

**Prepared by and  
After Recording Return to:**

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117228-UKF  
30-029-0128

**SUPPLEMENTAL DEED OF TRUST,  
AND ASSIGNMENT OF LEASES AND RENTS  
(MOUNTAIN VIEW APARTMENTS)**

THIS SUPPLEMENTAL DEED OF TRUST AND ASSIGNMENT OF LEASES AND RENTS (this “**Mortgage**” or “**Deed of Trust**”) is entered into as of April 5, 2023, **MOUNTAIN VIEW ASSOCIATES OF PAYSON, LLC**, a limited liability company organized and existing under the laws of Utah, whose address is 987 E. 200 N, Payson, Utah 84651, as trustor (“**Trustor**”), to **JAMES R. PECK, ESQ.** (“**Trustee**”), for the benefit of **BELLWETHER ENTERPRISE REAL ESTATE CAPITAL, LLC**, a limited liability company organized and existing under the laws of Ohio, whose address is 1375 E. 9th Street, Suite 2400, Cleveland, OH 44114, as beneficiary (the “**Beneficiary**”).

TRUSTOR, in consideration of the Indebtedness created by this Deed of Trust, irrevocably grants, conveys and assigns to Trustee, in trust, for the benefit of Beneficiary, with power of sale, the Mortgaged Property, including but not limited to the land located in Utah County, State of Utah, and described in Exhibit “A” attached to this Deed of Trust (the “**Land**”).

TO SECURE TO Beneficiary the repayment of the Indebtedness evidenced by Trustor’s Promissory Note (the “**Note**”) payable to Beneficiary dated of even date with this Deed of Trust and maturing on the Maturity Date, in the principal amount of **Seventy-One Thousand and No Hundredths Dollars (\$71,000.00)** (the “**Loan Amount**”), and all renewals, extensions and modifications of the Indebtedness, and the performance of the covenants and agreements of Trustor contained in the Loan Documents.

WITNESSETH:

WHEREAS, the Trustor has, concurrently herewith, executed and delivered the Note to the Beneficiary; and

WHEREAS, the Note evidences a loan being made by the Beneficiary to the Trustor, for the purpose of providing mortgage financing for the real estate described in Exhibit A attached hereto and the improvements located thereon;

NOW, THEREFORE, FOR GOOD AND VALUABLE CONSIDERATION, including the indebtedness hereby secured, the receipt and sufficiency of which are hereby acknowledged, the Trustor hereby mortgages, grants, bargains, sells, warrants and conveys to the Trustee, with full power of sale, in trust for the benefit of Beneficiary, and its successors and

assigns forever, under and subject to the terms and conditions hereinafter set forth, all of the Trustor's right, title and interest in and to the Land, including all Improvements now and hereafter located thereon;

TOGETHER WITH all right, title and interest of the Trustor, now owned or hereafter acquired, in and to the following:

(a) All rents, issues, profits, royalties and income with respect to the said real estate and improvements and other benefits derived therefrom, subject to the right, power and authority given to the Trustor to collect and apply same; and

(b) All leases or subleases covering the said real estate and improvements or any portion thereof now or hereafter existing or entered into, including, but not limited to, the Leases (as defined in Section 1.1 hereof), including, without limitation, all cash or security deposits, advance rentals, and deposits or payments of similar nature, and any and all guarantees of the lessee's obligations under any of such leases and subleases; and

(c) All privileges, reservations, allowances, hereditaments and appurtenances belonging or pertaining to the said real estate and improvements and all rights and estates in reversion or remainder and all other interests, estates or other claims, both in law and in equity, which the Trustor now has or may hereafter acquire in the said real estate and improvements; and

(d) All easements, rights-of-way and rights used in connection with the said real estate and improvements or as a means of ingress and egress thereto, and all tenements, hereditaments and appurtenances thereof and thereto, and all water rights and shares of stock evidencing the same; and

(e) Any land lying within the right-of-way of any street, open or proposed, adjoining the said real estate and improvements, and any and all sidewalks, alleys and strips and gores of land adjacent to or used in connection with the said real estate and improvements; and

(f) Any and all buildings and improvements now or hereafter erected on the said real estate, including, but not limited to, all the fixtures, attachments, appliances, equipment, machinery, and other articles attached to said buildings and improvements; and

