliver Such Loan Agreements, Promissory Notes, Mortgages, Deeds of Trust, Assignments, Security Agreements, Financing Statements, Certificates of Every Kind, Escrow Instructions, Indemnity Agreements, Guarantees, and Other

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In the Matter of Entering into a Loan Agreement with  
the Network for Oregon Affordable Housing for Permanent Financing  
of the Sheldon Village (Phase I) Affordable Housing Development

Such Documents, Instruments, and Agreements (In a Form Substantially Similar to the Documents Provided in Attachment 1 and Hereby Incorporated by this Reference) of Every Nature or Kind Whatsoever as Are Required by NOAH or Are Necessary, Convenient, or Appropriate, to Consummate the Permanent Loan;

- (3) That the Persons Designated above Are Authorized and Empowered to Take Any Additional Action That They Deem Necessary and Appropriate to Carry out the Intent of this Board Order;
- (4) That the Executive Director or Deputy Director Is Authorized to and Directed to Deliver to NOAH and NOAH's Title Insurer a Copy of this Board Order, Properly Certified by Him or Her, in Evidence of the Authority to Borrow Money and to Execute and Deliver the Instruments Specified Above, as Provided Above.

DATED this 29 day of May, 2002

  
\_\_\_\_\_  
Chair, HACSA Board of Commissioners

**ATTACHMENT 1**

**Draft Loan Documents**

Recording Requested by and  
When Recorded Return to:

Michelle Bilderback  
Network for Oregon Affordable Housing  
1020 SW Taylor, Suite 585  
Portland, OR 97205

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

THIS DEED OF TRUST WITH ABSOLUTE ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT, AND FIXTURE FILING ("Deed of Trust") is made this \_\_\_ day of \_\_\_\_\_ 20\_\_\_, among \_\_\_\_\_ LIMITED PARTNERSHIP, an Oregon limited partnership, whose address is \_\_\_\_\_ ("Grantor" or "Borrower"), \_\_\_\_\_ [FIRST AMERICAN TITLE INSURANCE COMPANY OF OREGON], whose address is \_\_\_\_\_ [200 SW Market St., Portland, Oregon 97201] ("Trustee"), and the NETWORK FOR OREGON AFFORDABLE HOUSING, an Oregon nonprofit public benefit corporation, whose address is 1020 SW Taylor, Suite 585, Portland, Oregon 97205 ("Beneficiary").

**WITNESSETH:**

That Grantor does hereby irrevocably ASSIGN, GRANT, BARGAIN, SELL, CONVEY, and WARRANT TO TRUSTEE IN TRUST, WITH POWER OF SALE, that property in the City of \_\_\_\_\_, \_\_\_\_\_ County, State of Oregon, described in Exhibit A attached hereto and by this reference incorporated herein, which is herein collectively called the "Property":

TOGETHER WITH all right, title, interest, and estate of Grantor in and to any and all buildings, structures, and improvements now or hereafter erected thereon, including without limitation the fixtures, attachments, appliances, equipment, machinery, and other articles attached to such buildings, structures, and improvements (the "Improvements");

TOGETHER WITH all leases, subleases, and rental agreements, whether written or oral, covering the Property or any portion thereof, and all right, title, and interest of Grantor under such leases, including without limitation all cash or security deposits, advance rentals, and deposits or payments of similar nature;

TOGETHER WITH any and all guaranties of tenants' performance under the Leases;

TOGETHER WITH all right, title, and interest of Grantor in and to all options to purchase or lease the Property or any portion thereof or interest therein, and any greater estate in the Property owned or hereafter acquired;

TOGETHER WITH all interests, estate, or other claims, both in law and in equity, that Grantor now has or may hereafter acquire in the Property;

TOGETHER WITH all easements, rights-of-way, and rights used in connection therewith or as a means of access thereto, and all tenements, privileges, reversions, remainders, hereditaments, and appurtenances thereof and thereto, and all water rights, oil and gas rights, royalties, minerals and mineral rights, and shares of stock evidencing the same;

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

TOGETHER WITH all rents, issues, profits, royalties, income, and other benefits derived from the Property, subject to the right, power, and authority hereinafter given to Grantor to collect and apply such rents;

TOGETHER WITH all right, title, and interest of Grantor in and to all Collateral described in Article 3 of this Deed of Trust, including all proceeds thereof;

TOGETHER WITH all right, title, and interest of Grantor in the funds deposited pursuant to Section 1.5 and Section 1.8 hereof and Sections \_\_\_\_\_ [4.4, 4.6, and 4.7] of the Term Loan Agreement between Grantor and Beneficiary;

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

TOGETHER WITH all insurance policies covering all or any portion of the Trust Estate, all accounts, accounts receivable, contracts, contract rights (including without limitation any unpaid capital contributions of Grantor's partners), trade names, trademarks and service marks, and general intangibles of Grantor pertaining to the Trust Estate, and all right, title, and interest of Grantor in and to all present and future licenses, permits, entitlements, approvals, and agreements with or from any governmental or quasi-governmental entity;

TOGETHER WITH all proceeds of the conversion, voluntary and involuntary, of any of the foregoing into cash or liquidated claims, all other proceeds of any of the foregoing, and all replacements, renewals, additions, and accessions;

TOGETHER WITH all books, records, and files relating to any of the foregoing.

The entire foregoing estate, property, and interests hereby conveyed to Trustee is referred to herein as the "Trust Estate."

#### THIS DEED OF TRUST IS GIVEN FOR THE PURPOSE OF SECURING:

1. Payment of indebtedness in the total principal amount of \$ \_\_\_\_\_ with interest thereon (the "Loan"), evidenced by that certain Promissory Note of even date herewith (the "Note") with a maturity date of \_\_\_\_\_ executed by Grantor, which has been delivered to, and is payable to the order of, Beneficiary and which, by this reference, is made a part hereof, and any and all modifications, extensions, and renewals thereof. The interest rate, payment terms, or the balance due on the Note and the indebtedness evidenced thereby may be indexed, adjusted, renewed, or renegotiated without affecting the priority of this Deed of Trust;

2. Payment of all sums that may become due from Grantor or advances by Beneficiary or its successor, with interest thereon at the rate set forth herein, which include without limitation (a) fire and other hazard insurance premiums and taxes upon the real property herein described, according to the terms of this Deed of Trust, (b) payment by Grantor of all attorney fees and costs incurred by Trustee or Beneficiary in foreclosing this Deed of Trust or realizing upon any of the collateral for the obligations that this Deed of Trust secures, (c) payment by Grantor of all attorney fees and costs owed pursuant to Section 1.7(a), (d) payment by Grantor of all sums advanced by Beneficiary to or on behalf of Grantor for the purpose of clearing encumbrances or defects from the title to the Property described in this Deed of Trust where Beneficiary, in good faith, believes such encumbrances to be superior to the lien of the Deed of Trust, including without limitation payment of ad valorem taxes and mechanics' or materialmen's liens that may have gained priority over the lien of this Deed of Trust, and (e) payment by Grantor of all attorney fees and costs incurred by Trustee or Beneficiary in any bankruptcy proceedings or any reorganization or arrangement proceeding under the Bankruptcy Act affecting Grantor or this Deed of Trust, and payment of all other sums advanced by Beneficiary to protect the Trust Estate, with interest thereon at the rate set forth herein;

3. Payment of all other sums, with interest thereon, that may hereafter be loaned to Grantor, its successors or assigns, by Beneficiary, when evidenced by a promissory note or notes reciting that they are secured by this Deed of Trust;

4. Payment and performance of all of the obligations and liability of Grantor under a Term Loan Agreement between Grantor and Beneficiary (the "Loan Agreement"), a Pledge and Security Agreement between [among] Grantor, [Grantor's General Partner], and Beneficiary (the "Pledge Agreement"), and all other documents, instruments, and agreements between Grantor and Beneficiary executed in connection with the Note, excluding, however, that certain Certificate and Indemnity Regarding Hazardous Substances of even date herewith given by Grantor in favor of Beneficiary (the "Hazardous Substances Certificate"), which is not secured by this Deed of Trust; and

5. Performance of all of the obligations and liability of Grantor and/or Grantor's General Partner under certain agreements affecting the Property or the use or development thereof, as set forth in Exhibit C to the Loan Agreement (collectively, the "Project Agreements");

(collectively, the "Secured Obligations").

This Deed of Trust, the Note, the Loan Agreement, the Pledge Agreement, and any other instrument given to evidence or further secure the payment and performance of any obligation secured hereby may hereafter be referred to as the "Loan Documents."

TO PROTECT THE SECURITY OF THIS DEED OF TRUST, GRANTOR HEREBY COVENANTS AND AGREES AS FOLLOWS:

#### ARTICLE I COVENANTS AND AGREEMENTS OF GRANTOR

Grantor hereby covenants and agrees:

1.1 Warranties of Title and Authority. Grantor hereby represents and warrants that it is lawfully seized of an indefeasible fee title to the Property; that it has the authority and right to execute and deliver this Deed of Trust; that it shall defend the title to the Property against all claims and demands whatsoever; that the Property is free and clear of any and all liens, claims, encumbrances, restrictions, encroachments, and interests whatsoever in favor of any third party except as may be described in Exhibit B attached hereto, Beneficiary's title insurance policy, or as approved by Beneficiary in writing; and that any and all obligations it may have incurred in connection with the Property are current and without default. In the event any Grantor hereunder is a

partnership, joint venture, or a corporation, each person executing this instrument on behalf of such entity individually and personally represents and warrants that this Deed of Trust and each other instrument signed in the name of such entity and delivered to evidence or further secure the obligations secured hereby is, in all respects, binding upon such entity as an act and obligation of such entity.

1.2 Payment of Secured Obligations. Grantor covenants and agrees to pay when due the principal of, and the interest on, the indebtedness evidenced by the Note, all charges, fees, and other sums as provided in the Loan Documents, and the principal of, and interest on, any future advances secured by this Deed of Trust.

1.3 Maintenance, Repair, Alterations. Grantor covenants and agrees to keep the Trust Estate in good condition and repair, not to remove, demolish, or substantially alter (except such alterations as may be required by laws, ordinances, or regulations) any of the Improvements, to complete promptly and in a good and workmanlike manner any building or other improvement that may be constructed on the Property and promptly restore in like manner any Improvement that may be damaged or destroyed thereon, to pay when due all claims for labor performed and materials furnished therefor, to comply with all laws, ordinances, regulations, covenants, conditions, and restrictions now or hereafter affecting the Trust Estate or any part thereof or requiring any alterations or improvements, not to commit or permit any waste or deterioration of the Trust Estate, to keep and maintain abutting grounds, sidewalks, roads, parking, and landscape areas in good and neat order and repair, to comply with the provisions of any Lease, not to commit, suffer, or permit any act to be done in or upon the Trust Estate in violation of any law, ordinance, or regulation, to promptly commence and diligently pursue to completion any and all obligations of Grantor or Grantor's General Partner contained in the Loan Documents and the Project Agreements.

1.4 Required Insurance. Grantor agrees at all times to provide, maintain, and keep in force, or cause to be provided, maintained, and kept in force, the following policies of insurance:

a. Insurance against loss or damage to the Improvements by fire and any of the risks covered by the type of insurance now known as "all perils" or "Special Form" in an amount not less than the greater of (i) the original amount of the Note, (ii) one hundred percent (100%) of the full replacement cost of the Improvements and contents (exclusive of the cost of excavations, foundations, and footings below the lowest basement floor), or (iii) an amount sufficient to prevent Grantor and/or Beneficiary from becoming a co-insurer within the terms of the applicable policies, and with not more than One Thousand and no/100 Dollars (\$1,000.00) deductible from the loss payable for any casualty. The policies of insurance carried in accordance with this subparagraph a. shall contain the "Replacement Cost Endorsement";

b. Insurance against loss or damage to the Collateral by fire and other risks covered by the type of insurance now known as "all perils" or "Special Form"; and

c. Such other insurance and policy endorsements, and in such amounts, as may from time to time be reasonably required by Beneficiary against the same or other hazards, including without limitation flood insurance, rent loss insurance in an amount equal to twelve months rent, commercial general liability insurance in a minimum amount of \$1,000,000.00/per occurrence- \$2,000,000.00 aggregate, and endorsements for increased cost of construction, demolition, and contingent operation of building laws.

All policies of insurance required by the terms of this Deed of Trust shall contain an endorsement or agreement by the insurer that any loss shall be payable in accordance with the terms of such policy notwithstanding any act or negligence of Grantor that might otherwise result in forfeiture of such insurance and the further agreement of the insurers waiving all rights of setoff, counterclaim, or deductions against Grantor (Non-Contributory Standard Mortgage Clause and Lender's Loss Payable Endorsement - Form 438 BFU NS or CP 1218 - or their equivalent).

1.5 Delivery of Policies; Payment of Premiums.

a. All policies of insurance shall be issued by companies and in amounts in each company satisfactory to Beneficiary. All policies of insurance shall have attached thereto a lender's loss payable endorsement for the benefit of Beneficiary in form satisfactory to Beneficiary. Grantor shall furnish Beneficiary with an original or certified copy of all policies of required insurance. If Beneficiary consents to Grantor's providing any of the required insurance through blanket policies carried by Grantor and covering more than one (1) location, then Grantor shall furnish Beneficiary with a certificate of insurance for each such policy setting forth the coverage, the limits of liability, the name of the carrier, the policy number, and the expiration date.

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

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**WARNING TO GRANTOR**

Unless you provide Beneficiary with evidence of the insurance coverage as required by this Deed of Trust, Beneficiary may purchase insurance at your expense to protect Beneficiary's interest. This insurance may, but need not, also protect your interest. If the Trust Estate becomes damaged, the insurance coverage purchased by Beneficiary may not pay any claim you make or any claim made against you. You may later cancel the insurance coverage purchased by Beneficiary by providing evidence that you have obtained the insurance coverage required by this Deed of Trust elsewhere.

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

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

c. Grantor shall deposit with Beneficiary, on the day monthly installments of principal and interest are payable under the Note and until the Note is paid in full, an amount equal to one-twelfth (1/12) of the estimated aggregate annual insurance premiums on all policies of insurance required by this Deed of Trust. Grantor further agrees to cause all bills, statements, or other documents relating to the foregoing insurance premiums to be sent or mailed directly to Beneficiary. Upon receipt of such bills, statements, or other documents, and providing Grantor has deposited sufficient funds with Beneficiary pursuant to this Section 1.5, Beneficiary shall pay such amounts as may be due thereunder out of the funds so deposited with Beneficiary. If at any time and for any reason the funds deposited with Beneficiary are or will be insufficient to pay such amounts as may then or subsequently be due, Beneficiary shall notify Grantor and Grantor shall, within ten (10) days, deposit with Beneficiary an amount equal to such deficiency. Notwithstanding the foregoing, nothing contained herein shall cause Beneficiary to be deemed a trustee of such funds or to be obligated to pay any amounts in excess of the amount of funds deposited with Beneficiary pursuant to this Section 1.5. Beneficiary may commingle such reserve with its own funds and Grantor shall be entitled to no interest thereon.

d. In the event of loss, Grantor shall immediately notify Beneficiary, who may make proof of loss if it is not made promptly by Grantor. Proceeds shall be paid directly to Beneficiary, who may compromise with any insurance company and make a final settlement that shall be binding upon Grantor. Beneficiary shall have the option, in its sole and absolute discretion, to apply all such proceeds, after deducting therefrom all costs and expenses (regardless of the particular nature thereof and whether incurred with or without suit), including reasonable attorney fees, incurred by it in connection with such proceeds, upon any indebtedness secured hereby and in such order as Beneficiary may determine, or to apply all such proceeds, after such deductions, to the repair or restoration of the Trust Estate upon such conditions as Beneficiary may determine. Notwithstanding any of the foregoing, such proceeds, less any legal costs and fees incurred by Beneficiary, shall be used to reimburse Grantor for the cost of restoration of the Improvements, provided that restoration is economically and legally feasible in the reasonable judgment of Beneficiary and provided further that Grantor is not in default under any of the Loan Documents or Project Agreements. Such application or release shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

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

1.7 Indemnification; Subrogation; Waiver of Offset.

a. If Beneficiary is made a party defendant to any litigation concerning this Deed of Trust or the Trust Estate or any part thereof or interest therein, or the occupancy thereof by Grantor, then Grantor shall indemnify, defend, and hold Beneficiary harmless from all liability, loss, cost, or damage by reason of such litigation, including reasonable attorney fees and expenses incurred by Beneficiary in any such litigation, whether or not any such litigation is prosecuted to judgment. Subject to ORS 20.096, if Beneficiary commences an action against Grantor to enforce any of the terms hereof or because of the breach by Grantor of any of the terms hereof or for the recovery of any sum secured hereby, Grantor shall pay to Beneficiary reasonable attorney fees and expenses, and such fees and expenses shall be deemed to have accrued on the commencement of such action, and shall be enforceable whether or not such action is prosecuted to judgment. Subject to ORS 20.096, if Grantor breaches any term of this Deed of Trust, Beneficiary may employ an attorney or attorneys to protect its rights hereunder and, in the event of such employment following any breach by Grantor, Grantor shall pay Beneficiary reasonable attorney fees at trial and on appeal and expenses incurred by Beneficiary, whether or not an action is actually commenced against Grantor by reason of breach.

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

c. All sums payable by Grantor hereunder shall be paid without notice, demand, counterclaim, setoff, deduction, or defense, and without abatement, suspension, deferment, diminution, or reduction, and the obligations and liabilities of Grantor hereunder shall in no way be released, discharged, or otherwise affected (except as expressly provided herein) by reason of (i) any damage to or destruction of or any condemnation or similar taking of the Trust Estate or any part thereof, (ii) any restriction or prevention of or interference with any use of the Trust Estate or any part thereof, (iii) any title defect or encumbrance or any eviction from the Property or the Improvements or any part thereof by title paramount or otherwise, (iv) any bankruptcy, insolvency, reorganization, composition, adjustment, dissolution, liquidation, or other like proceeding relating to Beneficiary, or any action taken with respect to this Deed of Trust by any trustee or receiver of Beneficiary, or by any court, in any such proceeding, (v) any claim that Grantor has or might have against Beneficiary, (vi) any default or failure on the part of Beneficiary to perform or comply with any of the terms hereof or of any other agreement with Grantor, or (vii) any other occurrence whatsoever, whether similar or dissimilar to the foregoing and whether or not Grantor shall have notice or knowledge of any of the foregoing. Except as expressly provided herein, Grantor waives all rights now or hereafter conferred by statute or otherwise to any abatement, suspension, deferment, diminution, or reduction of any sum secured hereby and payable by Grantor.