(g) All materials intended for construction, reconstruction, alteration and repairs of the said real estate and improvements, all of which materials shall be deemed to be included within the said real estate and improvements immediately upon the delivery thereof to the said real estate; and

(h) All fixtures attached to or contained in and used in connection with the said real estate and improvements, including, but not limited to, all machinery, motors, elevators, fittings, radiators, awnings, shades, screens, and all plumbing, heating, lighting,

ventilating, refrigerating, incinerating, air-conditioning and sprinkler equipment and fixtures and appurtenances thereto; and all items of furniture, furnishings, equipment and personal property used or useful in the operation of the said real estate and improvements; and all renewals, substitutions and replacements for any or all of the foregoing, and all proceeds therefrom, whether or not the same are or shall be attached to the said real estate and improvements in any manner; it being mutually agreed, intended and declared that all the aforesaid property placed by the Trustor on and in the said real estate and improvements shall, so far as permitted by law, be deemed to form a part and parcel of the real estate and for the purpose of this Deed of Trust to be real estate and covered by this Deed of Trust; and as to any of the aforesaid property which does not so form a part and parcel of the real estate or does not constitute a "fixture" (as such term is defined in the "Code" (as defined in Section 1.1 hereof), this Deed of Trust is intended to be a security agreement under the Code for the purpose of creating hereby a security interest in such property, which the Trustor hereby grants to the Beneficiary as secured party; and

(i) All the estate, interest, right, title and other claims and demands, including claims or demands with respect to any proceeds of insurance related thereto, which the Trustor now has or may hereafter acquire in the said real estate and improvements or personal property and any and all awards made for the taking by eminent domain, or by any proceeding or purchase in lieu thereof, of the whole or any part of the said real estate and improvements or personal property, including without limitation any awards resulting from a change of grade of streets and awards for severance damages; and

(j) All of the following which relate to the said real estate and improvements: All present and future plans, specifications, licenses, permits and approvals, all present and future management, supply and other contracts and agreements of every sort, and all present and future obligations and indebtedness owed to the Trustor thereunder, all present and future intellectual property, and all other present and future general intangibles; and

(k) All proceeds of all of the foregoing;

the said Land and Improvements and the property and interests described in (a) through (k) above being collectively referred to herein as the "Mortgaged Property;" and as to any portion of the Mortgaged Property constituting property subject to the Code, this Deed of Trust is intended to be a security agreement under the Code for the purpose of creating hereby a security interest in such portion of the Mortgaged Property, which the Trustor hereby grants to the Beneficiary as secured party.

TO HAVE AND TO HOLD, unto the Trustee, and successors in trust with power of sale, for purposes of securing the following (but not exceeding the Loan Amount in the aggregate):

(a) Payment of the Indebtedness evidenced by the Note, and including the principal thereof and interest thereon and any and all modifications, extensions and renewals thereof, and performance of all obligations of the Trustor under the Note; and

(b) Performance and observance by the Trustor of all of the terms, covenants and provisions of this Deed of Trust; and

(c) Performance and observance by the parties thereto of all of the terms, covenants and provisions of the other "Loan Documents" (as defined in Section 1.1 hereof); and

(d) Payment of all sums advanced by the Beneficiary to perform any of the terms, covenants and provisions of this Deed of Trust or any of the other Loan Documents, or otherwise advanced by the Beneficiary pursuant to the provisions hereof or any of such other documents to protect the property hereby mortgaged and pledged; and

(e) Performance and observance of all of the terms, covenants and provisions of any other instrument given to evidence or further secure the payment and performance of any indebtedness hereby secured or any obligation secured hereby; and

(f) Payment of any future or further advances which may be made by the Beneficiary at its sole option to and for the benefit of the Trustor, its successors, assigns and legal representatives.

PROVIDED, HOWEVER, that if the Trustor shall pay the principal and all interest as provided in the Note, and shall pay all other sums herein provided for, or secured hereby, and shall well and truly keep and perform all of the covenants herein contained, then this Deed of Trust shall be released at the cost of the Trustor, otherwise to remain in full force and effect.

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

**ARTICLE I**  
**DEFINITIONS**

Section 1.1. Definitions. The terms defined in this Section (except as otherwise expressly provided or unless the context otherwise requires) for all purposes of this Deed of Trust shall have the respective meanings specified in this Section.

"Agency" means the **UTAH HOUSING CORPORATION.**

"Beneficiary" means **BELLWETHER ENTERPRISE REAL ESTATE CAPITAL, LLC**, an Ohio limited liability company.

"Closing Date" shall be ~~March~~ <sup>April</sup> 5, 2023.

“Code” means the Uniform Commercial Code of the State of Utah as from time to time in effect.

“Deed of Trust” means this Deed of Trust and Assignment of Leases and Rents effective as of the Closing Date, from the Trustor to the Trustee for the benefit of the Beneficiary.

“Default” means, when used in reference to this Deed of Trust or any other document, or in reference to any provision of or obligation under this Deed of Trust or any other document, the occurrence of an event or the existence of a condition which, with the passage of time or the giving of notice, or both, would constitute an Event of Default under this Deed of Trust or such other document, as the case may be.

“Environmental Indemnity Agreement” means the Environmental Compliance Certificate and Indemnity Agreement to be entered into by and between Beneficiary and Trustor in accordance with the terms of the Loan Agreement.

“Environmental Laws” means the Comprehensive Environmental Response, Compensation, and Liability Act, any so-called “Superfund” or “Superlien” law, and any other federal, state or local statute, law, ordinance, code, rule, regulation, order or decree regulating, relating to, or imposing liability or standards of conduct concerning any Hazardous Material, in each case as now or hereafter in force and effect.

“Event of Default” means:

(i) when used in reference to this Deed of Trust, an Event of Default specified in Section 4.1 hereof; and

(ii) when used in reference to any other document, a default or event of default under such document that has continued after the giving of any applicable notice and the expiration of any applicable grace or cure periods.

“Hazardous Material” means any hazardous substance or any pollutant or contaminant defined as such in, or for purposes of, any federal, state or local statute, law, ordinance, code, rule, regulation, order or decree, in each case as now or hereafter in force and effect; asbestos or any substance or compound containing asbestos; polychlorinated biphenyls or any substance or compound containing any polychlorinated biphenyl; petroleum and petroleum products; pesticides; and any other hazardous, toxic or dangerous waste, substance or material.

“Trustor” means **MOUNTAIN VIEW ASSOCIATES OF PAYSON, LLC**, a Utah limited liability company.

“Managing Entity” means **CMN MOUNTAIN VIEW INC.**, a Utah corporation.

“Imposition Escrows” means the escrows provided for in Section 2.2 hereof.

“Impositions” means Impositions as defined in Section 2.6(a) hereof.

“Improvements” means a housing development, to be known as “Mountain View Apartments”, located on the Mortgaged Property.

“Indebtedness” means the principal of, interest on, and all other amounts due at any time under, the Note, this Deed of Trust or any other Loan Document, including prepayment premiums, late charges, default interest, and advances to protect the security of this Deed of Trust.

“Interest Rate” means the rate defined in the Supplemental Note.

“Leases” means the Leases as defined in the Loan Agreement.

“Loan” means the loan to be made by the Beneficiary to the Trustor in accordance with the terms and conditions of the Loan Agreement.

“Loan Agreement” means the Loan Agreement effective as of the Closing Date by and between the Trustor and the Beneficiary.

“Loan Amount” means Seventy-One Thousand and No Hundredths Dollars (\$71,000.00).

“Loan Documents” means the Loan Agreement, the Note, this Deed of Trust, the Security Agreement, the Environmental Indemnity Agreement, and all other documents and instruments at any time evidencing and securing the Indebtedness secured by this Deed of Trust.

“Maturity Date” means April 1, 2061.

“Mortgaged Property” shall have the meaning set forth in the foregoing granting clause of this Deed of Trust.

“Supplemental Note” means the Supplemental Promissory Note of the Trustor dated the Closing Date, in the principal amount of \$71,000.00, made payable to the order of the Beneficiary, issued under the Loan Agreement to evidence the Loan.

“Permitted Encumbrances” means Permitted Encumbrances as defined in the Loan Agreement.