1.8 Taxes and Impositions.

a. Grantor agrees to pay or cause to be paid, at least ten (10) days before due, all real property taxes and assessments, general and special, and all other liens, levies, taxes, and assessments of any kind or nature whatsoever, including without limitation nongovernmental levies or charges resulting from covenants, conditions, and restrictions affecting the Trust Estate, that are assessed or imposed upon the Trust Estate or become due and payable, and that create, may create, or appear to create a lien upon the Trust Estate or any part thereof or upon any personal property, equipment, or other facility used in the operation or maintenance thereof (all of which taxes, assessments, and other governmental and nongovernmental charges of like nature are hereinafter referred to as "Impositions").

b. If, at any time after the date hereof, there shall be assessed or imposed (i) a tax or assessment on the Trust Estate in lieu of or in addition to the Impositions payable by Grantor pursuant to subparagraph a. hereof, or (ii) a license fee, tax, or assessment imposed on Beneficiary and measured by or based in whole or in part upon the amount of the outstanding obligations secured hereby, then all such taxes, assessments, or fees shall be deemed to be included within the term "Impositions" as defined in subparagraph a. hereof; and Grantor shall pay and discharge or cause to be paid and discharged the same as herein provided with respect to the payment of Impositions if Grantor may lawfully make such payment or, at the option of Beneficiary, all obligations secured hereby, together with all accrued interest thereon, shall immediately become due and payable. Anything to the contrary herein notwithstanding, Grantor shall have no obligation to pay any franchise, estate, inheritance, income, excess profits, or similar tax levied on Beneficiary or on the obligations secured hereby.

c. Subject to the provisions of subparagraph d. of this Section 1.8, Grantor covenants to furnish to Beneficiary, within forty-five (45) days after the date upon which any such Imposition is due and payable by Grantor, official receipts of the appropriate taxing authority or other proof satisfactory to Beneficiary evidencing the payments thereof. Grantor shall not be required to furnish such proof to Beneficiary if Beneficiary has caused such Imposition to be paid pursuant to subparagraph e. of this Section 1.8.

d. Grantor shall have the right, before any delinquency occurs, to contest or object to the amount or validity of any such Imposition by appropriate legal proceedings, but this shall not be deemed or construed in any way as relieving, modifying, or extending Grantor's covenant to pay or cause to be paid any such Imposition at the time and in the manner provided in this Section 1.8, unless Grantor has given prior written notice to Beneficiary of Grantor's intent to so contest or object to an Imposition, and unless, at Beneficiary's sole option (i) Grantor shall demonstrate to Beneficiary's satisfaction that the legal proceedings shall conclusively operate to prevent the sale of the Trust Estate or any part thereof to satisfy such Imposition prior to final determination of such Proceedings, or (ii) Grantor shall furnish a good and sufficient bond or surety as requested by and satisfactory to Beneficiary, or (iii) Grantor shall have provided a good and sufficient undertaking as may be required or permitted by law to accomplish a stay of such proceedings.

e. Grantor shall deposit with Beneficiary, on the day monthly installments of principal and interest are payable under the Note and until the Note is paid in full, an amount equal to one-twelfth (1/12) of the annual Impositions reasonably estimated by Beneficiary to pay the installment of Impositions next due on the Trust Estate. In such event, Grantor further agrees to cause all bills, statements, or other documents relating to Impositions to be sent or mailed directly to Beneficiary. Upon receipt of such bills, statements, or other documents, and providing Grantor has deposited sufficient funds with Beneficiary pursuant to this Section 1.8, Beneficiary shall pay such amounts as may be due thereunder out of the funds so deposited with Beneficiary. If, at any time and for any reason, the funds deposited with Beneficiary are or will be insufficient to pay such amounts as may then or subsequently be due, Beneficiary shall notify Grantor and Grantor shall, within ten (10) days, deposit with Beneficiary an amount equal to such deficiency. Notwithstanding the foregoing, nothing contained herein shall cause Beneficiary to be deemed a trustee of such funds or to be obligated to pay any amounts in excess of the amount of funds deposited with Beneficiary pursuant to this Section 1.8. Beneficiary may commingle such deposit with its own funds. Beneficiary shall not be obligated to pay or allow any interest on any sums held by Beneficiary pending disbursement or application hereunder, and Beneficiary may impound or reserve for future payment of Impositions such portion of such payments as Beneficiary may in its absolute discretion deem proper, applying the balance on the principal of or interest on the obligations secured hereby. Should Grantor fail to deposit with Beneficiary (exclusive of that portion of such payments that has been applied by Beneficiary on the principal of or interest on the indebtedness secured by the Loan Documents) sums sufficient to fully pay such Impositions at least thirty (30) days before delinquency thereof, Beneficiary may, at Beneficiary's election, but without any obligation so to do, advance any amounts required to make up the deficiency, which advances, if any, shall be secured hereby and shall be repayable to Beneficiary as herein elsewhere provided or, at the option of Beneficiary, the latter may, without making any advance whatever, apply any sums held by it upon any obligation of Grantor secured hereby. Should any default occur or exist on the part of Grantor and/or any guarantor in the payment or performance of any of Grantor's and/or any guarantor's obligations under the terms of the Loan Documents, Beneficiary may, at any time at Beneficiary's option, apply any sums or amounts in its hands received pursuant hereto, or pursuant to Section 1.5 hereof or as rents or income of the Trust Estate or otherwise, upon any indebtedness or obligation of Grantor secured hereby in such manner and order as Beneficiary may elect. The receipt, use, or application of any such sums paid by Grantor to Beneficiary hereunder shall not be construed to affect the maturity of any indebtedness secured by this Deed of Trust or any of the rights or powers of Beneficiary or Grantor under the terms of the Loan Documents or any of the obligations of Grantor and/or any guarantor under this Deed of Trust.

f. Grantor covenants and agrees not to suffer, permit, or initiate the joint assessment of the real and personal property, or any other procedure whereby the lien of the real property taxes and the lien of the personal property taxes shall be assessed, levied, or charged to the Trust Estate as a single lien.

g. If requested by Beneficiary, Grantor shall cause to be furnished to Beneficiary a tax reporting service covering the Trust Estate of the type, duration, and with a company satisfactory to Beneficiary.

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

1.10 Ground Leases. Grantor agrees to pay when due all rents and other payments and perform all covenants and agreements contained in any lease, sublease, or ground lease that may constitute a portion of or an interest in the Trust Estate. Grantor further agrees that it will not surrender, assign, or sublease any such lease, sublease, or ground lease, or take any action that would effect or permit the termination of any such lease, sublease, or ground lease. If requested by Beneficiary, Grantor covenants to furnish to Beneficiary within thirty (30) days after the date upon which such rents or other payments are due and payable by Grantor, receipts or other evidence satisfactory to Beneficiary evidencing the payment thereof.

1.11 Actions Affecting Trust Estate. Grantor agrees to appear in and contest any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee and to pay all costs and expenses, including cost of evidence of title and reasonable attorney fees, in any such action or proceeding in which Beneficiary or Trustee may appear.

1.12 Actions by Trustee and/or Beneficiary to Preserve Trust Estate. Should Grantor fail to make or cause to be made any payment, or fail to do or cause to be done any act, as and in the manner provided in any of the Loan Documents or Project Agreements, Beneficiary and/or Trustee, each in its own discretion, without obligation so to do and after ten (10) days written notice to Grantor, and without releasing Grantor from any obligation, may make or do the same in such manner and to such extent as either may deem necessary to protect the security hereof. In connection therewith (without limiting their general powers), Beneficiary and/or Trustee shall have and are hereby given the right, but not the obligation (i) to enter upon and take possession of the Trust Estate, (ii) to make additions, alterations, repairs, and improvements to the Trust Estate that they or either of them may consider necessary or proper to keep the Trust Estate in good condition and repair, (iii) to appear and participate in any action or proceeding affecting or that may affect the security hereof or the rights or powers of Beneficiary or Trustee, (iv) to pay, purchase, contest, or compromise any encumbrance, claim, charge, lien, or debt that in the judgment of either may affect or appear to affect the security of this Deed of Trust or be prior or superior hereto, and (v) in exercising such powers, to pay necessary expenses, including employment of counsel or other necessary or desirable consultants. Grantor hereby agrees to pay on demand, with interest at the rate set forth herein, all of Beneficiary's costs, charges, and expenses incurred by Beneficiary in connection with the exercise by Beneficiary of the foregoing rights, including without limitation costs of evidence of title, court costs, appraisals, surveys, and reasonable attorney fees. All costs, charges, and expenses so incurred, together with interest thereon as aforesaid, shall be secured by the lien of this Deed of Trust.

1.13 Additional Security. In the event Beneficiary at any time holds additional security for any of the obligations secured hereby, it may enforce the sale thereof or otherwise realize upon the same, at its option, either before or concurrently herewith or after a sale is made hereunder.

1.14 Appointment of Successor Trustee. In the event of dissolution or resignation of Trustee, Beneficiary may substitute a trustee or trustees to execute the trust hereby created, and when such substitution has been filed for record in the Office of the Auditor or Recorder, as the case may be, of the County in which the Trust Estate is located, it shall be conclusive evidence of the appointment of such trustee or trustees, and such new trustee or trustees shall succeed to all of the powers and duties of the trustee or trustees named herein.

1.15 Successors and Assigns. This Deed of Trust applies to, inures to the benefit of, and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, successors, and assigns. The term "Beneficiary" shall mean the owner and holder of the Note, whether or not named as Beneficiary herein. In this Deed of Trust, whenever the context so requires, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural.

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

1.17 Liens. Grantor covenants and agrees to pay and promptly discharge or cause to be paid and promptly discharged, at Grantor's cost and expense, all liens, encumbrances, and charges upon the Trust Estate, or any part thereof or interest therein that have priority over this Deed of Trust, provided that the existence of any mechanic's, laborer's, materialman's, supplier's, or vendor's lien or right thereto shall not constitute a violation of this Section if payment is not yet due under the contract that is the foundation thereof and if such contract does not postpone payment for more than seventy-five (75) days after the performance thereof. Grantor shall have the right to contest in good faith the validity of any such lien, encumbrance, or charge, provided Grantor shall first deposit with Beneficiary a bond or other security satisfactory to Beneficiary in such amounts as Beneficiary shall reasonably require, but not more than one and one-half (150%) of the amount of the claim, and provided further that Grantor shall thereafter diligently proceed to cause such lien, encumbrance, or charge to be removed and discharged. If Grantor shall fail to discharge any such lien, encumbrance, or charge, then, in addition to any other right or remedy of Beneficiary, Beneficiary may, but shall not be obligated to, discharge the same, either by paying the amount claimed to be due, or by procuring the discharge of such lien by depositing in court a bond or the amount claimed or otherwise giving security for such claim, or in such manner as is or may be prescribed by law.

1.18 Trustee's Powers. At any time, or from time to time, without liability therefor and after ten (10) days written notice, upon written request of Beneficiary and presentation of this Deed of Trust and the Note secured hereby for endorsement, and without affecting the personal liability of any person for payment of the indebtedness secured hereby or the effect of this Deed of Trust upon the remainder of such Trust Estate, Trustee may (i) reconvey any part of such Trust Estate, (ii) consent in writing to the making of any map or plat thereof, (iii) join in granting any easement thereon, or (iv) join in any extension agreement or any agreement subordinating the lien or charge hereof.

1.19 Beneficiary's Powers. Without affecting the liability of any other person liable for the payment of any obligation herein mentioned, and without affecting the lien or charge of this Deed of Trust upon any portion of the Trust Estate not then or theretofore released as security for the full amount of all unpaid obligations, Beneficiary may, from time to time (i) release any person so liable, (ii) extend the maturity or alter any of the terms of any such obligation, (iii) grant other indulgences, (iv) release or reconvey, or cause to be released or reconveyed, at any time at Beneficiary's option any parcel or portion of the Trust Estate so long as the release or reconveyance does not materially affect the security value of the Trust Estate, (v) take or release any other or additional security for any obligation herein mentioned, or (vi) make compositions or other arrangements with debtors in relation

thereto. By accepting payment of any obligation herein mentioned after its due date, Beneficiary does not waive its right either to require prompt payment when due of all other obligations herein mentioned or to declare default for failure so to pay.

1.20 Accounting. Grantor will keep and maintain or will cause to be kept and maintained in accordance with sound accounting practice, accurate and proper books of record and account relating to the Property. Grantor shall permit Beneficiary to examine the books of account and other records of Grantor, to discuss the affairs, finances, and accounts of Grantor, and to be informed as to the same by Grantor, all at such reasonable times and intervals as Beneficiary may desire. Throughout the term of the Loan, Grantor shall furnish to Beneficiary (a) annual CPA-prepared financial statements for Grantor, Grantor's General Partner, [and all guarantors], delivered to Beneficiary within ninety (90) days [one hundred eighty (180) days] of the end of such entity's [or person's] fiscal year, and (b) if requested by Beneficiary or if Grantor's or Grantor's General Partner's CPA-prepared financial statements are not audited or reviewed, annual tax returns, complete with all schedules, including, K-1 statements for any partnership or S-Corporation in which Grantor or Grantor's General Partner has an interest] [and (c) annual tax returns for any individual guarantor or individual General Partner]. During the first year of the Loan, Grantor shall furnish to Beneficiary quarterly operating statements and rent rolls relating to the Trust Estate, delivered to Beneficiary within thirty (30) days of the end of each calendar quarter. Thereafter, throughout the term of the Loan, Grantor shall furnish to Beneficiary annual operating statements and rent rolls relating to the Trust Estate, delivered to Beneficiary within ninety (90) days of the end of each calendar year. Operating statements shall set forth the rental income and expenditures relating to the Trust Estate; rent rolls shall be in reasonable detail and in form and substance satisfactory to Beneficiary and shall contain, without limitation, a listing of each tenant, the space occupied, amount of rent, and the expiration of the lease. Beneficiary reserves the right to require more frequent operating and financial statements if it deems such reporting necessary or advisable. At Beneficiary's option, Beneficiary also may require that the Grantor and/or the property manager certify that the rent rolls and operating statements provided are complete and accurate in all respects. All financial statements, rent rolls, and operating statements shall be (i) prepared in accordance with generally accepted accounting principles, and (ii) in form and substance satisfactory to Beneficiary. All financial statements shall be certified as true and correct by the entity or person to which they pertain. In the event Grantor fails to furnish any of the financial statements hereinabove required, Beneficiary may cause an audit to be made, at Grantor's sole cost and expense, of the respective books and records.

1.21 Trade Names. At the request of Beneficiary, Grantor shall execute a certificate in form satisfactory to Beneficiary listing the trade names under which Grantor intends to operate the Trust Estate, and representing and warranting that Grantor does business under no other trade names with respect to the Trust Estate. Grantor shall promptly notify Beneficiary in writing of any change in such trade names, and will, upon request of Beneficiary, execute any additional financing statements and other certificates revised to reflect the change in trade name.

1.22 Eminent Domain. Should the Trust Estate, or any part thereof or interest therein, be taken or damaged by reason of any public improvement or condemnation proceeding or in any other manner ("Condemnation"), or should Grantor receive any notice or other information regarding such proceeding, Grantor shall give prompt written notice thereof to Beneficiary.

a. Beneficiary shall be entitled to all compensation, awards, and other payments or relief therefor, and shall be entitled at its option to commence, appear in, and prosecute in its own name any action or proceedings. Beneficiary shall also be entitled to make any compromise or settlement in connection with such taking or damage. All such compensation, awards, damages, rights of action, and proceeds awarded to Grantor (the "Proceeds") are hereby assigned to Beneficiary, and Grantor agrees to execute such further assignments of the Proceeds as Beneficiary or Trustee may require.

b. In the event any portion of the Trust Estate is so taken or damaged, Beneficiary shall have the option, in its sole and absolute discretion, to apply all the Proceeds, after deducting therefrom all costs and expenses (regardless of the particular nature thereof and whether incurred with or without suit), including reasonable attorney fees, incurred by it in connection with the Proceeds, upon any indebtedness secured hereby and in such order as Beneficiary may determine, or to apply all the Proceeds, after such deductions, to the restoration of the Trust Estate upon such conditions as Beneficiary may determine. Notwithstanding any of the foregoing, the Proceeds, less any administrative and legal costs and fees incurred by Beneficiary, shall be used to reimburse Grantor for the cost of restoration of the Improvements, provided that restoration is economically and legally feasible in the reasonable judgment of Beneficiary and provided further that Grantor is not in default under any of the Loan Documents or Project Agreements. Such application or release shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

1.23 Repayment of Advances. Upon receipt of notice, Grantor shall repay promptly all sums expended or advanced hereunder by or on behalf of Beneficiary or Trustee, with interest from the date of such advance or expenditure at the Note rate, and the repayment thereof shall be secured hereby. Failure to repay such expenditure or advance and interest thereon within ten (10) days of such notice will, at Beneficiary's option, constitute an Event of Default hereunder, or Beneficiary may, at its option, commence an action against Grantor for the recovery of such expenditure or advance and interest thereon, and in such event Grantor agrees to pay, in addition to the amount of such expenditure or advance, all costs and expenses incurred in such action, together with a reasonable attorney fee.

1.24 Hazardous Waste. Without limiting any provision of the Hazardous Substances Certificate:

a. Grantor represents and warrants to Beneficiary that, based on the \_\_\_\_\_ report prepared by \_\_\_\_\_ dated \_\_\_\_\_ [and the \_\_\_\_\_ report prepared by \_\_\_\_\_ dated \_\_\_\_\_] (collectively, the "Report[s]"), no Hazardous Substances (as defined in the Hazardous Substances Certificate) are being stored on the Property or, except as disclosed in the Report[s], on any adjacent property, nor have any such Hazardous Substances been stored or used on the Property or, except as disclosed in the Report[s], on any adjacent property prior to Grantor's ownership, possession, or control of the Property. Grantor agrees to provide written notice to Beneficiary promptly upon Grantor becoming aware that the Property or any adjacent property is being or has been contaminated with hazardous or toxic waste or substances. Grantor will not cause or permit any activities on the Property that directly or indirectly could result in the Property or any other property becoming contaminated with any Hazardous Substance.

b. Grantor will indemnify and hold Beneficiary harmless from and against any and all claims, demands,

damages, costs, expenses, losses, liens, liabilities, penalties, fines, lawsuits, and other proceedings (including reasonable attorney fees) arising directly or indirectly from or out of, or in any way connected with (i) the inaccuracy of the certifications contained herein or in any other document executed by Grantor in connection with the loan evidenced by the Note, (ii) any activities on the Property during Grantor's ownership, possession, or control of the Property that directly or indirectly result in the Property or any other property becoming contaminated with hazardous or toxic waste or substances, (iii) the discovery of Hazardous Substances on the Property, or (iv) the clean-up of Hazardous Substances from the Property or any other property required as a result of activities on the Property, all in accordance with the Hazardous Substances Certificate. Grantor acknowledges that it will be solely responsible for all costs and expenses relating to the clean-up of Hazardous Substances from the Property or from any other properties that become contaminated with hazardous or toxic waste or substances as a result of the contamination of or activities on the Property, provided that nothing herein shall be construed to limit any right of Grantor to seek contribution or indemnity from any party other than Beneficiary.

c. Beneficiary reserves the right to inspect and investigate the Property and its operations at any time and from time to time, and Grantor shall cooperate fully with Beneficiary in such inspection and investigations. If Beneficiary at any time has reason to believe that Grantor is not complying with all applicable Environmental Laws (as defined in the Hazardous Substances Certificate) or that a material spill, release or disposal of Hazardous Substances has occurred on or under the Property, Beneficiary may require Grantor to furnish Beneficiary at Grantor's expense an environmental audit or site assessment with respect to the matters of concern to Beneficiary. Such audit or assessment shall be performed by a qualified consultant approved by Beneficiary.

d. Grantor acknowledges and agrees that Grantor's obligations under the Hazardous Substances Certificate are unconditional and shall not be limited by any nonrecourse or other limitations of liability provided for in of the Loan Documents. The representations, warranties, and covenants of Grantor set forth in the Hazardous Substances Certificate (including without limitation the indemnity provisions therein) shall continue in effect and, to the extent permitted by law, shall survive the transfer of the Trust Estate pursuant to foreclosure proceedings (whether judicial or nonjudicial), by deed in lieu of foreclosure, or otherwise. Grantor acknowledges and agrees that its covenants and obligations under the Hazardous Substances Certificate are separate and distinct from its obligations under this Deed of Trust and the other Loan Documents.

## ARTICLE 2 ASSIGNMENT OF LEASES AND RENTS

2.1 Assignment. Grantor hereby irrevocably assigns to Beneficiary all of Grantor's right, title, and interest in, to, and under: (a) all leases of the Trust Estate or any portion thereof, and all other agreements of any kind relating to the use or occupancy of the Trust Estate or any portion thereof, whether now existing or entered into after the date hereof (the "Leases"), and (b) all rents, issues, profits, royalties, income, and other benefits derived from the Trust Estate, including without limitation all amounts payable and all rights and benefits accruing to Grantor under the Leases (collectively, the "Rents"). The term "Leases" shall also include all guarantees of and security for the lessees' performance hereunder, and all amendments, extensions, renewals, or modifications hereto which are permitted hereunder. This is a present and absolute assignment, not an assignment for security purposes only, and Beneficiary's right to the Leases and Rents is not contingent upon, and may be exercised without possession of, the Trust Estate.

2.2 Grant of License. Beneficiary confers upon Grantor a license (the "License") to collect and retain the Rents as they become due and payable, until the occurrence of an Event of Default (as such term is defined in Section 4.1 below). Upon an Event of Default, the License shall be automatically revoked and Beneficiary may collect and apply the Rents pursuant to Section 4.2 without notice and without taking possession of the Trust Estate. Grantor hereby irrevocably authorizes and directs the lessees under the Leases to rely upon and comply with any notice or demand by Beneficiary for the payment to Beneficiary of any rental or other sums which may at any time become due under the Leases, or for the performance of any of the lessees' undertakings under the Leases, and the lessees shall have no right or duty to inquire as to whether any Event of Default has actually occurred or is then existing hereunder. Grantor hereby relieves the lessees from any liability to Grantor by reason of relying upon and complying with any such notice or demand by Beneficiary.

2.3 Effect of Assignment. The foregoing irrevocable assignment shall not cause Beneficiary to be: (a) a mortgagee in possession, (b) responsible or liable for the control, care, management, or repair of the Trust Estate or for performing any of the terms, agreements, undertakings, obligations, representations, warranties, covenants, and conditions of the Leases, or (c) responsible or liable for any waste committed on the Trust Estate by the lessees under any of the Leases or any other parties; for any dangerous or defective condition of the Trust Estate, or for any negligence in the management, upkeep, repair, or control of the Trust Estate resulting in loss or injury or death to any lessee, licensee, employee, invitee, or other person. Beneficiary and Trustee shall not directly or indirectly be liable to Grantor or any other person as a consequence of: (i) the exercise or failure to exercise by Beneficiary or Trustee, or any of their respective employees, agents, contractors, or subcontractors, any of the rights, remedies, or powers granted to Beneficiary or Trustee hereunder, or (ii) the failure or refusal of Beneficiary to perform or discharge any obligation, duty, or liability of Grantor arising under the Leases.