“Rents” means all rents (whether from residential or non-residential space), revenues and other income of the Mortgaged Property, including subsidy payments received from any sources (including, but not limited to payments under any Housing Assistance Payments Contract), parking fees, laundry and vending machine income and fees and charges for food, health care and other services provided at the Mortgaged Property, whether now due, past due, or to become due, and deposits forfeited by tenants.

“Recording Office” means land records of Utah County, State of Utah.

“RHS” means the United States Secretary of Agriculture, acting pursuant to the Housing Act of 1949, 12 U.S.C., Section 1490, p-2.

“Investor” means Wincopin Circle LLLP, a Maryland limited liability limited partnership, and its successors and assigns.

“State” means the State of Utah.

## **ARTICLE II** **COVENANTS AND AGREEMENTS OF TRUSTOR**

Section 2.1. Payment of Indebtedness. The Trustor covenants and agrees that it will pay when due the principal of and interest on the indebtedness hereby secured evidenced by the Note, all other sums which may become due pursuant thereto or hereto, and all other indebtedness hereby secured as described in the foregoing granting clauses of this Mortgage, including, but not limited to, all charges, fees and all other sums to be paid by the Trustor as provided in the Loan Documents, and that it will duly and punctually perform, observe and comply with all of the terms, provisions and conditions herein and in the other Loan Documents provided to be performed and observed by the Trustor. All amounts payable under this Mortgage shall be paid by the Trustor without offset or other reduction. The Note secured hereby, which is hereby incorporated into this Mortgage by reference with the same effect as if set forth in full herein, is in the principal amount of the Loan Amount, and bears interest at the Interest Rate.

Section 2.2. Escrow Deposits. In order to provide moneys for the payment of the Impositions on the Mortgaged Property required to be paid by the Trustor pursuant to Section 2.6 hereof, the premiums on the insurance required to be carried by the Trustor pursuant to Section 2.4 hereof, and the RHS loan guaranty fees required to be paid by the Trustor pursuant to Section 2.4 hereof, the Trustor shall pay to the Beneficiary with each monthly amortization payment on the Note such amount as the Beneficiary shall estimate will be required to accumulate, by the date 30 days prior to the due date of the next annual installment of such Impositions, insurance premiums and guaranty fees, through substantially equal monthly payments by the Trustor to the Beneficiary, amounts sufficient to pay such next annual Impositions and insurance premiums. All such payments shall be held by the Beneficiary in escrow, and the Beneficiary shall not be obligated to pay interest thereon. Amounts held in such escrow shall be applied by the Beneficiary to the payment of the Impositions, insurance premiums and guaranty fees on the Mortgaged Property when due. The Beneficiary may at any time and from time to time waive the requirement for the escrow deposits provided for in this Section. In the event of any such waiver, the Beneficiary may thereafter in its sole discretion elect to require that the Trustor commence making such escrow deposits by giving the Trustor not less than 10 days' written notice of such election. No such waiver shall impair the right of the Beneficiary thereafter to require that such escrow deposits be made. The Trustor may use the reserve for taxes and insurance premiums created under the Loan Agreement for such purposes in accordance with the terms and conditions of the Loan Agreement. Any funds held by Beneficiary pursuant to this

Section 2.2 which remain undisbursed after the applicable payment has been made in full (“Additional Escrow Funds”) shall be retained by Beneficiary and applied to escrows collected for subsequent periods. Any Additional Escrow Funds held by Beneficiary upon maturity or repayment of the Loan shall be applied first to any amounts due to Beneficiary under the provision of the Loan Documents, and any funds remaining after such application shall be refunded to Trustor.