2.4 Representations and Warranties. Grantor represents and warrants that: (a) all existing Leases are in full force and effect and are enforceable in accordance with their respective terms, and no breach or default, or event which would constitute a breach or default after notice or the passage of time, or both, exists under any existing Leases on the part of any party, (b) no rent or other payment under any existing Lease has been paid by any lessee for more than one (1) month in advance, and (c) none of the lessor's interests under any of the Leases has been transferred or assigned.

2.5 Covenants. Grantor covenants and agrees at Grantor's sole cost and expense to: (a) perform the obligations of lessor contained in the Leases and enforce by all available remedies performance by the lessees of the obligations of the lessees contained in the Leases, (b) give Beneficiary prompt written notice of any default that occurs with respect to any Lease in excess of one year, whether the default be that of the lessee or of the lessor, (c) deliver to Beneficiary fully executed, counterpart original(s) of each and every Lease if requested to do so by Beneficiary, and (d) execute and record such additional assignments of any Lease or specific subordinations (or subordination, allotment, and non-disturbance agreements executed by the lessor and lessee) of any Lease to this Deed of Trust, in form and substance acceptable to Beneficiary, as Beneficiary may request. Grantor shall not, without Beneficiary's prior written consent or as otherwise permitted by any provision of the Loan Documents: (i) enter into any Leases after the date thereof; (ii) execute any other assignment relating to any of the Leases, (iii) discount any rent or other sums due under the

Leases or collect the same in advance, other than to collect rentals one (1) month in advance of the time when it becomes due, (iv) terminate, modify, or amend any of the terms of the Leases or in any manner release or discharge the lessees from any obligations thereunder, (v) consent to any assignment or subletting by any lessee, or (vi) subordinate or agree to subordinate any of the Leases to any other deed of trust or encumbrance. Any such attempted action in violation of the provisions of this Section 2.5 shall be null and void. Without in any way limiting the requirement of Beneficiary's consent hereunder, any sums received by Grantor in consideration of any termination (or the release or discharge of any lessee) modification or amendment of any Lease shall be applied to reduce the outstanding Secured Obligations and any such sums received by Grantor shall be held in trust by Grantor for such purpose.

2.6 Estoppel Certificates. Within thirty (30) days after written request by Beneficiary, Grantor shall deliver to Beneficiary and to any party designated by Beneficiary estoppel certificates executed by Grantor and by each of the lessees, in recordable form, certifying (if such be the case): (a) that the foregoing assignment and the Leases are in full force and effect, (b) the date of each lessee's most recent payment of rent, (c) that there are no defenses or offsets outstanding, or stating those claimed by Grantor or lessees under the foregoing assignment or the Leases, as the case may be, and (d) any other information reasonably requested by Beneficiary.

2.7 Power of Attorney. Grantor hereby constitutes and appoints Beneficiary as Grantor's attorney-in-fact (such agency being coupled with an interest) and as such attorney-in-fact Beneficiary may, without the obligation to do so, in the name, place, and stead of Grantor, subordinate at any time and from time to time, any Leases affecting the Trust Estate or any part thereof to the lien of this Deed of Trust or any other mortgage of any kind encumbering the Trust Estate, and to request or require such subordination where such option or authority was reserved to Grantor under any Lease or in any case where Grantor otherwise would have the right, power, or privilege so to do. This appointment is to be irrevocable and continuing and these rights, powers, and privileges shall be exclusive in Beneficiary, its successors and assigns, as long as any part of the indebtedness secured by this Deed of Trust remains unpaid.

2.8 Indemnification. Grantor hereby agrees to indemnify, defend, and hold Beneficiary harmless from any and all liability, loss, damage, or expense that Beneficiary may incur under or by reason of this Article 2 or for any action taken by Beneficiary hereunder, or by reason or in defense of any and all claims and demands whatsoever that may be asserted against Beneficiary arising out of the Leases, including but not limited to any claims by any tenants of credit for rental for any period under any Lease more than one (1) month in advance of the due date thereof and security deposits paid to and received by Grantor but not delivered to Beneficiary. Should Beneficiary incur any such liability, loss, damage, or expense, the amount thereof (including reasonable attorney fees) with interest thereon at the then-applicable rate set forth in the Note shall be payable by Grantor immediately without demand, and shall be secured by this Deed of Trust.

2.9 Records. Until the indebtedness secured by this Deed of Trust shall have been paid in full, Grantor shall retain, and upon reasonable notice make available for inspection and copying by Beneficiary at reasonable times, executed copies of all then current Leases upon all or any part of the Trust Estate, and will transfer and assign future Leases upon the same terms and conditions as herein contained. Grantor hereby covenants and agrees to make available for inspection and copying by Beneficiary at reasonable times, any and all assignments and other records and instruments, including but not limited to rent rolls, tenant financial statements, and books of account sufficient for the purpose that Beneficiary may deem to be advisable for carrying out the purposes and intent of this Article 2.

2.10 No Waiver. The failure of Beneficiary to avail itself of any of the terms, covenants, and conditions of this Article 2 for any period of time or at any time shall not be construed or deemed to be a waiver of any such right, and nothing contained in this Article 2, nor anything done or omitted to be done by Beneficiary pursuant to this Article 2, shall be deemed a waiver by Beneficiary of any of its rights and remedies under the Note and this Deed of Trust, or of the benefit of the laws of the State of Oregon. The rights of Beneficiary to collect the indebtedness secured by this Deed of Trust, to enforce any other security for such indebtedness, or to enforce any other right or remedy under this Deed of Trust may be exercised by Beneficiary either prior to, simultaneously with, or subsequent to any such other action described in this Article 2, and shall not be deemed an election of remedies.

2.11 Additional Rights and Remedies. In addition to, but not in lieu of, any other rights under this Article 2, Beneficiary shall have the right to institute suit and obtain a protective or mandatory injunction to prevent a breach or default of, or to enforce the observation by Grantor of, the agreements, covenants, terms, and conditions contained in this Article 2, and shall have the right to reasonable attorney fees, costs, expenses, and damages occasioned by any such breach or default by Grantor.

2.12 Creation of Security Interest; Security Agreement. Without in any way limiting any provision of this Article 2, Grantor hereby grants to Beneficiary a security interest in all Leases and Rents and all proceeds thereof for the purpose of securing all liability and obligations of Grantor contained in any of the Loan Documents or the Project Agreements. This Deed of Trust constitutes a security agreement as that term is used in the Uniform Commercial Code of Oregon, as the same may be amended or recodified from time to time (the "UCC"). Grantor agrees that Beneficiary is authorized to file financing statements in the name of Grantor to perfect the security interest granted herein, and that Grantor will pay the cost of filing the same in all public offices wherever filing is deemed by Beneficiary to be necessary or desirable.

### ARTICLE 3

#### SECURITY AGREEMENT AND FIXTURE FILING

3.1 Creation of Security Interest. For the purpose of securing all liability and obligations of Grantor contained in any of the Loan Documents or the Project Agreements, Grantor hereby grants to Beneficiary a security interest in all of Grantor's personal property, wherever located, and now owned or hereafter acquired, including without limitation the following (collectively, the "Collateral"):

All goods, building and other materials, supplies, work in process, equipment, machinery, fixtures, furniture, furnishings, signs, and other personal property and embedded software included therein, wherever situated, that are or are to be incorporated into, used in connection with, or appropriated for use on the Trust Estate, together with any and all rents (to the

extent, if any, that they are not real property), all inventory, accounts, cash receipts, deposit accounts, accounts receivable, contract rights (including without limitation any unpaid capital contributions of Grantor's partners or other owners), licenses, agreements, general intangibles, chattel paper (whether electronic or tangible), instruments, documents, promissory notes, drafts, letters of credit, letter of credit rights, supporting obligations, investment property, commercial tort claims, insurance policies, insurance and condemnation awards and proceeds, any other rights to the payment of money, trade names, trademarks and service marks arising from or related to the ownership, management, leasing, or operation of the Trust Estate or any business now or hereafter conducted thereon by Grantor, all permits, consents, approvals, licenses, authorizations, and other rights granted by, given by, or obtained from, any governmental entity with respect to the Trust Estate, all deposits or other security now or hereafter made with or given to utility companies by Grantor with respect to the Trust Estate, all advance payments of insurance premiums made by Grantor with respect to the Trust Estate, all plans, drawings, and specifications relating to the Trust Estate, all loan funds held by Beneficiary, whether or not disbursed, all funds deposited with Beneficiary pursuant to any loan agreement or this Deed of Trust, all reserves, deferred payments, deposits, accounts, refunds, cost savings, and payments of any kind related to the Trust Estate or any portion thereof, together with all replacements and proceeds of, and additions and accessions to, any of the foregoing, together with all books, records, and files relating to any of the foregoing.

All terms used in the foregoing definition of Collateral shall be as defined in the UCC, as the same may be amended or recodified from time to time.

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

- a. Except for the security interest granted hereby, Grantor is, and as to portions of the Collateral to be acquired after the date hereof will be, the sole owner of the Collateral, free from any adverse lien, security interest, encumbrance, or adverse claims thereon of any kind whatsoever. Grantor will notify Beneficiary of, and will defend the Collateral against, all claims and demands of all persons at any time claiming the same or any interest therein.
- b. Grantor will not lease, sell, convey, or in any manner transfer the Collateral without the prior written consent of Beneficiary.
- c. The Collateral is not used or bought for personal, family, or household purposes.
- d. All tangible Collateral will be kept on or at the Property, and Grantor will not remove any tangible Collateral from the Property without the prior written consent of Beneficiary, except such portions or items of tangible Collateral that are consumed or worn out in ordinary usage, all of which shall be promptly replaced by Grantor with an article of equal suitability owned by Grantor free and clear of any lien or security interest except such as may be approved in writing by Beneficiary.
- e. Grantor's principal place of business is located at the address shown in Section 5.5 of this Deed of Trust (entitled "Notices"), Grantor's legal name is exactly as set forth on the first page of this Deed of Trust, and all of Grantor's organizational documents or agreements provided to Beneficiary are complete and accurate in every respect.
- f. Grantor agrees (i) to execute and deliver such documents as Beneficiary deems necessary to create, perfect, and continue the security interests contemplated in this Deed of Trust, (ii) not to change its name or, as applicable, its chief executive office, its principal residence, or the jurisdiction in which it is organized without prior written notice to Beneficiary, (iii) to cooperate with Beneficiary in perfecting all security interests granted in this Article 3, and in obtaining such agreements from third parties as Beneficiary deems necessary, proper, or convenient in connection with the preservation, perfection, or enforcement of any of Beneficiary's rights under this Article 3, and (iv) that Beneficiary is authorized to file financing statements in the name of Grantor to perfect Beneficiary's security interest in the Collateral, and that Grantor will pay the cost of filing the same in all public offices wherever filing is deemed by Beneficiary to be necessary or desirable.
- g. Grantor agrees to cooperate with Beneficiary in obtaining control with respect to any Collateral consisting of deposit accounts or other property as to which, under the UCC, a secured party perfects its security interest by means of control.
- h. Grantor agrees to execute such further documents and to take such further actions as are reasonably requested by Beneficiary in order to evidence or perfect the security interests granted in this Article 3, to maintain the first priority of the security interests, and/or to effectuate the rights granted to Beneficiary in Article 3.
- i. All covenants and obligations of Grantor contained herein relating to the Trust Estate shall be deemed to apply to the Collateral whether or not expressly referred to herein.

3.3 Rights of Beneficiary. In addition to Beneficiary's rights as a "Secured Party" under the UCC, Beneficiary may, but shall not be obligated to, at any time without notice to and at the expense of Grantor (i) give notice to any person of Beneficiary's rights hereunder and enforce such rights at law or in equity, (ii) insure, protect, defend, and preserve the Collateral or any rights or interests of Beneficiary therein, (iii) inspect the Collateral, and (iv) endorse, collect, and receive any right to payment of money owing to Grantor under or from the Collateral. Notwithstanding the foregoing, in no event shall Beneficiary be deemed to have accepted any property other than cash in satisfaction of any obligation of Grantor to Beneficiary unless Beneficiary makes an express written election of such remedy under the UCC or other applicable law.

3.4 Security Agreement. This Deed of Trust constitutes a security agreement as that term is used in the UCC.

3.5 Fixture Filing. As to any or all of the Collateral that is or hereafter becomes a "fixture" under applicable law, this Deed of Trust constitutes a fixture filing under the UCC.

#### ARTICLE 4

#### REMEDIES UPON DEFAULT

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

- a. Grantor fails to pay any installment of principal or interest on the Note or any other sum secured by this Deed of Trust when due, subject to any applicable grace period contained in the Note or the other Loan Documents; or
- b. Grantor fails to perform or comply with any other covenant or condition to be performed or satisfied by Grantor under this Deed of Trust or the other Loan Documents or the Project Agreements [or the Commercial Leases] within thirty (30) days after written notice from Beneficiary to perform or satisfy the covenant or condition or, if such performance or compliance cannot be completed within such 30-day period through the exercise of reasonable diligence, the failure by Grantor to commence the required performance or compliance within such 30-day period and thereafter to continue such performance or compliance with diligence to completion; or
- c. Grantor fails to show evidence of full or substantial compliance with any requirement of any governmental authority having jurisdiction over the Property within thirty (30) days after notice in writing of such requirement shall have been given to Grantor by Beneficiary or, if such compliance cannot be completed within such 30-day period through the exercise of reasonable diligence, the failure by Grantor to commence the required compliance within such 30-day period and thereafter to continue such compliance with diligence to completion; or
- d. Grantor otherwise materially breaches any term, covenant, condition, provision, representation, or warranty of Grantor under this Deed of Trust or the other Loan Documents or the Project Agreements [or the Commercial Leases] and fails to cure such breach within thirty (30) days after notice in writing of such breach shall have been given to Grantor by Beneficiary or, if such breach cannot be cured within such 30-day period through the exercise of reasonable diligence, the failure by Grantor to commence the required cure within such 30-day period and thereafter to continue such cure with diligence to completion; or
- e. Any representation or warranty of Grantor in any of the Loan Documents or the Project Agreements or in any certificate, agreement, instrument, or other document made or delivered pursuant to or in connection with any of the Loan Documents or the Project Agreements [or the Commercial Leases] proves to have been incorrect in any material respect when made; or
- f. All or any material portion of the Property is condemned, seized, or appropriated by any governmental agency; or
- g. There shall occur a material adverse change in the financial condition of Grantor or Grantor's General Partner from the financial condition of such entity as of the date hereof and Grantor shall fail to present evidence satisfactory to Beneficiary that such condition has been remedied within thirty (30) days after written notice by Beneficiary to Grantor; or
- h. The occurrence of an event of default which has not been cured within any applicable cure period under any lien instrument securing financing subordinate to the loan evidenced by the Note, regardless of whether Beneficiary has given its written consent to such lien; or
- i. The occurrence of an event of default which has not been cured within any applicable cure period as defined in any of the other Loan Documents or the Project Agreements [or the Commercial Leases]; or
- j. Grantor, Grantor's General Partner [or any guarantor]: (i) files a voluntary petition in bankruptcy, or such petition is filed against such person or entity and is not dismissed within 60 days after filing, (ii) files any petition or answer seeking or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief for itself under any present or future federal, state, or other statute, law, or regulation relating to bankruptcy, insolvency, or other relief for debtors, or (iii) seeks or consents to or acquiesces in the appointment of any trustee, receiver, or liquidator of Grantor or of all or any part of the Trust Estate, or of any or all of the royalties, revenues, rents, issues, or profits thereof, or makes any general assignment for the benefit of creditors, or admits in writing its inability to pay its debts generally as they become due; or
- k. A court of competent jurisdiction enters an order, judgment, or decree approving a petition filed against Grantor or Grantor's General Partner, seeking any reorganization, dissolution, or similar relief under any present or future federal, state, or other statute, law, or regulation relating to bankruptcy, insolvency, or other relief for debtors, and such order, judgment, or decree remains unvacated and unstayed for an aggregate of sixty (60) days (whether or not consecutive) from the first date of entry thereof, or any trustee, receiver, or liquidator of Grantor or of all or any part of the Trust Estate, or of any or all of the royalties, revenues, rents, issues, or profits thereof, is appointed without the consent or acquiescence of Grantor and such appointment remains unvacated and unstayed for an aggregate of sixty (60) days (whether or not consecutive); or
- l. A writ of execution or attachment or any similar process is issued or levied against all or any part of or interest in the Trust Estate, or any judgment involving monetary damages is entered against Grantor or Grantor's General Partner that becomes a lien on the Trust Estate or any portion thereof or interest therein, and such execution, attachment, or similar process or judgment is not released, bonded, satisfied, vacated, or stayed within sixty (60) days after its entry or levy; or
- m. Any transfer of all or any part of the Trust Estate, or any transfer of the capital stock or partnership or joint venture interest in Grantor, as provided in Section 4.8 below.

4.2 Acceleration Upon Default; Additional Remedies. In the event of any Event of Default, Beneficiary may declare all indebtedness secured hereby to be due and payable and the same shall thereupon become due and payable without any presentment, demand, protest, or notice of any kind. In addition, Beneficiary may exercise one or more of the following rights and remedies, in addition to any other remedies that may be available at law, in equity, or otherwise:

- a. Beneficiary may, either in person or by agent, with or without bringing any action or proceeding, or by a receiver appointed by a court and without regard to the adequacy of its security, enter upon and take possession of the Trust Estate, or

any part thereof, in its own name or in the name of Trustee, and do any acts that it deems necessary or desirable to preserve the value, marketability, or rentability of the Trust Estate, or part thereof or interest therein, increase the income therefrom or protect the security hereof and, with or without taking possession of the Trust Estate, sue for or otherwise collect the rents, issues, and profits thereof, including those past due and unpaid, and apply the same upon any indebtedness secured hereby, less costs and expenses of operation and collection, including attorney fees, all in such order as Beneficiary may determine. The entering upon and taking possession of the Trust Estate, the collection of such rents, issues, and profits, and the application thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done in response to such default or pursuant to such notice of default and, notwithstanding the continuance in possession of the Trust Estate or the collection, receipt, and application of rents, issues, or profits, Trustee or Beneficiary shall be entitled to exercise every right provided for in any of the Loan Documents or by law upon occurrence of any Event of Default, including the right to exercise the power of sale.

b. Beneficiary may commence an action to foreclose this Deed of Trust as a mortgage, appoint a receiver, or specifically enforce any of the covenants hereof.

c. Beneficiary shall be entitled to the appointment of a receiver as a matter of right, whether or not the apparent value of the Trust Estate exceeds the amount of the balance due hereunder, and any receiver appointed may serve without bond. Employment by Beneficiary shall not disqualify a person from serving as receiver. Upon taking possession of all or any part of the Trust Estate, the receiver may:

- (1) Use, operate, manage, control, and conduct business on the Trust Estate;
- (2) Make expenditures for all maintenance, renewals, replacements, alterations, environmental site assessments, additions, and improvements to the Trust Estate as in its judgment are proper;
- (3) Insure and reinsure the Trust Estate and all risks incidental to its possession, operation, and management of the Trust Estate;
- (4) Collect the revenues and income from the Trust Estate and apply such sums to the expenses of use, operation, and management in such priority as the receiver deems appropriate. Grantor shall promptly turn over to the receiver all documents, books, records, papers, and accounts, together with the amount of any deposits, rentals, and use fees from any tenant or other user. The receiver may appear in any proceeding or bring suit on Grantor's behalf, as necessary to enforce obligations of any tenant or other user, including actions for the recovery of rent and actions in forcible detainer;
- (5) Cancel or terminate any lease or agreement for any cause for which Grantor would be entitled to cancel the same;
- (6) Elect to disaffirm any lease or agreement that is then subordinate to this Deed of Trust;
- (7) Extend or modify any lease and make any new lease on any portion of the Trust Estate. Any such instruments shall be binding upon Grantor and all persons whose interests in the Trust Estate are subordinate to this Deed of Trust, and upon the purchaser or purchasers at any foreclosure sale, notwithstanding any redemption from sale, discharge, or indebtedness, satisfaction of the foreclosure decree, or issuance of any certificate of sale or deed to any purchaser; or
- (8) Complete any construction in progress on the Property, and in that connection, pay bills, borrow funds, employ contractors, and make any changes in plans or specifications as the receiver deems appropriate.

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

d. In addition to all of Beneficiary's rights as a "Secured Party" under the UCC or otherwise at law, Beneficiary may exercise any or all of the following remedies:

- (1) Either personally or by means of a court appointed receiver, take possession of all or any of the Collateral and exclude therefrom Grantor and all others claiming under Grantor, and thereafter hold, store, use, operate, manage, maintain, and control, make repairs, replacements, alterations, additions and improvements to, and exercise all rights and powers of Grantor in respect to the Collateral or any part thereof. In the event Beneficiary demands or attempts to take possession of the Collateral in the exercise of any rights under any of the Loan Documents, Grantor promises and agrees to promptly turn over and deliver complete possession thereof to Beneficiary.
- (2) Without notice to or demand upon Grantor, make such payments and do such acts as Beneficiary may deem necessary to protect its security interest in the Collateral, including without limitation paying, purchasing, contesting, or compromising any encumbrance, charge, or lien that is prior to or superior to the security interest granted hereunder, entering into any agreement, compromise, or settlement, including insurance claims, that Beneficiary may deem desirable or proper with respect to any of the Collateral, and endorsing and delivering evidences of title for, and receiving, enforcing and collecting by legal action or otherwise, all indebtedness and obligations now or hereafter owing to Grantor in connection with or on account of any of the Collateral, and in exercising any of the foregoing powers or authority pay all expenses incurred in connection therewith.
- (3) Require Grantor to assemble the Collateral or any portion thereof, at a place designated by Beneficiary and reasonably convenient to both parties, and promptly to deliver such Collateral to Beneficiary, or an agent or representative designated by it. Beneficiary and its agents and representatives shall have the right to enter upon any or all of Grantor's premises and property to exercise Beneficiary's rights hereunder.

(4) Sell, lease, or otherwise dispose of the Collateral at public sale, with or without having the Collateral at the place of sale, and upon such terms and in such manner as Beneficiary may determine. Beneficiary may be a purchaser at any such sale.

(5) Unless the Collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market, Beneficiary shall give Grantor at least ten (10) days prior written notice of the time and place of any public sale of the Collateral or other intended disposition thereof, and Grantor hereby agrees that any notice so given shall be deemed reasonable.

(6) In disposing of Collateral, beneficiary may disclaim all warranties of title, possession, quiet enjoyment, and the like. Any proceeds of any disposition of any Collateral may be applied by Beneficiary to the payment of expenses incurred by Beneficiary in connection with the foregoing, including reasonable attorney fees, and the balance of such proceeds may be applied by Beneficiary toward the payment of the Secured Obligations in such order of application as Beneficiary may from time to time elect.

Notwithstanding any other provision hereof, Beneficiary shall not be deemed to have accepted any property other than cash in satisfaction of any obligation of Grantor to Beneficiary unless Beneficiary makes an express written election of such remedy under the UCC or other applicable law. Grantor agrees that Beneficiary shall have no obligation to process or prepare any Collateral for sale or other disposition.

c. Beneficiary may direct Trustee, and Trustee shall be empowered, to foreclose the Trust Estate by advertisement and exercise of the power of sale under applicable law.

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

a. Upon receipt of such notice from Beneficiary, Trustee shall cause to be given such Notice of Default as then required by law. Trustee shall, without demand on Grantor, after lapse of such time as may then be required by law and after Notice of Sale having been given as required by law, sell the Trust Estate at the time and place of sale fixed by it in such Notice of Sale, either as a whole, or in separate lots of parcels or items as Trustee shall deem expedient, and in such order as it may determine, at public auction to the highest bidder for cash in lawful money of the United States payable at the time of sale. Trustee shall deliver to such purchaser or purchasers thereof its good and sufficient deed or deeds conveying the property so sold, but without any covenant or warranty, express or implied. The recitals in such deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including without limitation Grantor, Trustee, or Beneficiary, may purchase at such sale.

b. After deducting all costs, fees, and expenses of Trustee and of this Trust, including without limitation costs of evidence of title, costs of obtaining an updated environmental site assessment, and reasonable attorney fees in connection with sale, Trustee shall apply the proceeds of sale to payment of all sums expended under the terms hereof, not then repaid, with accrued interest, all other sums then secured hereby, and the remainder, if any, to the person or persons legally entitled thereto.

4.4 Appointment of Receiver. If any Event of Default described in Section 4.1 of this Deed of Trust shall have occurred and be continuing, Beneficiary, as a matter of right and without notice to Grantor or anyone claiming under Grantor, and without regard to the then value of the Trust Estate or the interest of Grantor therein, shall have the right to apply to any court having jurisdiction to appoint a receiver or receivers of the Trust Estate, and Grantor hereby irrevocably consents to such appointment and waives notice of any application therefor. Any such receiver or receivers shall have all the usual powers and duties of receivers in like or similar cases and all the powers and duties of Beneficiary in case of entry as provided in Section 4.2.a and shall continue as such and exercise all such powers until the date of confirmation of sale of the Trust Estate unless such receivership is sooner terminated.

4.5 Remedies Not Exclusive; Application of Sums; No Cure or Waiver. Trustee and Beneficiary, and each of them, shall be entitled to enforce payment and performance of any indebtedness or obligations secured hereby and to exercise all rights and powers under this Deed of Trust or under any Loan Document or other agreement or any laws now or hereafter in force, notwithstanding that some or all of the indebtedness and obligations secured hereby may now or hereafter be otherwise secured, whether by mortgage, deed of trust, pledge, lien, assignment, or otherwise. Neither the acceptance of this Deed of Trust nor its enforcement, whether by court action or pursuant to the power of sale or other powers herein contained, shall prejudice or in any manner affect Trustee's or Beneficiary's right to realize upon or enforce any other security now or hereafter held by Trustee or Beneficiary, it being agreed that Trustee and Beneficiary, and each of them, shall be entitled to enforce this Deed of Trust and any other security now or hereafter held by Beneficiary or Trustee in such order and manner as they or either of them may in their absolute discretion determine. No remedy herein conferred upon or reserved to Trustee or Beneficiary is intended to be exclusive of any other remedy herein or by law provided or permitted, but each shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute. Every power or remedy given by any of the Loan Documents to Trustee or Beneficiary or to which either of them may be otherwise entitled, may be exercised, concurrently or independently, from time to time and as often as may be deemed expedient by Trustee or Beneficiary and either of them may pursue inconsistent remedies.

All sums received by Beneficiary under Section 4.2 or Section 2.2, less all costs and expenses incurred by Beneficiary or any receiver under Section 4.2 or Section 2.2, including without limitation attorney fees, shall be applied in payment of the Secured Obligations in such order as Beneficiary shall determine in its sole discretion, provided, however, that Beneficiary shall have no liability for funds not actually received by Beneficiary. Neither Beneficiary's nor Trustee's nor any receiver's entry upon and taking possession of all or any part of the Trust Estate, nor any collection of rents, issues, profits, insurance proceeds, condemnation proceeds or damages, other security or proceeds of other security, or other sums, nor the application of any collected sum to any Secured Obligation, nor the exercise or failure to exercise of any other right or remedy by Beneficiary or Trustee or any receiver shall cure or waive any breach, Event of Default, or notice of default under this Deed of Trust, or nullify the effect of any notice of default or sale (unless all Secured Obligations then due have been paid and performed and Grantor has cured all other defaults), or impair the

status of the security, or prejudice Beneficiary or Trustee in the exercise of any right or remedy, or be construed as an affirmation by Beneficiary of any tenancy, lease, or option or a subordination of the lien of or security interests created by this Deed of Trust.

4.6 Sale of Trust Estate Pursuant to Foreclosure. In case of a sale pursuant to a foreclosure of this Deed of Trust, the Trust Estate, and all property comprising the Trust Estate, real, personal, or mixed, may be sold as an entirety or in parcels, by one sale or by several sales held at one time or at different times, all as Trustee, in its unrestricted discretion, may elect, and Grantor for and on behalf of itself and all persons claiming by, through, or under it, waives any and all rights to have the property and estates comprising the Trust Estate marshalled upon any foreclosure sale and agrees that upon foreclosure, the Trust Estate may be sold as an entirety and not in parcels.

4.7 Restoration of Former Positions. In case Beneficiary shall proceed to enforce any right under this Deed of Trust and the proceedings for enforcement thereof shall have been discontinued or abandoned for any reason or shall have been determined adversely to Beneficiary, then and in every such case Beneficiary, Trustee, and Grantor shall, subject to any determination in such proceedings, severally and respectively be restored to their former positions and rights hereunder, and thereafter all rights and remedies and powers of Beneficiary and Trustee shall continue as though no such proceeding had been taken.

4.8 Due on Sale or Increase in Interest Rate on Sale.

a. Grantor further agrees and acknowledges that the indebtedness evidenced by the Note is personal to it, and that its personal responsibility and/or control of the Trust Estate given to secure this indebtedness is a material inducement to Beneficiary to agree to enter into this transaction. Any sale, conveyance, assignment, or other transfer of the whole or any part of the Trust Estate securing the obligations of Grantor hereunder, whether by deed, contract, further encumbrance, lease of the same (other than a lease of any portion of the space in the Improvements without an option to purchase), or otherwise, and whether voluntary, involuntary, or by operation of law (a "transfer"), without Beneficiary's prior written consent, or any transfer of capital stock or the general partnership interest in Grantor without Beneficiary's prior written consent, shall be deemed to increase the risk of Beneficiary and shall be an Event of Default hereunder. [Except for a transfer described below in subsection (d) hereof, in] [In] the event of transfer, Beneficiary or other holder may declare the entire unpaid balance immediately due and payable, or, at its sole option, it may consent to such transfer of the Trust Estate or transfer of capital stock or partnership or joint venture interest in writing and may impose such conditions to its consent as Beneficiary in its sole discretion may determine. Without limitation, Beneficiary may, as conditions to its consent, increase the interest rate of the loan secured hereby, change the maturity date of the Note, modify the loan terms, require personal guarantees of all indebtedness and obligations secured hereby, require payment of an assumption fee and of administrative and legal fees and costs of Beneficiary, or impose whatever other conditions it shall deem necessary to compensate it for such increased risk. Any increase in interest shall entitle the holder to increase monthly payments on the loan evidenced by the Note so as to retire the obligation within the original stipulated time. In the event Grantor shall request the consent of Beneficiary in accordance with the provisions of this Section 4.8, Grantor shall deliver a written request to Beneficiary, together with such information as Beneficiary may reasonably request regarding such transfer, and shall allow Beneficiary thirty (30) days to evaluate such request. Consent as to any one transaction shall not be deemed to be a waiver of the right to require consent to any further or successive transaction. The execution and delivery by Grantor of any joint venture agreement, partnership agreement, declaration of trust, option agreement, or other instrument whereunder any other person or entity may become entitled, directly or indirectly, to the possession or enjoyment of the Trust Estate or the income or other benefits derived or to be derived therefrom, shall in each case be deemed to be a transfer of Grantor's interest in the Trust Estate for the purposes of this Section, and shall require the prior written consent of Beneficiary.

b. If Grantor is a partnership or a joint venture, the withdrawal or change, voluntary, involuntary, or otherwise, of general partners or joint venturers owning 50 percent or more of the capital or profits of the partnership or joint venture (or in the case of a limited partnership, 50 percent or more of the general partnership interest) in one or more transactions, or the dissolution of the partnership or joint venture, shall be deemed a transfer for the purposes of this Section, and shall require the prior written consent of Beneficiary. The transfer of limited partnership interests in Grantor shall also require Beneficiary's prior written consent, which consent shall not be unreasonably withheld. If Grantor or its successor is a corporation, any dissolution, merger, consolidation, or other reorganization of Grantor, or the sale or other transfer, directly or indirectly, of a controlling percentage of capital stock of Grantor or the sale of 50 percent or more of the book value of the assets of Grantor in one or more transactions shall be deemed a transfer for purposes of this Section, and shall require the prior written consent of Beneficiary. The phrase "controlling percentage" means the ownership of, and the right to vote, stock possessing at least 50 percent of the total combined voting power of all classes of Grantor's capital stock issued, outstanding, and entitled to vote for the election of directors. The phrase "controlling percentage" with reference to corporations, the stock of which is traded through an exchange or over the counter, shall mean such percentage of ownership as is required to provide actual control over the affairs of the corporation.

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

d. [Describe here any transfers to which Beneficiary agrees not to unreasonably withhold its consent.]

4.9 Request for Notice. Grantor hereby requests a copy of any notice of default or of sale, and that any notice of default or sale hereunder be mailed to it at the address set forth in the first paragraph of this Deed of Trust.

ARTICLE 5  
MISCELLANEOUS

5.1 Governing Law. This Deed of Trust shall be governed by the laws of the State of Oregon. In the event that any provision or clause of any of the Loan Documents conflicts with applicable laws, such conflicts shall not affect other provisions of such Loan Documents that can be given effect without the conflicting provision, and to this end the provisions of the Loan Documents are declared to be severable. This instrument cannot be waived, changed, discharged, or terminated orally, but only by an instrument

in writing signed by the party against whom enforcement of any waiver, change, discharge, or termination is sought.

5.2 Limitation of Interest. It is the intent of Grantor and Beneficiary in the execution of this Deed of Trust and the Note and all other instruments securing the Note to contract in strict compliance with the usury laws of the State of Oregon governing the loan evidenced by the Note. In furtherance thereof, Beneficiary and Grantor stipulate and agree that none of the terms and provisions contained in the Loan Documents shall ever be construed to create a contract for the use, forbearance, or detention of money requiring payment of interest at a rate in excess of the maximum interest rate permitted to be charged by the laws of the State of Oregon governing the loan evidenced by the Note. Grantor or any guarantor, endorser, or other party now or hereafter becoming liable for the payment of the Note shall never be liable for unearned interest on the Note and shall never be required to pay interest on the Note at a rate in excess of the maximum interest that may be lawfully charged under the laws of the State of Oregon, and the provisions of this Section shall control over all other provisions of the Note and any other instrument executed in connection herewith that may be in apparent conflict herewith. If a court of competent jurisdiction shall make a final determination that the performance of any provision of the Note shall result in a payment of an amount for such use, forbearance, or detention in excess of such rate, then (i) such provision shall be deemed to be appropriately modified to the extent necessary to reduce such amount to an amount not in excess of such rate; and (ii) any such excess amounts heretofore received by the holder of the Note shall be deemed to have been applied to the redemption at par of a like principal amount of the Note, and all necessary reallocations of subsequent payments with respect to such Note shall be made and appropriately annotated on such Note.

5.3 Statements by Grantor. Grantor, within ten (10) days after being given notice by mail, will furnish to Beneficiary a written statement stating the unpaid principal of and interest on the Note and any other amounts secured by this Deed of Trust and stating whether any offset or defense exists against such principal and interest.

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

5.5 Notices. All notices, demands, requests, or other communication of any kind (a "notice") that any party may be required or may desire to serve upon another party hereunder shall be sufficient if given or made in writing and shall be deemed delivered (a) when actually delivered to the addressee personally or at the address specified below, or (b) three (3) calendar days after the notice has been deposited in the United States mails, postage prepaid, certified or registered mail, addressed to the party at the address specified below. When any notice is given to Grantor, a copy of such notice will be delivered to Grantor's limited partner(s) at the address set forth below. Rejection or refusal to accept a notice, or inability to deliver a notice because of changed address of which no notice of changed address was given, shall constitute delivery of any such notice to the addressee. Any party hereto may, by delivery of notice to the other parties, designate a different address.

Grantor: \_\_\_\_\_, an Oregon limited partnership

\_\_\_\_\_  
\_\_\_\_\_

Trustee: \_\_\_\_\_ Title Insurance Company

\_\_\_\_\_  
\_\_\_\_\_

Beneficiary: Network for Oregon Affordable Housing  
1020 SW Taylor, Suite 585  
Portland, OR 97205

Limited Partner(s): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

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

5.8 Invalidity of Certain Provisions. If the lien of this Deed of Trust is invalid or unenforceable as to any part of the debt, or if the lien is invalid or unenforceable as to any part of the Trust Estate, the unsecured or partially secured portion of the debt shall be completely paid prior to the payment of the remaining and secured or partially secured portion of the debt, and all payments made on the debt, whether voluntary or under foreclosure or other enforcement action or procedure, shall be considered to have been first paid on and applied to the full payment of that portion of the debt that is not secured or fully secured by the lien of this Deed of Trust. Further, the invalidity or unenforceability of any portion or provision of this Deed of Trust shall in no way affect the validity or enforceability of the remainder hereof.

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

5.10 No Merger. If both the lessor's and lessee's estates under any lease or portion thereof that constitutes a part of the Trust Estate shall at any time become vested in one (1) owner, this Deed of Trust and the lien created hereby shall not be destroyed or

terminated by application of the doctrine of merger and, in such event, Beneficiary shall continue to have and enjoy all of the rights and privileges of Beneficiary as to the separate estates. In addition, the foreclosure of the lien of this Deed of Trust shall not result in application of the law of merger, or as a matter of law, or as a result of such foreclosure unless Beneficiary or any purchaser at any such foreclosure sale shall so elect. No act by or on behalf of Beneficiary or any such purchaser shall constitute a termination of any lease or sublease unless Beneficiary or such purchaser shall give written notice thereof to such tenant or subtenant.

5.11 Late Charge. Grantor recognizes that default by Grantor in making the payments under the Note and/or in any of the other Loan Documents when due will result in Beneficiary's incurring additional expense servicing the loan, loss to Beneficiary of the use of the money due, and frustration to Beneficiary in meeting its other loan commitments. In the event that any payment or portion thereof (other than any "balloon payment" due upon maturity of the Note) is not paid within ten (10) days after the date it is due, Beneficiary may collect, and the Grantor agrees to pay with such payment, a "late charge" of five percent (5%) for each dollar so overdue as liquidated damages for the additional expense of handling such delinquent payments. Such late charge represents the reasonable estimate of Beneficiary and Grantor of a fair, average compensation due to the failure of Grantor to make timely payments. In the event that any "balloon payment" due on the maturity date of the Note is not paid within ten (10) days after the date it is due, Beneficiary may collect, and Grantor agrees to pay with such payment, a late charge equal to the maximum late charge payable upon the failure to pay a monthly installment under the Note. Such late charge shall be paid without prejudice to the right of Beneficiary to collect any other amounts provided to be paid or to declare a default hereunder.

5.12 Severability; Modification. In the event that any provision or clause of any of the Loan Documents conflicts with applicable laws, such conflicts shall not affect other provisions of such Loan Documents that can be given effect without the conflicting provision, and to this end the provisions of the Loan Documents are declared to be severable. This instrument cannot be waived, changed, discharged, or terminated orally, but only by an instrument in writing signed by the party against whom enforcement of any waiver, change, discharge, or termination is sought.

5.13 Time of the Essence. Time is of the essence of this Deed of Trust, the other Loan Documents, and the Project Agreements [and the Commercial Leases].

5.14 Relationship of Parties. All parties to this Deed of Trust agree and understand that in no event and under no circumstances shall the relationship between Beneficiary and any other parties hereto be deemed a joint venture or partnership. All parties hereby covenant and agree that in no event and under no circumstances shall Beneficiary be required to do any act or not do any act that would result in Beneficiary's being held to be responsible for the payment of any state or federal employee withholding tax. Grantor covenants and agrees to remain current at all times in the payment of any state or federal employee withholding tax.

5.15 Further Assurances. The parties agree to execute and deliver such further documents, instruments, and other agreements as are necessary or convenient to carry out the terms and purposes of this Deed of Trust.

5.16 Attorney Fees. Without limiting any other provision of this Deed of Trust, in the event action is instituted to enforce, interpret, or rescind this Deed of Trust or any of the other Loan Documents, or any term hereof or thereof, the prevailing party shall be entitled to recover attorney fees and all other reasonable costs incurred in the action, whether in connection with arbitration, trial, appeal, or collection of any judgment obtained, in addition to whatever other relief may be available to the party.

5.17 Limited Subordination. This Deed of Trust shall, to the extent provided below, be subordinate to such extended use agreements and/or land use restrictive covenants as may be recorded from time to time in favor of the State of Oregon acting by and through its Housing and Community Services Department with respect to the Trust Estate. This subordination shall cease to be effective as of the earlier of (a) the date the Trust Estate is acquired by foreclosure (or instrument in lieu of foreclosure), or (b) upon the termination of the "extended use period," as defined in Section 42(h)(6)(D) of the Internal Revenue Code, as amended, or any successor provision (the "Code"), or for such other reason provided in Section 42(h)(6)(E) of the Code. Provided, however, a limitation on the eviction of existing low-income tenants and a limitation on any increase in the gross rent with respect to units occupied by such existing low-income tenants, for the term and to the extent provided in Section 42(h)(6)(E)(ii) of the Code, shall survive such foreclosure or other termination of the extended use period applicable to the Trust Estate. This subordination shall be interpreted to constitute a subordination of this Deed of Trust, but only to the extent necessary to meet the requirements established under Section 42(h)(6)(B)(v) of the Code.

5.18 Limited Recourse Obligation. Except as otherwise provided in the Note, no partner of Grantor shall be personally liable for repayment of the indebtedness secured by this Deed of Trust.

IN WITNESS WHEREOF, Grantor has executed this Deed of Trust as of the day and year first written above.

[Signatures appear on following page.]