Section 2.3. Completion, Maintenance, Repair and Alterations. The Trustor shall

- (i) Keep the Mortgaged Property in good condition and repair (normal wear and tear excepted);
- (ii) Not remove, demolish or substantially alter any of the improvements which are a part of the Mortgaged Property;
- (iii) Complete promptly and in a good and workmanlike manner any construction, renovation or repair work on or at the Mortgaged Property which may be approved by the Beneficiary;
- (iv) Promptly repair and restore any portion of the Mortgaged Property which may become damaged or be destroyed so as to be of at least equal value and of substantially the same character as prior to such damage or destruction;
- (v) Subject to Section 2.13(b) hereof, pay when due all claims for labor performed and materials furnished to and for the Mortgaged Property;
- (vi) Comply with all laws, ordinances, regulations, covenants, conditions and restrictions now or hereafter affecting the Mortgaged Property or any part thereof or requiring any alterations or improvements;
- (vii) Not commit or permit any waste or deterioration of the Mortgaged Property or any portion thereof;
- (viii) Keep and maintain the Mortgaged Property and abutting grounds, sidewalks, roads, parking and landscape areas in good and neat order and repair and free of nuisance;
- (ix) Not commit, suffer or permit any act to be done in or upon the Mortgaged Property in violation of any law, ordinance or regulation;
- (x) Not initiate or acquiesce in any zoning change or reclassification of the Mortgaged Property without the prior written approval of Beneficiary; and
- (xi) Subject to Section 2.13(b) hereof, keep the Mortgaged Property free and clear of all liens and encumbrances of every sort except Permitted Encumbrances.



Section 2.4. Insurance and USDA Guaranty Fees.

(a) Insurance. Trustor shall secure and maintain in force on the Premises (i) multi-peril property insurance; (ii) public liability insurance; (iii) worker's compensation insurance; (iv) flood insurance (unless Trustor provides Beneficiary with evidence satisfactory to Beneficiary that no part of the Premises is located within an area designated by the Department of Housing and Urban Development as a flood hazard area); and (v) such other insurance as may be required by the Loan Agreement or by law. All such insurance policies must cover all risks required to be covered by Beneficiary, comply with any requirements set forth in the Loan Agreement and be approved by Beneficiary as to amount, form, terms, deductibles and insurer. All such policies of insurance shall name Beneficiary as an additional insured or loss payee, as appropriate. All such insurance policies shall contain a provision that such policies will not be cancelled or amended, which term shall include any reduction in the scope or limits of coverage, without at least thirty (30) days prior written notice to Beneficiary.

(b) Notice of Casualty. In the event of loss or damage to the Premises, or any portion of the Premises, Trustor shall immediately give notice thereof to Beneficiary.

(c) Proceeds of Insurance. Until the Loan has been paid in full, all proceeds of insurance on the Premises, and all causes of action, claims, compensation, awards and recoveries for any damage, condemnation or taking of all or any part of the Premises, or for any damage or injury to it or for any loss or diminution in the value of the Premises, are hereby assigned to and shall be paid to Beneficiary, except as otherwise provided in the Loan Agreement. Beneficiary may participate in any suits or proceedings relating to any such proceeds, causes of action, claims, compensation, awards or recoveries and may join with Trustor in enjoining any loss covered by insurance.

(d) Disposition of Policies on Foreclosure. In the event Beneficiary exercises the power of sale or foreclosure provisions of this Deed of Trust or makes any other transfer of title or assignment of the Premises in extinguishment in whole or in part of the Obligations, all right, title and interest of Trustor in and to the policies of insurance required by Section 5.1 of this Deed of Trust shall inure to the benefit of and pass to the transferee of the interests conveyed under this Deed of Trust or to the purchaser at the foreclosure sale, as the case may be and Beneficiary is hereby irrevocably appointed by Trustor as attorney-in-fact for Trustor to assign any such policy to said purchaser or to Beneficiary, as the case may be, without accounting to Trustor for any unearned premiums thereon.

(e) As used herein, "you" means the Trustor and "we" means the Beneficiary: Unless you provide evidence of the insurance coverage required by the Loan Agreement, we may purchase insurance at your expense to protect our interests in your collateral. This insurance may, but need not, protect your interests. The coverage that we purchase may not pay any claim that you make or any claim that is made against you in connection with the collateral. You may later cancel any insurance purchased by us, but only after providing evidence that you have obtained insurance as required by our agreement. If we purchase insurance for the collateral, you will be responsible for the costs of that insurance, including the insurance premium, interest and any other charges we may impose in connection with the placement of the

insurance, until the effective date of the cancellation or expiration of the insurance. The costs of the insurance may be added to your total outstanding balance or obligation. The costs of the insurance may be more than the cost of insurance you may be able to obtain on your own.

(f) The Loan shall at all times be guaranteed by RHS under its Section 538 Rural Housing Program. In connection therewith, an annual guarantee fee may be required by RHS. As set forth more fully in section 2.4 of the Loan Agreement, to the extent the guarantee fee is required by RHS at any time after the date hereof, Beneficiary shall require Trustor to pay the guarantee fee to Beneficiary in monthly installments upon written notice to Beneficiary that such guarantee fee is due and payable.

Section 2.5. Delivery of Policies; Payment of Premiums. The Trustor shall furnish the Beneficiary with the original of all required policies of insurance or certificates satisfactory to the Beneficiary. At least 30 days prior to the expiration of each such policy, the Trustor shall furnish the Beneficiary with evidence satisfactory to the Beneficiary of the payment of the premium and the reissuance of a policy continuing insurance in force as required by this Deed of Trust.

Section 2.6. Taxes and Other Impositions.

(a) The Trustor shall pay or cause to be paid, at least 10 days prior to delinquency, all real property taxes and assessments, general and special, and all other taxes and assessments of any kind or nature whatsoever, including without limitation any non-governmental levies or assessments such as maintenance charges, owner association dues or charges or fees, levies or charges resulting from covenants, conditions and restrictions affecting the Mortgaged Property, which are assessed or imposed upon the Mortgaged Property, or become due and payable, and which create, may create or appear to create a lien upon the Mortgaged Property, or any part thereof (all of which taxes, assessments and other governmental charges and non-governmental charges of the above-described or like nature are hereinafter referred to as “**Impositions**”); provided however, that if, by law, any such Imposition is payable, or at the option of the taxpayer may be paid, in installments, the Trustor may pay the same together with any accrued interest on the unpaid balance of such Imposition in installments as the same become due and before any fine, penalty, interest or cost may be added thereto for the nonpayment of any such installment and interest. With respect to any Impositions for which Beneficiary has escrowed funds pursuant to Section 2.2 above, and regarding which Beneficiary has elected to directly pay the payee, Trustor shall not be in breach of this Section 2.6(a) for any failure on the part of Beneficiary to timely make such payment.

(b) The Trustor shall furnish to the Beneficiary within 30 days after the date upon which any Imposition is due and payable by the Trustor, official receipts of the appropriate taxing authority, or other proof satisfactory to the Beneficiary, evidencing the payment thereof.

(c) The Trustor shall have the right before any delinquency occurs to contest or object to the amount or validity of any Imposition by appropriate legal proceedings properly instituted and prosecuted in such manner as shall stay the collection of the contested Impositions and prevent the sale or forfeiture of the Mortgaged Property to collect the same; provided that no

such contest or objection shall be deemed or construed in any way as relieving, modifying or extending the Trustor's covenants to pay any such Imposition at the time and in the manner provided in this Section unless the Trustor has given prior written notice to the Beneficiary of the Trustor's intent to so contest or object to an Imposition, and unless, at the Beneficiary's sole option, (i) the Trustor shall demonstrate to the Beneficiary's satisfaction that legal proceedings instituted by the Trustor contesting or objecting to such impositions shall conclusively operate to prevent the sale or forfeiture of the Mortgaged Property, or any part thereof, to satisfy such Imposition prior to final determination of such proceedings; and/or (ii) the Trustor shall furnish a good and sufficient bond or surety as requested by and satisfactory to the Beneficiary, or a good and sufficient undertaking as may be required or permitted by law to accomplish a stay of any such sale or forfeiture of the Mortgaged Property during the pendency of such contest, adequate fully to pay all such contested Impositions and all interest and penalties upon the adverse determination of such contest.

Section 2.7. Utilities. The Trustor shall pay or cause to be paid when due all utility charges which are incurred by the Trustor or others for the benefit of or service to the Mortgaged Property or which may become a charge or lien against the Mortgaged Property for gas, electricity, water or sewer services furnished to the Mortgaged Property and all other assessments or charges of a similar nature, whether public or private, affecting the Mortgaged Property or any portion thereof, whether or not such assessments or charges are liens thereon.