**GRANTOR:**

\_\_\_\_\_ LIMITED PARTNERSHIP, an Oregon limited partnership

By: \_\_\_\_\_, General Partner

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

Name: \_\_\_\_\_

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

STATE OF OREGON            )  
  ) ss:  
COUNTY OF \_\_\_\_\_)

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ by \_\_\_\_\_, as \_\_\_\_\_ on behalf of \_\_\_\_\_, general partner on behalf of \_\_\_\_\_ Limited Partnership, an Oregon limited partnership.

\_\_\_\_\_  
Notary Public for Oregon  
My commission expires:

**EXHIBIT A**

**[Legal Description of Property]**

**EXHIBIT D**

**[Permitted Exceptions]**

## PROMISSORY NOTE

\$ \_\_\_\_\_

Portland, Oregon  
\_\_\_\_\_, \_\_\_\_\_

The undersigned ("Borrower"), for value received, hereby promises to pay to the order of the NETWORK FOR OREGON AFFORDABLE HOUSING, an Oregon nonprofit public benefit corporation (herein, together with its successors and assigns as holder of this Note, called "Lender"), the principal sum of \_\_\_\_\_ DOLLARS (\$ \_\_\_\_\_) and to pay interest on the unpaid principal balance of this Note from the date the loan is advanced at the rate of \_\_\_\_ percent ( \_\_ %) per annum together with all costs and fees, including reasonable attorney fees, incurred by Lender in enforcing the obligations of this Note.

a. Interest Rate. [Borrower represents that Borrower has obtained an allocation of Oregon Affordable Housing Tax Credits ("OAHTC") in connection with this loan pursuant to ORS 317.097 and Oregon Administrative Rules pertaining thereto, resulting in Lender's ability to conditionally provide Borrower a lower interest rate than Lender could otherwise provide. For so long as the OAHTC is available with respect to the loan, the interest rate on the unpaid principal balance of this Note shall be \_\_ percent ( \_\_ %) per annum, subject to the conditions and adjustments set forth in this paragraph. If the loan ceases to qualify for the OAHTC for any reason (including, without limitation, expiration of the OAHTC or amendment of the OAHTC to eliminate or reduce its availability), or if the available credit is ever less than the lesser of (i) four percent (4%) of the average unpaid balance of the loan, or (ii) the difference between the amount of finance charge actually charged on the loan and the amount of finance charge that would have been charged on the loan had it not been subsidized but otherwise had been made under like terms and conditions at the time the loan was made, then Borrower shall pay, indemnify, defend, and hold Lender and any assignee of the OAHTC harmless from and against any loss, cost, expense, or liability (including, without limitation, any income tax, interest, or penalties) suffered by Lender or any assignee of the OAHTC by reason of the reduction or loss of the OAHTC. Borrower further agrees that the interest rate on the outstanding principal balance shall be increased, up to the original rate of \_\_ % per annum, to the extent necessary to compensate Lender or any assignee of the OAHTC for such disqualification or reduction, as of the date of such disqualification or reduction, or to the extent necessary to compensate Lender for any administrative fee charged by the State of Oregon not otherwise paid by Borrower. Upon any such interest rate adjustment, the monthly installments of principal and interest provided herein shall be adjusted based on the new interest rate but otherwise on the original amortization period and other payment terms of this Note.] Interest on amortized installment payments shall be calculated on a 360-day year comprised of twelve 30-day months; otherwise interest payments shall be calculated on a 365-day year and the actual number of days elapsed. Principal and interest shall be payable as hereinafter provided.

a. Interest Rate. [Borrower represents that Borrower has obtained an allocation of Oregon Affordable Housing Tax Credits ("OAHTC") in connection with [\$ \_\_\_\_\_ of the total amount of] this loan [(the "OAHTC Portion")] pursuant to ORS 317.097 and Oregon Administrative Rules pertaining thereto, resulting in Lender's ability to conditionally provide Borrower a lower interest rate for the loan than Lender could otherwise provide. For so long as the OAHTC is available with respect to [the OAHTC Portion of] the loan, the interest rate on the unpaid principal balance of this Note shall be \_\_\_\_ percent (\_\_\_\_ %) per annum, subject to the conditions and adjustments set forth in this paragraph. If [the OAHTC Portion of] the loan ceases to qualify for the OAHTC for any reason (including, without limitation, expiration of the OAHTC with respect to [the OAHTC Portion of] the loan, or amendment of the OAHTC to eliminate or reduce its availability with respect to [the OAHTC Portion of] the loan), or if the available credit is ever less than the lesser of (i) four percent (4 %) of the average unpaid balance of [the OAHTC Portion of] the loan, or (ii) the difference between the amount of finance charge actually charged on [the OAHTC Portion of] the loan and the amount of finance charge that would have been charged on [the OAHTC Portion of] the loan if [the OAHTC Portion of] the loan had not been subsidized but the loan had otherwise been made under like terms and conditions at the time the loan was made, then Borrower shall pay, indemnify, defend, and hold Lender and any assignee of the OAHTC harmless from and against any loss, cost, expense, or liability (including, without limitation, any income tax, interest, or penalties) suffered by Lender or any assignee of the OAHTC by reason of the expiration, reduction, or loss of the OAHTC. Borrower further agrees that the interest rate on the outstanding principal balance of this Note shall be increased, up to the original rate of \_\_\_\_ % per annum, to the extent necessary to compensate Lender or any assignee of the OAHTC for such expiration, disqualification, or reduction, as of the date of such expiration, disqualification, or reduction, or to the extent necessary to compensate Lender for any administrative fee charged by the State of Oregon with respect to the OAHTC not otherwise paid by Borrower. Upon any such interest rate adjustment, the monthly installments of principal and interest provided herein shall be adjusted based on the new interest rate but otherwise on the original amortization period and other payment terms of this Note.] Interest on amortized installment payments shall be calculated on a 360-day year comprised of twelve 30-day months; otherwise interest payments shall be calculated on a 365-day year and the actual number of days elapsed. Principal and interest shall be payable as hereinafter provided.

[ (b.(change all par. letters)). Resident Services Funding Program. Borrower has submitted an application to Lender dated \_\_\_\_\_, 1997 (the "RSFP Application") to participate in Lender's Resident Services Funding Program ("RSFP") and Lender has approved such application. Accordingly, Borrower agrees that, for the first three (3) years of the term of this Note (the "RSFP Period") (i) the interest rate on the unpaid principal balance of this Note shall be \_\_\_\_ percent (\_\_\_\_ %) per annum (the "RSFP Rate"), which is one percent (1 %) lower than the interest rate otherwise applicable hereunder (the "Applicable Rate"), and (ii) the monthly installments of principal and interest due from Borrower hereunder during the RSFP Period shall be based on the RSFP Rate (and a \_\_-year amortization, as provided in section \_\_ below),

provided that (1) the difference between the monthly payment amount based on the Applicable Rate (\$ \_\_\_\_\_) and the monthly payment amount based on the RSFP Rate (\$ \_\_\_\_\_), which difference equals \$ \_\_\_\_\_ per month (the "RSFP Savings"), is used by Borrower to fund supportive social service programs for Project residents substantially as described in Borrower's RSFP Application, and (2) Borrower submits to Lender annually during each year of the RSFP Period, within thirty (30) days of the anniversary of the date of this Note, a written certification describing in reasonable detail all such social services provided by Borrower during the prior year with the RSFP Savings. Upon expiration of the RSFP Period, or in the event Borrower fails to use the RSFP Savings as provided herein or fails to provide annual certification to Lender as provided herein, the interest rate on the then-outstanding principal balance of this Note shall increase to the Applicable Rate. Upon such increase in the interest rate, the monthly installments of principal and interest due hereunder shall be adjusted based on the Applicable Rate, the then-outstanding principal balance of this Note, the \_\_\_-year amortization period, and the remaining term of the Note. All payment and other terms of this Note shall remain unchanged.]

b. Payment. Borrower shall pay equal monthly installments to Lender based on the then-current interest rate hereunder and a \_\_\_-year amortization, commencing on \_\_\_\_\_, and continuing on the same day of each successive month thereafter until the Maturity Date. If the loan is advanced on a date that is more than one month from the first installment date, interest for the period exceeding one month shall be payable on the date of the advance. If the loan is advanced on a date that is less than one month from the first installment date, Borrower shall pay the full installment amount and the amount of such payment that exceeds interest actually accrued shall be applied to principal. Principal and interest payments due hereunder are payable to Lender at 1020 S.W. Taylor St., Suite 585, Portland, Oregon 97205, or such other place as Lender may direct, in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts.

c. Application of Payments. Unless an event of default has occurred and is continuing under the Loan Documents, all payments hereunder shall be applied first to late charges, costs of collection or enforcement, and other similar amounts due, if any, under this Note and the other Loan Documents, then to interest that is due and payable under this Note, and the remainder to principal due and payable under this Note. If an event of default has occurred and is continuing, such payments may be applied to sums due hereunder or under the other Loan Documents in any order and combination that Lender may, in its sole discretion, determine.

d. Prepayment. During the first ten (10) years of the Note term beginning with the date of the Note (the "Yield Maintenance Period") and upon giving Lender sixty (60) days prior written notice, Borrower may prepay the entire unpaid principal balance of the Note (no partial prepayments are permitted) on the business day before a scheduled monthly payment date by paying, in addition to the entire unpaid principal balance, accrued interest, and any other sums

due Lender at the time of prepayment, a prepayment premium equal to:

(1) The product obtained by multiplying (i) the difference obtained by subtracting from the interest rate on the Note the yield on the U.S. Treasury Security then outstanding with a maturity and coupon rate closest to those on the Note (the "Yield Rate"), as the Yield Rate is reported in the Wall Street Journal on the fifth business day preceding the date notice of prepayment is given to Lender, times (ii) the present value factor calculated using the following formula:

$$\frac{1 - (1 + r)^{-n}}{r}$$

[r = Yield Rate  
n = the number of years, and any fraction thereof, remaining between the prepayment date and the expiration of the Yield Maintenance Period]

times (iii) the entire unpaid principal balance of the Note at the time of prepayment, provided, however, that in no event shall the prepayment premium be less than 0; plus

(2) If the amount of the prepayment premium due under subparagraph (1) above is less than 1% of the entire unpaid principal balance of the Note, then an additional prepayment premium equal to 1% of the entire unpaid principal balance of the Note at the time of prepayment less any prepayment premium due under subparagraph (1) above.

In the event that no Yield Rate is published on the U.S. Treasury Security described above, then the nearest equivalent Treasury Security shall be selected at Lender's sole discretion. If the publication of such yield rates in the Wall Street Journal is discontinued, Lender shall select a security with a comparable rate and term to the U.S. Treasury Security described in subparagraph (1) above. After the expiration of the Yield Maintenance Period and upon giving Lender sixty (60) days prior written notice, Borrower may prepay the entire unpaid principal balance of the Note (no partial prepayments are permitted) on the business day before a scheduled monthly payment date by paying, in addition to the entire unpaid principal balance, accrued interest, and any other sums due Lender at the time of prepayment, a prepayment premium equal to one percent (1%) of the unpaid principal balance of the Note. Borrower shall pay the prepayment premium due under this paragraph whether the prepayment is voluntary or involuntary (in connection with Lender's acceleration of the unpaid principal balance of the Note) or the Deed of Trust is satisfied or released by foreclosure (whether by power of sale or judicial proceeding), deed in lieu of foreclosure, or by any other means. Borrower shall not pay any prepayment premium with respect to any prepayment occurring as a result of the application of insurance proceeds or condemnation awards under the Deed of Trust.

[Notwithstanding the foregoing provisions of paragraph d, if Lender has not sold the loan to any other participant or purchaser at such time, if any, that Borrower desires to prepay the Note, then Borrower shall be entitled to prepay the Note in full, without payment of the prepayment premium described above, upon not less than thirty (30) days' prior written notice specifying the date of prepayment, provided that Borrower is not then in default under the Note or any of the Loan Documents.]

e. Maturity. The entire principal balance and any accrued interest on this Note shall be paid in full on or before \_\_\_\_\_ (the "Maturity Date").

f. Loan Documents. This Note is issued under the provisions of a Term Loan Agreement of even date herewith, between Borrower and Lender (the "Agreement"). This Note is secured by a Deed of Trust with Absolute Assignment of Leases and Rents, Security Agreement, and Fixture Filing ("Deed of Trust") on real and personal property situated in \_\_\_\_\_ County, Oregon (the "Property"), and a Pledge and Security Agreement (the "Pledge"), each dated as of the date hereof, to which reference is hereby made for a description of the nature and extent of the security provided thereby and the rights and limitations of rights of Lender and of Borrower in respect of such security. This Note, the Agreement, the Deed of Trust, the Pledge, and all other documents and instruments executed in connection with or to secure this Note are collectively referred to as the "Loan Documents."

g. Project Agreements. Borrower and/or Borrower's general partner have previously entered into certain agreements affecting the Property or the use or development thereof, as set forth in Exhibit C to the Agreement. These agreements are collectively referred to as the "Project Agreements." [Borrower has also entered into certain lease agreements for the commercial space within the Property, as follows: Lease dated \_\_\_\_\_ between \_\_\_\_\_ as tenant/lessee and Borrower as landlord/lessor for \_\_\_\_\_ square feet of the commercial space ; Lease dated \_\_\_\_\_ between \_\_\_\_\_ as tenant/lessee and Borrower as landlord/lessor for \_\_\_\_\_ square feet of the commercial space; and Lease dated \_\_\_\_\_ between \_\_\_\_\_ as tenant/lessee and Borrower as landlord/lessor for \_\_\_\_\_ square feet of the commercial space. These lease agreements, together with any successor or replacement lease(s) pertaining to the commercial space within the Property, are collectively referred to as the "Commercial Leases").]

h. Acceleration/Default Rate. If default occurs with respect to any payment or other obligation herein provided for, or if an event of default occurs under any of the Loan Documents or the Project Agreements [or the Commercial Leases], the principal amount of this Note and any accrued interest and all other indebtedness secured or to be secured by the Loan Documents may be declared due and payable in the manner and with the effect provided in the

Loan Documents, and the same shall thereafter bear interest at the then-current interest rate of this Note plus four percent (4%) per annum; provided, however, that Lender shall not declare all sums owing hereunder immediately due and payable if (i) a payment is made within ten (10) days of the date such payment is due, or (ii) any default other than a payment default is cured within thirty (30) days after written notice from Lender to Borrower of such default or, if such default cannot be cured within such 30-day period through the exercise of reasonable diligence, if Borrower commences the required cure within such 30-day period and thereafter continues such cure with diligence to completion. Failure to exercise this option shall not constitute a waiver of the right to exercise the same at any other time.

i. Late Charge. Borrower recognizes that a default by Borrower in making the payments under this Note and/or any of the other Loan Documents when due will result in Lender's incurring additional expense servicing the loan, loss to Lender of the use of the money due, and frustration to Lender in meeting its other loan commitments. In the event that any payment or portion thereof is not paid within ten (10) days after the date it is due, the holder hereof may collect, and Borrower agrees to pay with such payment, a "late charge" of five percent (5%) of each dollar so overdue as liquidated damages for the additional expense of handling such delinquent payments. In the event any "balloon payment" due on the maturity hereof is not paid within ten (10) days after the date it is due, the holder hereof may collect, and Borrower agrees to pay with such payment, a late charge equal to the maximum late charge payable upon the failure to pay a monthly installment hereunder. Such late charge represents the reasonable estimate by the parties of a fair, average compensation due to the failure of Borrower to make timely payments. Such late charge shall be paid without prejudice to the rights of the holder hereof to collect any other amounts provided to be paid, or to declare a default hereunder or under the other Loan Documents.

j. Collection Costs. In the event that Borrower defaults with respect to any payment provided for herein, or in case of an event of default under any of the Loan Documents, Lender shall have the right, at Borrower's expense, to retain an attorney or collection agency to make any demand, enforce any remedy, or otherwise protect its rights under this Note and the other Loan Documents. Borrower hereby promises to pay all costs, fees, and expenses so incurred by Lender, including, without limitation, reasonable attorney fees (with or without arbitration or litigation), arbitration and court costs, notice expenses, and title search expenses, and the failure of the defaulting Borrower to pay the same shall, in itself, constitute a further and additional default. In the event that suit or action or arbitration is instituted by Lender to enforce this Note or any rights under the Loan Documents, Borrower hereby promises to pay, in addition to costs and expenses provided by statute or otherwise, such sums as the court may adjudge reasonable as attorney fees in such proceeding and on any appeals from any judgment or decree entered therein and the costs and attorney fees for collection of the amount due therein.

Borrower further agrees to pay immediately upon demand all costs and expenses

of Lender including reasonable attorney fees: (i) if Lender seeks to have the Property securing the Loan abandoned by any estate in bankruptcy, (ii) if Lender attempts to have any stay or injunction prohibiting the enforcement or collection of the Note, prohibiting the foreclosure of the Deed of Trust, or prohibiting the enforcement of the Deed of Trust or any other Loan Document lifted by any bankruptcy or other court, (iii) if Lender participates in any subsequent proceedings or appeals from any order or judgment entered in any such proceeding, (iv) if Lender deems it appropriate to file a proof of claim or in any other manner participate in any bankruptcy or similar proceedings, or (v) if Lender retains legal counsel in connection with any amendments or modifications to this Note, the Deed of Trust, or any other Loan Documents.

k. Limited Recourse Provisions. Except as otherwise provided in this section (k), no partner [member] of Borrower shall be personally liable for the payment of principal, interest, or other amounts that may become due and payable under the Loan Documents. Lender shall not seek, take, or obtain against such partner [member] any deficiency judgment for amounts remaining unpaid under the Loan Documents after all the security for the Loan (including without limitation hazard insurance proceeds and condemnation awards with respect to the Property) has been applied to payment of all amounts owed to Lender under the Loan Documents; provided, however, that a judgment may be sought against Borrower or its constituent owners, or both, to the extent necessary to enforce the rights of Lender in, to, or against the Property. Notwithstanding the foregoing, Borrower, and each general partner [managing member] of Borrower, to the extent allowed by law, shall be and remain personally liable and promises to pay Lender for the following: (i) all loss, damage, cost, and expense (including without limitation attorney fees at trial or on appeal) suffered by Lender as a result of fraud, material misrepresentation, or bad faith by Borrower or its general partner(s) [managing member] or its/their agents, or as a result of the waste of the Property; (ii) all rents, revenues, issues, and profits from the Property (x) received during the period of any default under the Loan Documents and (y) not applied to payment of the indebtedness evidenced by this Note or other sums owing to Lender under the Loan Documents or to payment of the normal operating expenses of the Property; (iii) all security deposits and rent from the Property collected more than one month in advance that are not earned at the time of occurrence of any default under the Loan Documents and that are not applied to payment of such indebtedness or other sums owing to Lender or to payment of the normal operating expenses of the Property; (iv) all insurance proceeds and condemnation awards with respect to the Property that are not applied in accordance with the provisions of the Loan Documents, as well as any expenditures, damages, or costs (including without limitation attorney fees) incurred by Lender as a result of such misapplication; (v) any and all costs to repair the Property that are not reimbursed by insurance to the extent insurance is required by the Loan Documents; (vi) any and all sums due under the Certificate and Indemnity Regarding Hazardous Substances of even date herewith executed by Borrower; and (vii) all real estate taxes and assessments due, accrued, or payable up until the time that Lender is vested in fee title ownership of the Property. [The foregoing provisions shall not limit or impair the

liability of \_\_\_\_\_ [and/or \_\_\_\_\_, each individually,] under [the Guaranty and/or] the Certificate and Indemnity Regarding Hazardous Substances executed in favor of Lender in connection herewith.] Nothing contained in this section shall be deemed to release, affect, or impair the indebtedness evidenced by this Note or the security therefor or Lender's rights to enforce its remedies under the Loan Documents, including any remedy for injunctive or other equitable relief.

[k] l. Time. Time is of the essence. All reimbursements and payments required by this Note other than regularly scheduled installments of principal and interest and any balloon payment due on the Maturity Date shall be immediately due and payable on demand.

[l] m. Waiver. Each and every maker hereof agrees that they have received valuable consideration hereunder, that they sign this Note as makers and not as sureties, and that any and all suretyship defenses are hereby waived. Borrower for itself and all drawers and endorsers severally waives presentment for payment, protest, notice of protest, and notice of nonpayment of this Note, and consents to any and all extensions of time, renewals, waivers, or modifications that may be granted by Lender with respect to the payment or other provisions of this Note, and to any substitution, exchange, or release of the collateral for this Note, or any part thereof, with or without substitution of such collateral.

[m] n. Governing Law. This Note shall be governed by the laws of the State of Oregon.