Section 2.8. Actions by Beneficiary to Preserve Mortgaged Property. Should the Trustor fail to make any payment or to do any act as and in the manner provided herein or in any of the other Loan Documents, subject to any notice and cure period, the Beneficiary in its own discretion, without obligation so to do and without releasing the Trustor from any obligation, may make or do the same in such manner and to such extent as it may deem necessary to protect the security hereof. In connection therewith, without limiting its general powers, the Beneficiary shall have and is hereby given the right, but not the obligation, (i) to enter upon and take possession of the Mortgaged Property; (ii) to make additions, alterations, repairs and improvements to the Mortgaged Property which it may consider necessary and proper to keep the Mortgaged Property in good condition and repair; (iii) to appear and participate in any action or proceeding affecting or which may affect the Mortgaged Property, the security hereof or the rights or powers of the Beneficiary; (iv) to pay any Impositions asserted against the Mortgaged Property and to do so according to any bill, statement or estimate procured from the appropriate office without inquiry into the accuracy of the bill, statement or estimate or into the validity of any Imposition; (v) to pay, purchase, contest or compromise any encumbrance, claim, charge, lien or debt which in the judgment of the Beneficiary may affect or appears to affect the Mortgaged Property or the security of this Deed of Trust or which may be prior or superior hereto; and (vii) in exercising such powers, to pay necessary expenses, including employment of and payment of compensation to counsel or other necessary or desirable consultants, contractors, agents and other employees. The Trustor irrevocably appoints the Beneficiary its true and lawful attorney in fact, at the Beneficiary's election, to do and cause to be done all or any of the foregoing only in the event the Beneficiary shall be entitled to take any or all of the action provided for in this Section. The Trustor shall immediately, upon demand therefor by the Beneficiary, pay all costs and expenses incurred by the Beneficiary in connection with the exercise by the Beneficiary of the foregoing rights, including without limitation, costs of

evidence of title, court costs, appraisals, surveys and reasonable attorneys fees and expenses, all of which shall constitute additional indebtedness secured by this Deed of Trust immediately due and payable, with interest thereon from the date of such demand until paid at the default rate of interest as set forth in the Note.

Section 2.9. Damage and Destruction.

(a) The Trustor shall give the Beneficiary prompt notice of any damage to or destruction of any portion or all of the Mortgaged Property, and the provisions contained in the following paragraphs of this Section shall apply in the event of any such damage or destruction.

(b) In the case of loss in excess of \$150,000.00 covered by policies of insurance, the Beneficiary is hereby authorized at its option either (i) to settle and adjust any claim under such policies without the consent of the Trustor, or (ii) to allow the Trustor to agree with the insurance company or companies on the amount to be paid upon the loss; and in any case the Beneficiary shall, and is hereby authorized to, collect and receipt for any such insurance proceeds; and the reasonable expenses incurred by the Beneficiary in the adjustment and collection of insurance proceeds shall be so much additional indebtedness secured by this Deed of Trust, and shall be reimbursed to the Beneficiary upon demand.

(c) If any portion of the Mortgaged Property is wholly or partially damaged or destroyed by fire or any other cause, and such damage causes a loss in excess of \$150,000.00, and (a) all insurance proceeds received by Beneficiary together with any cash funds delivered by Trustor to Beneficiary are sufficient to fully restore and repair the Mortgaged Property as determined by Beneficiary, in Beneficiary's sole discretion, and (b) Trustor is not in default under any of the Loan Documents, Beneficiary shall disburse such proceeds in accordance with its general procedures for disbursements of construction loan proceeds toward the cost of such restoration and repair. If Beneficiary determines that such proceeds together with any cash funds provided by Trustor are insufficient to fully restore the Mortgaged Property, Beneficiary will apply any sums received by Beneficiary under this Section first to the payment of all Beneficiary's costs and expenses (including but not limited to legal fees and costs) incurred in obtaining those sums, and then, in Beneficiary's sole discretion and without regard to the adequacy of its security, to the payment of the Loan. If the amount of such proceeds exceeds the cost of restoration of the Mortgaged Property, Beneficiary shall apply the excess proceeds to the payment of the Loan. If the proceeds of insurance are used to restore the Mortgaged Property and if the total estimated cost to restore the Mortgaged Property exceeds the amount of the proceeds of insurance, Trustor shall deliver to Beneficiary prior to any disbursement of the proceeds of insurance, an amount equal to such difference in cash or cash equivalents satisfactory to Beneficiary. After all obligations of Trustor under the Loan Documents have been paid in full, then all proceeds in excess of such obligations will be paid to the permitted subordinate mortgagees in order of priority.