**BORROWER:**

\_\_\_\_\_ LIMITED PARTNERSHIP, an Oregon limited partnership

By: \_\_\_\_\_, General Partner

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

## TERM LOAN AGREEMENT

THIS TERM LOAN AGREEMENT is made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ by and between \_\_\_\_\_ LIMITED PARTNERSHIP, an Oregon limited partnership, whose address is \_\_\_\_\_ ("Borrower"), and the NETWORK FOR OREGON AFFORDABLE HOUSING, an Oregon nonprofit public benefit corporation, whose address is 1020 S.W. Taylor St., Suite 585, Portland, Oregon 97205 ("Lender").

### RECITALS:

A. Borrower is the owner of certain real property located in the City of \_\_\_\_\_, \_\_\_\_\_ County, Oregon, more particularly described in Exhibit A attached hereto, and all improvements located thereon (the "Property" or the "Project").

B. The improvements consist of a \_\_\_-unit multifamily housing development [with \_\_\_\_\_ square feet of commercial space] and related facilities (the "Improvements").

C. Borrower intends to rent \_\_\_\_\_ of the rental units of the Property (the "Affordable Units") at rents that are in accordance with (i) the requirements of Internal Revenue Code Section 42, or (ii) any affordability or rent restrictions recorded against the Property, whichever of the foregoing are the most restrictive.

D. Borrower has provided to Lender a \_\_\_\_\_ preliminary title report issued by \_\_\_\_\_ Title Insurance Company, which describes the title of the Property as of \_\_\_\_\_ (the "Title Report"), with a legal description of the Property in a form approved by Lender.

E. Lender has issued to Borrower a commitment dated \_\_\_\_\_, as amended by letter dated \_\_\_\_\_ (as so amended, the "Commitment") for a term loan in

the amount of \$ \_\_\_\_\_ or \_\_\_% of the appraised stabilized market value of the Property, whichever is less, on the terms and conditions therein stated (the "Loan"), and Borrower has accepted the Commitment.

F. The Loan will be evidenced by a Promissory Note, a copy of which is attached hereto as Exhibit B (the "Note") and will be secured by a Deed of Trust with Absolute Assignment of Leases and Rents, Security Agreement, and Fixture Filing covering the Property (the "Deed of Trust"), a Pledge and Security Agreement (the "Pledge"), and such other security documents required by Lender, [including but not limited to, a guaranty from \_\_\_\_\_] all of which are to be executed pursuant to this Agreement.

G. Borrower and/or Borrower's general partner have entered into certain agreements affecting the Property or the use or development thereof, as set forth in Exhibit C (collectively the "Project Agreements").

H. Borrower has also entered into certain lease agreements for commercial space within the Property, as follows: Lease dated \_\_\_\_\_ between \_\_\_\_\_ as tenant/lessee and Borrower as landlord/lessor for \_\_\_\_\_ square feet of the commercial space; Lease dated \_\_\_\_\_ between \_\_\_\_\_ as tenant/lessee and Borrower as landlord/lessor for \_\_\_\_\_ square feet of the commercial space; and Lease dated \_\_\_\_\_ between \_\_\_\_\_ as tenant/lessee and Borrower as landlord/lessor for \_\_\_\_\_ square feet of the commercial space (collectively, together with any successor or replacement lease(s) pertaining to the commercial space within the Property, the "Commercial Leases").]

NOW, THEREFORE, the parties agree as follows:

#### ARTICLE 1 INCORPORATION OF RECITALS AND EXHIBITS

1.1 Recitals. The foregoing recitals are incorporated into this Agreement by this reference.

1.2 Exhibits. The exhibits referred to in, and attached to, this Agreement are incorporated into this Agreement by this reference.

#### ARTICLE 2 REPRESENTATIONS AND WARRANTIES OF BORROWER

2.1 Representations and Warranties of Borrower. To induce Lender to enter into this Agreement and to make the Loan provided for in this Agreement, Borrower represents and warrants to Lender:

a. Borrower is a \_\_\_\_\_ [limited partnership] duly organized, validly existing, and in good standing under the laws of the State of Oregon.

b. The \_\_\_\_\_ [limited partnership agreement dated \_\_\_\_\_ ("Partnership Agreement")] and related documents submitted to Lender by Borrower are true, correct, and complete copies of the actual agreements and documents in effect as of the date hereof. \_\_\_\_\_ is the [sole] general partner of Borrower.

c. Borrower has the power and authority to conduct all of the activities that are now conducted by it or proposed to be conducted by it in connection with the Property and as contemplated by this Agreement, to enter into this Agreement, and to make and perform the representations, warranties, and undertakings herein provided. The resolutions of Borrower and Borrower's general partner submitted to Lender authorizing the borrowing contemplated herein and listing the individuals authorized to act on behalf of Borrower and Borrower's general partner are in full force and effect as of the date hereof.

d. Borrower owns and holds good and merchantable title in fee simple to the Property.

e. No default or breach by Borrower has occurred with respect to the Commitment, Borrower's construction loan for the Project, any of the Project Agreements, or any term or condition of any loan, grant, or subsidy provided for the Project.

f. Borrower has furnished current financial statements to Lender, prepared in accordance with generally accepted accounting principles, which are hereby represented and warranted to be true and complete as of their date and to fairly represent the respective financial conditions of Borrower and Borrower's general partner [and all guarantors], and Lender has relied on such financial statements in agreeing to advance funds hereunder. There has been no significant change in the financial condition of Borrower or Borrower's general partner [or any guarantor] from that shown in such financial statements. Borrower agrees at all times to keep Lender fully informed of the status and financial condition of Borrower and Borrower's general partner [and all guarantors], and will disclose to Lender all material facts necessary to make all previous disclosures not misleading. Lender shall have full and complete access at all times to Borrower's and Borrower's general partner's [and all guarantors'] current financial records.

g. Borrower has no direct or contingent liabilities involving significant amounts known to Borrower and not previously disclosed to Lender in writing. There is no litigation, prosecution, investigation, or proceeding of any nature whatsoever now pending or to the best of

Borrower's knowledge threatened against Borrower.

h. Borrower has full power and authority to execute, deliver, and perform this Agreement, the Note, the Deed of Trust, the Pledge, the Certificate and Indemnity Regarding Hazardous Substances referred to in Section 3.1(r) hereof, and all of the other loan documents that Borrower is required to execute, deliver, and perform by the terms of this Agreement (collectively, the "Loan Documents"). Borrower will execute and deliver the Loan Documents promptly when required and will perform and discharge each and every covenant and obligation of Borrower contained in this Agreement and the other Loan Documents in good faith and with due diligence.

i. This Agreement and the other Loan Documents when executed by Borrower and delivered to Lender will be the valid and binding obligations of Borrower, enforceable in accordance with their terms except as the same may be limited by bankruptcy, insolvency, reorganization, or similar laws or general principles of equity affecting creditors' rights generally.

j. The execution, delivery, and performance of this Agreement, the execution and payment of the Note, the granting of the Deed of Trust covering the Property, and the execution of, and granting of security interests under, any of the other Loan Documents will not constitute a breach or default under any other agreement to which Borrower is a party or may be bound or affected, or a violation of any law, regulation, or court order that may affect Borrower, the Property, or the use thereof.

k. The Property is properly planned and zoned for Borrower's present and intended use, and Borrower has obtained all governmental approvals, permits, and authorizations required for such use. Borrower shall also provide proof of payment for all such permits, including but not limited to, systems development charges.

l. The Property has suitable soils and geology for the Improvements and is not within a flood plain or other extra hazardous area for purposes of insurance.

m. The Affordable Units are, and will continue throughout the term of the Loan to be, rented only in accordance with (i) the requirements of Internal Revenue Code Section 42, or (ii) any affordability or rent restrictions recorded against the Property, whichever of the foregoing are the most restrictive.

n. The Property is, and will continue throughout the term of the Loan to be, "qualified low income housing" as defined in Section 42 of the Internal Revenue Code and any Treasury regulations or rulings applicable thereto, and any successor laws, rules, or regulations, or amendments thereto or thereof.

**[NOTE: If this Section is deleted "Department" needs to be defined**

**somewhere else in this document.]**

[o. Borrower is, and throughout the term of the Loan will remain, a "qualified borrower" as defined in ORS 317.097(9)(e) because a "sponsoring entity" as defined in ORS 317.097(9)(f) has a controlling interest in the Property. Borrower has applied for a Certification, as defined in OAR 813-110-010(3), to Lender that Lender may claim a tax credit for the Loan under ORS 317.097 (the "Oregon Affordable Housing Tax Credit" or "OAHTC"), and the Oregon Housing and Community Services Department ("the Department") has determined that the requirements of OAR 813-110-015 have been met and that the total outstanding balance of all loans eligible for tax credit does not exceed the Cap, as defined in OAR 813-110-010(2). The Department has issued to Lender, or is committed to issue to Lender at Closing, a Certification with respect to the Loan.]

[o. Borrower is, and throughout the term of the Loan will remain, a "qualified borrower" as defined in ORS 317.097(9)(e) because a "sponsoring entity" as defined in ORS 317.097(9)(f) has a controlling interest in the Property. Borrower has applied for a Certification, as defined in OAR 813-110-010(3), to Lender that Lender may claim a tax credit [for the Loan] [with respect to \$\_\_\_\_\_ of the total Loan amount (the "OAHTC Portion")] under ORS 317.097 (the "Oregon Affordable Housing Tax Credit" or "OAHTC"), and the Oregon Housing and Community Services Department ("the Department") has determined that the requirements of OAR 813-110-015 have been met with respect to [the OAHTC Portion of] the Loan and that the total outstanding balance of all loans eligible for the tax credit does not exceed the Cap, as defined in OAR 813-110-010(2). The Department has issued to Lender, or is committed to issue to Lender at Closing, a Certification with respect to [the OAHTC Portion of] the Loan.]

p. Borrower is not a "foreign person" within the meaning of Section 1445(f)(3) of the Internal Revenue Code of 1986, as amended.

q. Borrower will perform and discharge, or cause Borrower's general partner to perform and discharge, each and every covenant and obligation of Borrower and/or Borrower's general partner contained in the Project Agreements in good faith and with due diligence. There are no agreements affecting or restricting the use or development of the Project other than the Project Agreements identified in Recital G.

r. Borrower and/or Borrower's general partner have entered into a property management agreement with \_\_\_\_\_ dated \_\_\_\_\_ (the "Management Agreement"). The Management Agreement is in full force and effect as of the date hereof, and neither Borrower nor Borrower's general partner is in default under the Management Agreement or has received any notices of default under the Management Agreement.

s. Borrower's general partner is a tax-exempt organization under Section 501(c)(3) of the Internal Revenue Code. The Internal Revenue Service determination letter

submitted to Lender is a true, correct, and complete copy of the actual determination letter issued to Borrower's general partner, has not been rescinded or revoked, and remains in full force and effect as of the date hereof.

t. [Borrower will perform and discharge each and every covenant and obligation of Borrower contained in the Commercial Leases.]

2.2 Effectiveness of Representations and Warranties. Borrower represents and warrants to Lender that all of the foregoing representations and warranties are now true, will be true at the time of the recordation of the Deed of Trust in the real estate records of \_\_\_\_\_ County, Oregon ("Closing"), and will continue to be true until the Loan is repaid in full.

### ARTICLE 3 CONDITIONS PRECEDENT TO FUNDING

3.1 Prior to Closing, the following conditions must be satisfied:

- a. The representations and warranties of Article 2 shall be true and correct.
- b. Receipt by Lender of advice from \_\_\_\_\_ [First American Title Insurance Company of Oregon] (the "Title Insurer") that it is ready, able, and willing to issue to Lender an ALTA extended coverage mortgagee's title insurance policy, in such form and with such endorsements as may be required by Lender (including without limitation \_\_\_\_\_ [OLTA 52, OLTA 59, OLTA 74, [OLTA 63] and OLTA 83.1] endorsements) insuring that the Deed of Trust is and will continue to be an encumbrance against the Property and any Improvements, and securing a debt of \$\_\_\_\_\_ first, prior, and paramount to all other liens and encumbrances of any nature or kind whatsoever except real property taxes and assessments not yet due. The location of all existing easements across the Property shall be identified by survey and shall not interfere with the improvements upon the Property.
- c. Execution by Borrower and Lender of this Agreement and all other Loan Documents requiring Borrower's signature and, where appropriate, acknowledgment of the Loan Documents.
- d. Receipt by Lender of satisfactory evidence that the Property complies with all applicable zoning ordinances, building and use restrictions and codes, [any applicable zoning variances, conditional use permits, or similar land use exceptions,] and any requirements with respect to licenses, permits, and agreements necessary for the lawful use and operation of the Property, including without limitation any permits necessary for modification of any existing stream and wetlands, and evidence that necessary utilities and municipal services required for the Property are in place.

e. Receipt by Lender of two (2) copies of a current, certified as-built survey of the Property prepared by a licensed surveyor, delineating lot lines, ingress, egress, streets, alleys, driveways, and any flood hazard area boundaries, showing all improvements, easements, rights of way, encroachments, and other physical matters or restrictions that affect the title to and uses of the Property and the Improvements, and certifying the legal description as shown in the title policy to Lender and the Title Insurer in compliance with ALTA standards.

f. Receipt by Lender of an original or certified copy of a policy of "all perils" or "Special Form" hazard insurance with extended coverage from an insurance company acceptable to Lender, as is more specifically described in the Deed of Trust, with a mortgagee loss payable clause (Form 438BFU or CP1218 or their equivalent) attached in favor of Lender, together with evidence satisfactory to Lender that Borrower has obtained commercial general liability insurance coverage in a minimum amount of \$1,000,000.00/per occurrence-\$2,000,000.00 aggregate, and property damage, rent loss, flood, and worker's compensation insurance in amounts satisfactory to Lender.

g. Receipt by Lender of an information certificate issued by the Oregon Secretary of State showing that there are no presently effective financing statements on file with respect to the Property that name Borrower as "Debtor," other than those to be released at Closing.

h. Receipt by Lender of the opinion of Borrower's counsel, in form reasonably satisfactory to Lender, that (1) Borrower is duly organized and existing and in good standing in the State of Oregon and has been duly authorized to execute and deliver this Agreement and the other Loan Documents, (2) this Agreement and the other Loan Documents are valid and binding obligations of Borrower, enforceable in accordance with their terms except as the same may be limited by bankruptcy, insolvency, reorganization, or similar laws or general principles of equity affecting creditors' rights generally, (3) the Loan contemplated by this Agreement and the other Loan Documents are in compliance with all applicable usury laws, and (4) such other matters that Lender may require.

[Receipt by Lender of a tax opinion of Borrower's counsel, issued in connection with the sale of the tax credits.]

i. Receipt by Lender of a level one environmental assessment of the Property prepared by a qualified professional satisfactory to Lender, and an environmental questionnaire satisfactory to Lender. Any recommendation for abatement or remedial action shall be completed and documented in a manner satisfactory to Lender prior to Closing.

j. Receipt by Lender of certification by the Project architect that the Improvements have been completed in accordance with the plans and specifications and comply with all applicable laws, regulations, and building codes, including without limitation the

Americans With Disabilities Act and the Fair Housing Amendments Act of 1988, and that parking for \_\_\_\_\_ automobiles has been provided and is sufficient to satisfy the building code and all applicable ordinances, and that all residential units in the Project contain smoke detectors that comply with the requirements of ORS 479.250-479.300.

k. Receipt by Lender of certification by the Project engineer(s) that the soils and geology of the Property are appropriate for the Improvements and that all site excavation and preparation, and construction of the Improvements, have been completed in accordance with the plans and specifications and the engineer's recommendations.

l. Receipt by Lender of the balance of the loan fee in the amount of \$\_\_\_\_\_, a documentation preparation fee of \$500.00, and all expenses payable by Borrower pursuant to the Commitment.

m. Receipt by Lender of evidence satisfactory to Lender that Borrower has cash equity [and subordinate debt] in the Property in an amount equal to \$\_\_\_\_\_.

n. Receipt by Lender of (i) an appraisal report on the Property prepared by an appraiser selected by Lender, at Borrower's expense, in form and substance acceptable to Lender, [(ii) satisfactory review of such appraisal by a third-party appraiser selected by Lender, at Borrower's expense,] and (iii) if requested by Lender, satisfactory recertification of the appraisal of the Property pursuant to paragraph \_\_\_\_\_ of the Commitment.

o. Receipt by Lender of final verification from the Department of Borrower's low income housing tax credit allocation for the Property, including without limitation a copy of IRC Form 8609 for each building on the Property, and documentation satisfactory to Lender evidencing the eligible basis of the Project.

p. Receipt by Lender of financial statements of Borrower and Borrower's general partner, [and all guarantors] prepared in accordance with generally accepted accounting principles, dated within six months of Closing, and certified by the applicable entity [or person] as true and correct in all respects.

q. If requested by Lender, receipt of copies of Borrower's and Borrower's general partner's [and all guarantors'] federal income tax returns for the previous \_\_\_\_\_ year(s), in the form actually filed with the Internal Revenue Service.

r. Receipt by Lender of a duly authorized and executed original of the Certificate and Indemnity Regarding Hazardous Substances, in form provided by Lender (the "Certificate").

s. Receipt by Lender of copies of Borrower's Partnership Agreement and all

related agreements between Borrower and its partners, as in effect as of the date hereof.

t. Receipt by Lender of evidence satisfactory to Lender that Borrower has been granted an ad valorem property tax exemption for the Property, and approval by Lender of any agreement for payments in lieu of such taxes.

u. Receipt by Lender of all constituent documents of Borrower's general partner [and guarantor] pertaining to the formation, registration, and authority of such general partner, [and guarantor] and complete copies of resolutions of Borrower and Borrower's general partner [and guarantor] authorizing the borrowing contemplated herein and listing the individuals authorized to act on behalf of Borrower and Borrower's general partner.

v. Receipt by Lender of Borrower's standard rental agreement in form and substance acceptable to Lender.

w. Receipt by Lender of a determination letter from the Internal Revenue Service, in full force and effect as of the date hereof, determining that Borrower's general partner is a tax-exempt organization under Section 501(c)(3) of the Internal Revenue Code.

x. Receipt by Lender of a copy of Borrower's construction lender's commitment to provide construction financing for the Project and all amendments and modifications to such commitment, and, if requested by Lender, receipt of certification from Borrower's construction lender that Borrower has performed its obligations under the construction loan in a timely and satisfactory manner and that no default exists under the construction loan.

y. If requested by Lender, receipt of certification from the entities that have provided grants or subsidies for the Project, that funds have been irrevocably committed or applied to the Project and that no default exists under any term or condition of such grant or subsidy, or under any agreement pertaining thereto.

z. Receipt by Lender of copies of all executed leases or rental agreements for the Project with a term of more than one (1) year and, if requested by Lender, copies of all other executed leases or rental agreements for the Project. [ Receipt by Lender of copies of all executed leases or rental agreements evidencing the original occupancy of each apartment. Borrower shall also provide copies of income verifications for all original tenants.]

aa. Receipt by Lender of plans and specifications acceptable to Lender.

bb. [Receipt by Lender of copies of any investment summaries, offering materials, or other descriptions of the Project used in connection with the sale of the tax credits.]

cc. Receipt by Lender of evidence that the ratio of monthly Net Operating Income from the Project, based on month-end reports, to the required monthly principal and interest installments under the Loan is not less than \_\_\_\_\_ to 1 for \_\_\_\_\_ (consecutive) months. Net Operating Income ("NOI") shall mean net revenues, less total operating expenses including but not limited to the property taxes, insurance, maintenance, management fees, [Oregon Affordable Housing Tax Credit fees] [replacement reserves] [Low-Income Housing Tax Credit fees] and excluding interest and depreciation. Documentation supporting NOI must be acceptable to Lender, and NOI will be as calculated by Lender.

[cc. Receipt by Lender of evidence that (i) the ratio of monthly Net Operating Income from the Project, based on month-end reports, to the sum of required monthly principal and interest installments under the Loan, (the "primary debt-coverage ratio"), is not less than \_\_\_\_\_ to 1.0 for \_\_\_\_\_ [at least one (1) full] [three (3) consecutive] month(s), and (ii) the ratio of monthly Net Operating Income from the Project to the sum of required monthly principal and interest installments under the Loan plus any required installments under the subordinate liens approved by Lender (the "overall debt-coverage ratio") is not less than \_\_\_\_\_ to 1.0 for \_\_\_\_\_ [at least one (1) full] [three (3) consecutive] months(s). Net Operating Income ("NOI") shall mean net revenues, less total operating expenses including but not limited to property taxes, insurance, maintenance, management fees, [Oregon Affordable Housing Tax Credit fees] [replacement reserves] [Low-Income Housing Tax Credit fees] and excluding interest and depreciation. Documentation supporting NOI must be acceptable to Lender, and NOI will be as calculated by Lender.]

dd. Receipt by Lender of a recorded completion notice and an unconditional certificate of occupancy for the project.

ee. Receipt by Lender of rent rolls, based on month-end reports, certified as accurate by Borrower to support rental achievement.

ff. Fulfillment of conditions to funding in the Commitment.

#### ARTICLE 4 TERMS OF LOAN AND LOAN DOCUMENTS

4.1 Agreement to Lend. Upon satisfaction of the conditions precedent, Lender agrees to lend to Borrower the sum of \$ \_\_\_\_\_.

4.2 Payment. The terms for repayment of the Loan are more particularly described in the Note attached hereto as Exhibit B.

[, including provisions that the Loan has been approved for Lender's Resident Services Funding

Program ("RSFP") and that, accordingly, for the first three (3) years of the Loan term (the "RSFP Period") the interest rate otherwise applicable under the Note (the "Applicable Rate") shall be reduced by one percent (1%) and the monthly payments of principal and interest due from Borrower during the RSFP Period shall be based on such reduced interest rate (the "RSFP Rate"), provided that (i) the difference between the monthly payment amount based on the Applicable Rate and the monthly payment amount based on the RSFP Rate (the "RSFP Savings") is used by Borrower to fund supportive social service programs for Project residents substantially as described in Borrower's RSFP Application, and (ii) Borrower submits to Lender annual written certifications during the RSFP Period describing in reasonable detail all such social services provided by Borrower with the RSFP Savings].

4.3 Closing. The Loan shall be closed in escrow at the offices of the Title Insurer no later than \_\_\_\_\_, but no sooner than three (3) business days after Borrower has satisfied all conditions precedent under this Agreement and the Commitment.

4.4 Reserves for Replacement of Capital Improvements. Commencing on \_\_\_\_\_ 1, 20\_\_, and continuing on the first day of each month thereafter until the Note and all sums owing under the other Loan Documents have been repaid in full, Borrower shall deposit \$\_\_\_\_\_ monthly into an interest-bearing reserve account (the "Capital Replacement Reserve") as directed by Lender. Provided however, beginning \_\_\_\_\_, and annually thereafter, the monthly deposits for Capital Replacements Reserves shall increase by not less than \_\_\_\_\_%. The Capital Replacement Reserve shall be maintained for the purpose of funding necessary replacements of capital improvements, and all disbursements shall require Lender's authorization. Lender may authorize disbursements from the Capital Replacement Reserve upon the written request of Borrower, which request shall describe the purpose of the disbursement and provide an estimate of the cost of the proposed replacement. Upon Lender's receipt of a disbursement request from Borrower, Lender may require, at Lender's option, such evidence of the need for the requested disbursement, the cost of the work performed and/or items purchased, and the actual completion of the proposed improvements as Lender deems appropriate. For purposes of this Section, "necessary replacement of capital improvements" shall mean replacement only of existing capital improvements, such as appliances, carpeting, cabinetry, electrical and plumbing fixtures, roofing, and other similar structural elements of the Improvements that (a) are necessary to maintain the Improvements in the condition that exists at Closing; (b) are necessitated by ordinary wear and tear; and (c) are not covered by insurance or other third-party sources such as security deposits. Lender shall not authorize disbursements from the Capital Replacement Reserve for ordinary maintenance such as cleaning, painting, or minor repairs, or for improvements in excess of those necessary to maintain the condition of the Improvements as they exist at Closing. Borrower shall pledge the Capital Replacement Reserve to Lender as security for Borrower's obligations under this Agreement and the other Loan Documents. Upon repayment by Borrower of all sums owing under the Note and the other Loan Documents, Borrower shall provide Lender written instructions regarding the disposition of the Capital Replacement Reserve.

4.5 Tax and Insurance Reserves. Borrower shall make monthly property tax reserve deposits of \$ \_\_\_\_\_ and monthly insurance reserve deposits of \$ \_\_\_\_\_, pursuant to Sections 1.5 and 1.8 of the Deed of Trust. Lender reserves the right to adjust these amounts as provided in the Deed of Trust. [Borrower shall make monthly insurance reserve deposits of \$ \_\_\_\_\_, pursuant to Section 1.5 of the Deed of Trust. Borrower shall not be required to make monthly property tax reserve deposits pursuant to Section 1.8 of the Deed of Trust so long as the Property remains fully exempt from property taxes pursuant to the property tax exemption granted to Borrower. Lender reserves the right to require Borrower to make adequate monthly property tax reserve deposits if, and to the extent that, Borrower's property tax exemption for the Property expires, is reduced, is withdrawn, or otherwise becomes unavailable. Lender also reserves the right to adjust the amount of Borrower's insurance reserve deposit and tax reserve deposit, if any, as provided in the Deed of Trust.]

4.6 Operating Deficit Reserve. As a condition precedent to funding of the Loan, Borrower shall deposit not less than \$ \_\_\_\_\_ in an interest-bearing reserve account as directed by Lender (the "Operating Deficit Reserve"), to be disbursed to fund Operating Deficits incurred in the operation of the Project. "Operating Deficits" shall mean, for any specified period of time, the extent to which the collected gross revenues from the Project are less than the amount necessary to meet current cash operating obligations of the Project, including, without limitation, payment of principal, interest, and tax and insurance reserve installments under the Loan, management fees paid to an independent third party manager, repair and maintenance expenses not payable out of the Capital Replacement Reserve described in Section 4.4 hereof, and other direct operating expenses of the Project, but excluding any fees, distributions, or payments to Borrower or its partners. The Operating Deficit Reserve shall be pledged to Lender as security for the Loan, Lender shall receive written notice of all disbursements therefrom, and Lender's authorization shall be required for any disbursement therefrom that would reduce the balance in such reserve below \$ \_\_\_\_\_. Upon repayment by Borrower of all sums owing under the Note and the other Loan Documents, Borrower shall provide Lender written instructions regarding the disposition of the Operating Deficit Reserve.

[4.7 OAHTC Fee Reserve. Borrower shall make monthly payments of \$ \_\_\_\_\_ to cover the estimated annual fee charged by the Department for administration of the Oregon Affordable Housing Tax Credit for the Loan. Such payments shall be held by Lender or as directed by Lender, and paid annually to the Department. Any shortfall shall be paid by Borrower upon demand by Lender, and any over-payment shall be applied to the annual fee next due or refunded to Borrower at Lender's option.]

[4.7 OAHTC Fee Reserve. Borrower shall make monthly payments of \$ \_\_\_\_\_ to cover the estimated annual fee charged by the Department for administration of the OAHTC for [the OAHTC Portion of] the Loan. Such payments shall be held by Lender or as directed by Lender, and paid annually to the Department. Any shortfall shall be paid by Borrower upon

demand by Lender, and any over-payment shall be applied to the annual fee next due or refunded to Borrower at Lender's option.]

## **ARTICLE 5 EXPENSES, FEES, AND ADVANCES**

5.1 Loan Expenses. Borrower shall pay all fees, charges, and expenses incurred in connection with the procuring and closing of the Loan and repayment of the Loan, including without limitation, cost of title examination, title insurance premiums (including early issue premiums), survey costs, photocopy expenses, mortgage recording charges, escrow charges, appraisal fees, costs of foreclosure reports, documentary, transfer, and tangible or other similar taxes, revenue stamps, architects' and engineers' services, inspection fees, and Lender's reasonable attorney fees and out-of-pocket expenses. With respect to collection of the debt or enforcement of this Agreement, Borrower agrees to pay reasonable attorney fees and collection costs even though no civil action is filed and, if a civil action is filed, such additional sum as the trial judge or the appellate court may adjudge reasonable as attorney fees in the action and the appeal, if any, along with statutory costs and disbursements.

5.2 Advances. Lender shall have the right, but not the obligation, to pay taxes, assessments, charges, claims, liens, or encumbrances and to cause compliance with all applicable governmental requirements if Lender considers it necessary to protect its security and for prospects of repayment of the Loan. Such payments and expenses are repayable on demand with interest at the rate specified in the Note.

5.3 Security for Advances. The Deed of Trust shall secure any and all Loan expenses of Lender and all payments and advances made by Lender under the Loan Documents to or for the account of Borrower or for the protection of Lender's trust deed lien and security interests, whether or not the total of the Loan proceeds already disbursed plus such Loan expenses, advances, and costs exceed the face amount of the Note.

## **ARTICLE 6 BORROWER COVENANTS**

6.1 Affirmative Covenants. Borrower covenants as follows:

a. Borrower will punctually and promptly pay, when due, the principal of, and all interest on, the indebtedness evidenced by the Note and all other charges, fees, and sums that may become due under the Loan Documents.

b. Borrower will take all actions and do all things necessary to cause each and every covenant, warranty, condition, agreement, obligation, and/or requirement contained in this Agreement, the other Loan Documents, and the Project Agreements [and the Commercial Leases]

to be fully and faithfully performed and satisfied in accordance with the terms thereof.

c. Borrower will at all times rent the Affordable Units at rents that are in accordance with (i) the requirements of Internal Revenue Code Section 42, or (ii) any affordability or rent restrictions recorded against the Property, whichever of the foregoing are the most restrictive.

d. Borrower will maintain the Affordable Units as "qualified low income housing" as defined in Section 42 of the Internal Revenue Code [or \_\_\_\_\_] and any Treasury regulations or rulings applicable thereto, and any successor laws, rules, or regulations, or any amendments thereto.

e. Borrower will provide to Lender annually true copies of Internal Revenue Service Form 8586 and all attachments thereto, and copies of the Owner's Certificate of Continuing Project Compliance Form submitted by Borrower to the Department, both within thirty (30) days of filing with the appropriate entity; if applicable, provide to Lender copies of any Noncompliance Reports submitted by the Department to the Internal Revenue Service regarding the Project.

f. Borrower will retain a property manager acceptable to Lender, experienced in management of ["qualified low income housing" as defined in Internal Revenue Code Section 42] [subsidized low income housing,] to manage the Property and, in the event Lender reasonably determines at any time during the term of the Loan that Borrower's property manager is not performing its duties in a satisfactory or prudent manner, retain as soon as practicable a replacement property manager reasonably acceptable to Lender.

[g. Borrower will operate the Property in compliance with the requirements of ORS 317.097 and regulations promulgated thereunder.]

h. Borrower will provide to Lender copies of all executed leases or rental agreements for the Project with a term of more than one (1) year, and, if requested by Lender, provide copies of all other executed leases or rental agreements for the Project at such times as Lender may request [provide to Lender copies of all executed leases or rental agreements evidencing the original occupancy of each apartment. Borrower will also provide copies of income verifications for all original tenants.]

i. Borrower will furnish to Lender:

(i) throughout the term of the Loan, (a) annual CPA-prepared financial statements for Borrower, Borrower's general partner, [and all guarantors], delivered to Lender within ninety (90) days [one hundred eighty days] of the end of such entity's [or person's] fiscal year, and [(b) if requested by NOAH, or if Borrower's or Borrower's general partner's CPA-

prepared financial statements are not audited or reviewed, annual tax returns, complete with all schedules, including K-1 statements for any partnership or S-Corporation in which Borrower, or Borrower's general partner has an interest] [and (c) annual tax returns for any individual guarantor or individual general partner]; and

(ii) during the first year of the Loan, quarterly operating statements and rent rolls for the Project, delivered to Lender within thirty (30) days of the end of each calendar quarter; and thereafter throughout the term of the Loan, annual operating statements and rent rolls for the Project, delivered to Lender within ninety (90) days of the end of each calendar year.

Operating statements shall set forth rental income and expenditures for the Project; rent rolls shall be in reasonable detail and in form and substance satisfactory to Lender and shall contain, without limitation, a listing of each tenant, the space occupied, amount of rent, and the expiration of the lease. At Lender's option, Lender may also require that Borrower and/or the property manager certify that the rent rolls and operating statements are complete and accurate in all respects. Lender reserves the right to require more frequent operating and financial statements if it deems such reporting necessary or advisable. All financial statements, rent rolls, and operating statements shall be (a) prepared in accordance with generally accepted accounting principles, and (b) in form and substance satisfactory to Lender. All financial statements shall be certified as true and correct by the entity or person to which they pertain.

j. Borrower will maintain a ratio of monthly NOI from the Project to the required monthly principal and interest installments under the Loan of not less than \_\_\_\_\_ to 1. Documentation supporting NOI must be acceptable to Lender, and NOI will be as calculated by Lender.

[j. Borrower will maintain a minimum overall debt-coverage ratio of not less than \_\_\_\_\_ to 1. Documentation supporting NOI must be acceptable to Lender, and NOI will be as calculated by Lender.]

[k. Borrower will (i) use the RSFP Savings to fund supportive social service programs for Project residents substantially as described in Borrower's RSFP Application, and (ii) submit to Lender annually during each year of the RSFP Period, within thirty (30) days of the anniversary of the Loan date, a written certification describing in reasonable detail all such social services provided by Borrower during the prior year with the RSFP Savings.

l. Borrower will equip all residential units in the Project with smoke detectors that comply with the requirements of ORS 479.250-479.300, or any successor statute.

6.2 Negative Covenants. Borrower covenants that neither Borrower nor Borrower's general partner will cause or allow the Property or the Improvements or any part thereof to be subject to any lien or encumbrance relating to financing subordinate to the Loan contemplated by

this Agreement, without the prior written consent of Lender.

## **ARTICLE 7 EVENTS OF DEFAULT**

7.1 The occurrence of any one or more of the following shall be an event of default under this Agreement and the other Loan Documents:

a. Borrower fails to pay any amount to be paid by Borrower within ten (10) days of the date it is due; or

b. Borrower fails to perform or comply with any other covenant or condition to be performed or satisfied by Borrower under this Agreement or the other Loan Documents or the Project Agreements [or the Commercial Leases] within thirty (30) days after written notice from Lender to perform or satisfy the covenant or condition or, if such performance or compliance cannot be completed within such 30-day period through the exercise of reasonable diligence, the failure by Borrower to commence the required performance or compliance within such 30-day period and thereafter to continue such performance or compliance with diligence to completion; or

c. Borrower fails to show evidence of full or substantial compliance with any requirement of any governmental authority having jurisdiction over the Property within thirty (30) days after notice in writing of such requirement shall have been given to Borrower by Lender or, if such compliance cannot be completed within such 30-day period through the exercise of reasonable diligence, the failure by Borrower to commence the required compliance within such 30-day period and thereafter to continue such compliance with diligence to completion; or

d. Borrower otherwise materially breaches any term, covenant, condition, provision, representation, or warranty of Borrower under this Agreement or the other Loan Documents or the Project Agreements [or the Commercial Leases] and fails to cure such breach within thirty (30) days after notice in writing of such breach shall have been given to Borrower by Lender or, if such breach cannot be cured within such 30-day period through the exercise of reasonable diligence, the failure by Borrower to commence the required cure within such 30-day period and thereafter to continue such cure with diligence to completion; or

e. Any representation or warranty in any of the Loan Documents or the Project Agreements or in any certificate, agreement, instrument, or other document made or delivered pursuant to or in connection with any of the Loan Documents or the Project Agreements [or the Commercial Leases] proves to have been incorrect in any material respect when made; or

f. All or any material portion of the Property is condemned, seized, or appropriated by any governmental agency; or

g. There shall occur a material adverse change in the financial condition of Borrower [or General Partner] from the financial condition of such entity [entities] as of the date of this Agreement and Borrower shall fail to present evidence satisfactory to Lender that such condition has been remedied within thirty (30) days after written notice by Lender to Borrower; or

h. The occurrence of an event of default under any lien instrument securing financing subordinate to the Loan, regardless of whether Lender has given its written consent to such lien pursuant to Section 6.2 hereof; or

i. The occurrence of an event of default as defined in any of the other Loan Documents or the Project Agreements [or the Commercial Leases].

## **ARTICLE 8 REMEDIES**

8.1 If an event of default occurs, Lender may, but shall not be required to, exercise any one or more of the following remedies in addition to those remedies provided by law:

a. Declare the entire Loan amount disbursed hereunder immediately due and payable.

b. Exercise or pursue any other remedy or cause of action permitted by this Agreement, the other Loan Documents, or applicable law.

## **ARTICLE 9 ASSIGNMENT**

9.1 Borrower Assignment. Borrower may not convey, assign, mortgage, pledge, transfer, hypothecate, encumber, or otherwise dispose of its rights or obligations under this Agreement, the other Loan Documents, the Project Agreements, [the Commercial Leases,] the Commitment, the Property, or the Improvements without the prior written consent of Lender. A breach of this provision, directly or indirectly, shall be an event of default and shall not vest any rights in the purported transferee. [Without limiting the foregoing, the transfer of limited partnership interests in Borrower shall require Lender's prior written consent, which consent shall not be unreasonably withheld.]

9.2 Lender Assignment. Lender may assign its rights and obligations in and to this Agreement, the other Loan Documents, and the Commitment to another lender or lenders having the financial ability to perform Lender's obligations. Any such assignment by Lender shall be deemed to have been made pursuant to this Agreement and not to be a modification hereof, and the disbursements made by any such assignee hereunder shall be evidenced and secured by the Note and Deed of Trust. Lender shall also have the right to sell participation or syndication

interests in the Loan and the Loan Documents, or to assign its interest in the Loan and the Loan Documents as security for any loan made to Lender to enable it to make the Loan to Borrower.

[ Notwithstanding the foregoing, Lender shall not sell, assign, transfer, or otherwise convey any portion of Lender's interest in this Agreement, the other Loan Documents, or the Commitment to the Federal National Mortgage Association ("Fannie Mae"), or include any portion of Lender's interest in this Agreement, the other Loan Documents, or the Commitment in a pool of loans to be sold, assigned, transferred, or otherwise conveyed to Fannie Mae.]

## ARTICLE 10 MISCELLANEOUS

10.1 Time of the Essence. Time is of the essence of this Agreement, the other Loan Documents, and the Project Agreements [and the Commercial Leases].

10.2 Notices. All notices, demands, requests, or other communication of any kind (a "notice") that any party may be required or may desire to serve upon another party hereunder shall be sufficient if given or made in writing and shall be deemed delivered (a) when actually delivered to the addressee personally or at the address specified above, or (b) three (3) calendar days after the notice has been deposited in the United States mails, postage prepaid, certified or registered mail, addressed to the party at the address specified above. Rejection or refusal to accept a notice, or inability to deliver a notice because of changed address of which no notice of changed address was given, shall constitute delivery of any such notice to the addressee. Any party hereto may, by delivery of notice to the other party, designate a different address.

[Notwithstanding any other provision of this Agreement or of any other Loan Document, Borrower agrees that Lender may, but shall not be obligated to, copy Borrower's limited partner(s) on any notice given by Lender to Borrower under this Agreement or any of the other Loan Documents, or otherwise communicate or correspond with Borrower's limited partner(s) from time to time about the Loan. Such notices or other communication shall, if given, be directed to Borrower's limited partner(s) as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
telephone: \_\_\_\_\_  
facsimile: \_\_\_\_\_

or such other address as Borrower or Borrower's limited partner(s) may subsequently designate by written notice to Lender.]

10.3 Waiver and Estoppel. Lender may at any time and from time to time waive any

one or more of the conditions contained in this Agreement, but any such waiver shall be deemed to be made pursuant to this Agreement and not in modification thereof, and any such waiver in any instance or under any particular circumstances shall not be construed a waiver of any other condition or of any subsequent default. The failure of Lender to promptly exercise its rights or remedies shall not be deemed to be a waiver or grounds for the claim of estoppel.

10.4 Agreement Binding. This Agreement shall be binding upon and inure to the benefit of the permitted successors and assigns of the parties hereto. This Agreement is made and entered into for the sole protection and benefit of Lender and Borrower and their permitted successors and assigns. No trust fund is created by this Agreement and no other persons or entities will have any right of action under this Agreement or any right to the Loan funds.

10.5 Relationship of Parties. All parties hereto agree and understand that in no event and under no circumstances shall the relationship between Lender and any other parties hereto be deemed a joint venture or partnership. All parties hereto covenant and agree that in no event and under no circumstances shall Lender be required to do any act or not do any act that would result in Lender's being held to be responsible for the payment of any state or federal employee withholding tax. Borrower covenants and agrees to remain current at all times in the payment of any state or federal employee withholding tax.

10.6 Survival of Commitment; Conflict. To the extent that the terms and conditions of the Commitment have not been incorporated into this Agreement or the other Loan Documents, such terms and conditions of the Commitment shall survive the Closing. In the event of any conflict in the terms or conditions of the Commitment and the terms or conditions of this Agreement, the terms and conditions of this Agreement shall prevail. The terms and conditions of this Agreement, of the Commitment, and of the other Loan Documents are intended to complement and supplement each other and are to be construed so as to be consistent and complimentary.

10.7 Complete and Final Agreement. This Agreement, the other Loan Documents, and the Commitment are the complete and final agreement of the parties and no provision can or will be waived or modified by conduct or oral agreement either before or after execution of this Agreement.

10.8 Captions. The captions and headings in this Agreement are merely for convenience, and are not substantively a part of this Agreement.

10.9 Governing Law. This Agreement and the rights and obligations of the parties hereunder shall be governed by the laws of the State of Oregon.

10.10 No Representation Regarding Tax Benefits. If Borrower is relying on the availability of any tax benefit in connection with the Property, including without limitation the

Low Income Housing Tax Credit under Section 42 of the Internal Revenue Code or [the Oregon Affordable Housing Tax Credit under ORS 317.097], any review of Borrower's qualification for such tax benefit by Lender is done solely for Lender's benefit and does not constitute any representation or warranty by Lender of the availability of such tax benefit to Borrower. Borrower shall rely solely on Borrower's tax and legal advisors for any determination of the availability of any tax advantages or consequences of the Loan and Borrower's ownership and operation of the Property.

10.11 Further Assurances. The parties agree to execute and deliver such further documents, instruments, and other agreements as are necessary or convenient to carry out the terms and purposes of this Agreement.

10.12 Statutory Notice. **UNDER OREGON LAW, MOST AGREEMENTS, PROMISES, AND COMMITMENTS MADE BY LENDER AFTER OCTOBER 3, 1989 CONCERNING LOANS AND OTHER CREDIT EXTENSIONS THAT ARE NOT FOR PERSONAL, FAMILY, OR HOUSEHOLD PURPOSES OR SECURED SOLELY BY THE BORROWER'S RESIDENCE MUST BE IN WRITING, EXPRESS CONSIDERATION, AND BE SIGNED BY AN OFFICER OF LENDER TO BE ENFORCEABLE.**

IN WITNESS WHEREOF, the parties have executed and delivered this Term Loan Agreement on the date first written above.

**BORROWER:**

\_\_\_\_\_ LIMITED PARTNERSHIP, an Oregon limited partnership

By: \_\_\_\_\_, General Partner

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**LENDER:**

NETWORK FOR OREGON AFFORDABLE HOUSING, an Oregon nonprofit public benefit corporation

By: \_\_\_\_\_  
William A. Van Vliet, Executive Director

By: \_\_\_\_\_  
Margaret A. Jonsson, Vice President

**EXHIBIT A**

[legal description of property]

**EXHIBIT B**

[copy of promissory note]

**PLEDGE AND SECURITY AGREEMENT  
(and Control Agreement)**

DATE: \_\_\_\_\_

AMONG: \_\_\_\_\_ LIMITED PARTNERSHIP,  
an Oregon limited partnership ("Borrower")  
\_\_\_\_\_  
\_\_\_\_\_

AND: NETWORK FOR OREGON AFFORDABLE  
HOUSING, an Oregon nonprofit  
public benefit corporation ("NOAH")  
1020 SW Taylor, Suite 585  
Portland, OR 97205

AND: U.S. BANK NATIONAL ASSOCIATION  
Commercial Real Estate Group  
Attn: Linda Loven ("U.S. Bank")  
111 SW Fifth Avenue, Suite 1200  
Portland, OR 97204

**RECITALS:**

A. NOAH has extended a commitment to make a loan to Borrower in the maximum principal amount of \$\_\_\_\_\_ (the "Loan"), to be secured by a first lien on certain real property and improvements located in the City of \_\_\_\_\_, \_\_\_\_\_ County, Oregon, known as \_\_\_\_\_ Apartments (the "Property" or the "Project"). The Loan is subject to the terms and conditions of a written loan commitment dated \_\_\_\_\_, as subsequently amended (as so amended, the "Commitment") and a Term Loan Agreement of even date herewith between Borrower and NOAH (the "Term Loan Agreement").

B. Pursuant to the Commitment and the Term Loan Agreement, Borrower will make regular monthly payments of \$\_\_\_\_\_ into a reserve account (account no. \_\_\_\_\_ and/or any successor account) at U.S. Bank to be held and disbursed for replacement of capital improvements to the Property, as provided in the Commitment and the Term Loan Agreement (the "Capital Replacement Reserve"). [Provided however, beginning \_\_\_\_\_, and annually thereafter, the monthly payments for Capital Replacements Reserves shall increase by not less than \_\_\_\_\_%.]

[C. Pursuant to the Commitment and the Term Loan Agreement, Borrower has also deposited or will deposit the cash sum of \$\_\_\_\_\_ into a reserve account (account no.

\_\_\_\_\_ and/or any successor account) at U.S. Bank, to be held and disbursed to fund operating deficits incurred in the operation of the Project, as provided in the Commitment and the Term Loan Agreement (the "Operating Deficit Reserve").]

D. One of the conditions to funding the Loan is that the Capital Replacement Reserve [and the Operating Deficit Reserve] ([collectively,] the "Collateral" or the "Reserve Account[s]") be pledged to NOAH as security for the Loan.

#### **AGREEMENT:**

NOW, THEREFORE, in consideration of the above premises, and the terms, conditions, covenants, and agreements contained herein, the parties hereby agree as follows:

1. Grant of Security Interest. Borrower hereby pledges and grants to NOAH a security interest in the Collateral, whether now or hereafter held by U.S. Bank pursuant to the Commitment and/or the Term Loan Agreement, as security for the prompt payment and performance of Borrower's obligations under the documents and instruments evidencing and securing the Loan (with all such documents and instruments, whether now existing or hereafter delivered by Borrower referred to collectively as the "Loan Documents"). A default under any of the Loan Documents shall constitute a default under this Agreement.

2. Acknowledgment of U.S. Bank; Subordination. By execution of this Agreement, U.S. Bank acknowledges NOAH's security interest in the Collateral and agrees to hold the Collateral for the benefit of Borrower until such time as U.S. Bank receives written notice from NOAH that Borrower is in default under the Loan Documents, at which time U.S. Bank shall hold the Collateral for the benefit of NOAH. U.S. Bank further agrees that, regardless of whether U.S. Bank has received notice from NOAH that Borrower is in default under the Loan Documents, U.S. Bank will (i) comply with instructions originated by NOAH directing disposition of the Collateral without further consent from Borrower, and (ii) will not comply with instructions originated by Borrower directing disposition of the Collateral without the written consent of NOAH. Borrower agrees that the Reserve Account[s] shall be under the sole control of NOAH, and that neither Borrower nor any other person or entity acting through or under Borrower shall have any control over the use of the funds in the Reserve Account(s), except as authorized by NOAH in writing, or any right to withdraw any amount from the Reserve Account[s] without the prior written authorization of NOAH. The parties agree that NOAH shall be entitled to exercise the rights and remedies of a secured party under the Oregon Uniform Commercial Code, as the same may be amended or recodified from time to time (the "UCC") with respect to the Collateral, and that this Agreement constitutes a "control agreement" for purposes of Sections 9-104 and 9-312(b)(1) of the UCC. U.S. Bank agrees that any security interest it has or may acquire in the Collateral shall at all times be subordinate to the security interest of NOAH evidenced by this Agreement (except for any security interest in the Collateral granted by NOAH to U.S. Bank in U.S. Bank's capacity as Agent Bank under that certain

Restated Credit and Security Agreement among NOAH, U.S. Bank, and NOAH's member banks, as amended or restated from time to time).

3. Future Advances/After-Acquired Collateral. This Agreement secures all future advances made pursuant to the Commitment, the Term Loan Agreement, and the other Loan Documents, and the Collateral includes all after-acquired collateral deposited with U.S. Bank pursuant to the Commitment and/or the Term Loan Agreement.

4. Application of Collateral. Upon default by Borrower hereunder, all Collateral that NOAH shall receive in accordance with the provisions hereof shall be applied (to the extent thereof), first to the payment of all costs and expenses incurred in connection with the administration and enforcement of, or the preservation of any rights under, this Agreement or any of the reasonable expenses and disbursements of NOAH (including, without limitation, the reasonable fees and disbursements of its counsel and agents) in connection therewith, second to the payment and satisfaction of Borrower's obligations under the Loan Documents, and third to the payment of any excess to Borrower.

5. Covenant of Borrower. Borrower will, at its own expense, make, execute, endorse, acknowledge, file, and/or deliver to NOAH from time to time such vouchers, invoices, schedules, confirmatory assignments, conveyances, financing statements, transfer endorsements, powers of attorney, certificates, reports, and other assurances or instruments and take such further steps relating to the Collateral as NOAH may require.

6. Remedies Cumulative. The remedies provided herein in favor of NOAH shall not be deemed exclusive, but shall be cumulative, and shall be in addition to all other remedies in favor of NOAH existing at law or in equity. Without limiting the foregoing, NOAH may exercise its rights with respect to a portion of the Collateral without exercising its rights with respect to any other portion of the Collateral, and may exercise any of its rights under this Agreement without obligation to resort to other security for the Loan.

7. No Waiver. No delay on the part of NOAH in exercising any of its rights, remedies, powers, and privileges hereunder or partial or single exercise thereof, shall constitute a waiver thereof. None of the terms and conditions of this Agreement may be changed, waived, modified, or varied in any manner whatsoever unless in writing duly signed by the party to be charged. No notice to or demand on Borrower in any case shall entitle Borrower to any other or further notice or demand.

8. Continuation in Force. The obligations of Borrower hereunder shall remain in full force and effect without regard to, and shall not be impaired by (a) any bankruptcy, insolvency, reorganization, arrangement, readjustment, composition, liquidation, or the like of Borrower, (b) any exercise or nonexercise, or any waiver of, any right, remedy, power, or privilege under or with respect to the obligations of this Agreement, or any other security therefor other than as expressly provided in this Agreement, or (c) any amendment to or modification of the Loan

Documents, whether or not Borrower shall have notice or knowledge of any of the foregoing.

9. Binding Effect; Amendment. This Agreement is binding on and will inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors, and assigns, except that Borrower may not transfer or assign any of its obligations, rights, or interests hereunder without the prior written consent of NOAH. All agreements, representations, and warranties made herein shall survive the execution and delivery of this Agreement. This Agreement may not be modified or amended except by a written agreement executed by all parties.

10. Notices. All notices, demands, requests, or other communication of any kind (a "notice") that any party may be required or may desire to serve upon another party hereunder shall be sufficient if given or made in writing and shall be deemed delivered (a) when actually delivered to the addressee personally or at the address specified above, or (b) three (3) calendar days after the notice has been deposited in the United States mails, postage prepaid, certified or registered mail, addressed to the party at the address specified above. Rejection or refusal to accept a notice, or inability to deliver a notice because of changed address of which no notice of changed address was given, shall constitute delivery of any such notice to the addressee. Any party hereto may, by delivery of notice to the other party, designate a different address.

[Any notice delivered to Borrower under the terms of this Agreement shall also be delivered to Borrower's limited partner(s) at the address provided below or to such other address as Borrower or Borrower's limited partner(s) may subsequently designate by written notice to NOAH.

\_\_\_\_\_  
\_\_\_\_\_

Telephone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_

11. Termination. This Agreement and the security interests granted herein shall terminate upon the satisfaction in full of Borrower's obligations under the Loan Documents. NOAH agrees that upon such termination it will take such action as is necessary to terminate the security interests granted herein and the effectiveness of all financing statements and other instruments filed with respect thereto.

12. Headings. The descriptive headings of the several sections of this Agreement are inserted for convenience only and shall not in any way affect the meaning or construction of any provision of this Agreement.

13. Severability. Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or

unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

14. Governing Law. This agreement shall be governed by Oregon law.

15. Attorney Fees. If either party hereto institutes legal action to enforce, interpret, or rescind this Agreement, the prevailing party shall be entitled to an award of reasonable attorney fees, whether at trial or on appeal.

16. Instructions to U.S. Bank. NOAH agrees with Borrower that NOAH shall not give instructions to U.S. Bank directing disposition of the Collateral without consent from Borrower unless and until Borrower is in default under the Loan Documents. U.S. Bank acknowledges and agrees that U.S. Bank is not a beneficiary of the foregoing provision, and shall have no rights to enforce such provision as against Borrower, NOAH, or any other party. All parties agree that this Section 16 shall not, and shall not be construed to, modify, reduce, or in any way impair the effectiveness of this Agreement as a "control agreement" under the UCC.

17. U.S. Bank Fees; Returned Items.

(a) Borrower Reimbursement. In the event any fees or expenses ("Fees") related to the Reserve Account[s] go unpaid, or any checks or other items deposited or credited to the Reserve Account[s] are returned, reversed, refunded, or charged back for insufficient funds or for any other reason ("Returned Items"), U.S. Bank may charge the [applicable] Reserve Account, or any other account of Borrower maintained at U.S. Bank. If there are insufficient funds in such Reserve Account or other account to cover the Fees and/or Returned Items, U.S. Bank shall promptly notify Borrower in writing of the shortfall, and Borrower agrees to reimburse U.S. Bank for the amount of such shortfall within three (3) business days of Borrower's receipt of U.S. Bank's notice.

(b) NOAH Reimbursement. If Borrower fails to reimburse U.S. Bank pursuant to subsection (a) above, U.S. Bank shall promptly notify NOAH in writing, and NOAH agrees to reimburse U.S. Bank within three (3) business days of NOAH's receipt of U.S. Bank's notice for any Fees or Returned Items, to the extent NOAH previously received payment in respect thereof pursuant to Section 2 above.

18. Limited Duties of U.S. Bank. The parties agree that the duties of U.S. Bank under this Agreement are strictly limited to those set forth in this Agreement and U.S. Bank is not acting as a fiduciary for any party hereto. U.S. Bank shall be protected in relying on any form of instruction or other notice purporting to be from NOAH, which U.S. Bank, in good faith, believes to be genuine and what it purports to be. U.S. Bank shall have no duty to inquire as to the genuineness, validity, or enforceability of any such instruction or notice. The Reserve

Account[s] and all actions and undertakings by U.S. Bank with respect thereto shall be subject to all rules and regulations relating to the Reserve Account[s] and to applicable law. IN NO EVENT SHALL U.S. BANK BE LIABLE FOR ANY INDIRECT DAMAGES, LOST PROFITS, OR SPECIAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH U.S. BANK'S SERVICES PURSUANT TO THIS AGREEMENT, EVEN IF U.S. BANK HAS BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGES. The foregoing provision shall survive termination of this Agreement.

19. Legal Process. In the event that U.S. Bank receives any form of legal process concerning the Reserve Account[s], including without limitation court orders, levies, garnishments, attachments, and writs of execution, or in the event U.S. Bank learns of any insolvency proceeding concerning Borrower, including without limitation bankruptcy, receivership, or assignment for the benefit of creditors, U.S. Bank will respond to such legal process or knowledge of insolvency in the normal course of its business and/or as required by law.

20. No Waiver by U.S. Bank. No delay on the part of U.S. Bank in exercising any right, power, or privilege under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power, or privilege under this Agreement preclude other or further exercise thereof or the exercise of any right, power, or privilege. The rights and remedies of U.S. Bank specified herein are cumulative and are not exclusive of any rights or remedies that U.S. Bank would otherwise have.

21. Termination of U.S. Bank Services. This Agreement may not be terminated by Borrower or by U.S. Bank, provided that U.S. Bank may terminate its services under this Agreement upon ten (10) days prior written notice to NOAH in the event that NOAH fails to make a payment to U.S. Bank required under Section 17(b) above. In addition, NOAH may terminate U.S. Bank's services under this Agreement at any time upon ten (10) days prior written notice to U.S. Bank, pursuant to which notice NOAH releases U.S. Bank from any further obligation to comply with instructions originated by NOAH with respect to the Reserve Account[s]. In the event of any such termination of U.S. Bank's services (whether by U.S. Bank or by NOAH), U.S. Bank shall promptly transfer to NOAH all collected funds remaining in the Reserve Account[s] (or deposited into the Reserve Account[s] after the termination of U.S. Bank's services), less any amounts otherwise reimbursable to U.S. Bank pursuant to Section 17 above. ANY SUCH TERMINATION OF U.S. BANK'S SERVICES SHALL NOT OPERATE TO TERMINATE THIS AGREEMENT AS BETWEEN NOAH AND BORROWER, SHALL NOT IN ANY WAY AFFECT THE SECURITY INTEREST IN THE COLLATERAL GRANTED BY BORROWER TO NOAH PURSUANT TO THIS AGREEMENT, AND SUCH SECURITY INTEREST, AND ALL PROVISIONS OF THIS AGREEMENT PERTAINING TO SUCH SECURITY INTEREST AND THE COLLATERAL, SHALL REMAIN IN FULL FORCE AND EFFECT.

22. Waiver of Trial by Jury. BORROWER, NOAH, AND U.S. BANK HEREBY WAIVE ALL RIGHTS TO TRIAL BY JURY IN ANY JUDICIAL PROCEEDING ARISING OUT OF OR RELATING TO SERVICES RENDERED BY U.S. BANK IN CONNECTION WITH THIS AGREEMENT.

23. Counterparts. This Agreement may be executed in one or more counterparts, and all so executed shall constitute one agreement, binding on all the parties hereto, even though all parties are not signatories to the original or the same counterpart. Any counterpart of this Agreement that has attached to it separate signature pages, which altogether contain the signatures of all parties, shall for all purposes be deemed a fully executed instrument.

IN WITNESS WHEREOF, the parties have executed and delivered this Agreement on the date first written above.

[Signatures appear on next page.]

**BORROWER:**

\_\_\_\_\_ LIMITED PARTNERSHIP, an  
Oregon limited partnership

By: \_\_\_\_\_, General Partner

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**NOAH:**

NETWORK FOR OREGON AFFORDABLE  
HOUSING, an Oregon nonprofit public benefit  
corporation

By: \_\_\_\_\_  
William A. Van Vliet, Executive Director

By: \_\_\_\_\_  
Margaret A. Jonsson, Vice President

**U.S. BANK:**

U.S. BANK NATIONAL ASSOCIATION

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

## EXHIBIT A TO FINANCING STATEMENT

(Collateral Description)

Exhibit A to Oregon Uniform Commercial Code ("UCC") Financing Statement Form UCC-1 (the "Financing Statement") executed by \_\_\_\_\_ Limited Partnership, an Oregon limited partnership, as Debtor, in favor of Network for Oregon Affordable Housing, an Oregon nonprofit public benefit corporation, as Secured Party, dated as of \_\_\_\_\_.

Collateral Description. The Financing Statement includes all of Debtor's personal property, wherever located, and now owned or hereafter acquired, including without limitation the following (collectively, the "Collateral"):

All goods, building and other materials, supplies, work in process, equipment, machinery, fixtures, furniture, furnishings, signs, and other personal property and embedded software included therein, wherever situated, that are or are to be incorporated into, used in connection with, or appropriated for use on the real property described in Schedule 1 attached hereto and incorporated herein by reference (the "Property"), together with any and all rents (to the extent, if any, that they are not real property), all inventory, accounts, cash receipts, deposit accounts, accounts receivable, contract rights (including without limitation any unpaid capital contributions of Debtor's partners or other owners), licenses, agreements, general intangibles, chattel paper (whether electronic or tangible), instruments, documents, promissory notes, drafts, letters of credit, letter of credit rights, supporting obligations, investment property, commercial tort claims, insurance policies, insurance and condemnation awards and proceeds, any other rights to the payment of money, trade names, trademarks and service marks arising from or related to the ownership, management, leasing, or operation of the Property or any business now or hereafter conducted thereon by Debtor, all permits, consents, approvals, licenses, authorizations, and other rights granted by, given by, or obtained from, any governmental entity with respect to the Property, all deposits or other security now or hereafter made with or given to utility companies by Debtor with respect to the Property, all advance payments of insurance premiums made by Debtor with respect to the Property, all plans, drawings, and specifications relating to the Property, all loan funds held by Secured Party, whether or not disbursed, all funds deposited with Secured Party pursuant to any loan agreement or the Deed of Trust With Absolute Assignment of Leases and Rents, Security Agreement, and Fixture Filing of even date herewith given by Debtor, as Grantor, in favor of Secured Party, as Beneficiary (the "Deed of Trust"), all reserves, deferred payments, deposits, accounts, refunds, cost savings, and payments of any kind related to the Property, or any portion thereof, together with all replacements and proceeds of, and additions and accessions to, any of the foregoing, together with all books, records, and files relating to any of the foregoing.

All terms used in the foregoing definition of Collateral shall be as defined in the UCC, as the same may be amended or recodified from time to time.

The filing of this Financing Statement shall not be construed to derogate from or impair the lien or provisions of the Deed of Trust (as defined above) encumbering the Property with respect to any property described in the Deed of Trust that is real property or that the parties have agreed to treat as real property. Similarly, nothing in this Financing Statement shall be construed to alter any of the rights of Secured Party as determined by the Deed of Trust or the priority of Secured Party's lien created by the Deed of Trust, and this Financing Statement is declared to be for the protection of Secured Party in the event that any court shall at any time hold that notice of Secured Party's priority of interest in any property or interests described in the Deed of Trust must, in order to be effective against a particular class of persons, including without limitation the Federal Government and any subdivision or entity thereof, be filed in the UCC records.

**SCHEDULE 1**

{Legal Description of Property}