For losses that do not exceed \$150,000.00, Trustor shall have the right to settle and adjust such claims with the insurance company, provided that any funds received pursuant to such negotiations shall be used solely to repair the damage to the Property caused by such casualty loss or to reimburse Trustor for funds expended for such purpose.

Section 2.10. Eminent Domain.

(a) Should the Mortgaged Property 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, or should the Trustor receive any notice or other information regarding any such proceeding, the Trustor shall give prompt written notice thereof to the Beneficiary, and the provisions contained in the following paragraphs of this Section shall apply, provided that the same shall be subject to the provisions of Section 7.6 of the Loan Agreement.

(b) The 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. The Beneficiary shall also be entitled to make any compromise or settlement in connection with such taking or damage. All proceeds of compensation, awards, damages, rights of action and proceeds awarded to the Trustor are hereby assigned to the Beneficiary and the Trustor shall execute such further assignments of such proceeds as the Beneficiary may require.

(c) In the event that any portion of the Mortgaged Property are taken or damaged as aforesaid, all such proceeds shall be applied upon the indebtedness secured by this Deed of Trust or applied to the repair and restoration of the Mortgaged Property, as the Beneficiary in its sole discretion shall elect.

(d) In the event that the Beneficiary shall elect that such proceeds are to be applied to the repair and restoration of the Mortgaged Property, the Trustor hereby covenants promptly to repair and restore the same. In such event such proceeds shall be made available, from time to time, to pay or reimburse the costs of such repair and restoration in the manner and on the terms provided in the Loan Agreement for disbursements of construction loan proceeds.

Section 2.11. Inspection of Mortgaged Property. The Beneficiary, or its agents, representatives or workmen, are authorized to enter at any reasonable time during normal business hours, upon giving reasonable prior notice, upon or in any part of the Mortgaged Property for the purpose of inspecting the same and for the purpose of performing any of the acts it is authorized to perform under the terms of this Deed of Trust or any of the other Loan Documents.

Section 2.12. Inspection of Books and Records.

(a) The Trustor shall keep and maintain full and correct records showing in detail the income and expenses of the Mortgaged Property and shall make such book and record and all supporting vouchers and data available for examination by the Beneficiary and its agents at any time and from time to time on request at the offices of the Beneficiary, or at such other location as may be mutually agreed upon, upon reasonable notice, during normal business hours.

(b) The Trustor shall also furnish to the Beneficiary such other information and data with respect to the Mortgaged Property as may be requested by the Beneficiary.

Section 2.13. Title, Liens and Conveyances.

(a) The Trustor represents and warrants that it holds good and marketable title to the Mortgaged Property, subject only to Permitted Encumbrances.

(b) Except for Permitted Encumbrances, the Trustor shall not create, suffer or permit to be created or filed against the Mortgaged Property, or any part thereof or interest therein, any mortgage lien or other lien, charge or encumbrance, either superior or inferior to the lien of this Deed of Trust; provided however that the Trustor shall have the right to impose additional indebtedness on the Property subsequent to the date of this Deed of Trust with the prior written consent of the Beneficiary. The Trustor shall have the right to contest in good faith the validity of any such lien, charge or encumbrance, provided that the Trustor shall first deposit with the Beneficiary a bond, title insurance or other security satisfactory to the Beneficiary in such amounts or form as the Beneficiary shall require; provided further that the Trustor shall thereafter diligently proceed to cause such lien, encumbrance or charge to be removed and discharged. If the Trustor shall fail to discharge or so contest any such lien, encumbrance or charge, then, in addition to any other right or remedy of the Beneficiary, the 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 for the amount claimed or otherwise giving security for such claim, or in such manner as is or may be prescribed by law and any amounts expended by the Beneficiary in so doing shall be so much additional indebtedness secured by this Deed of Trust. Except for Permitted Encumbrances and liens, charges and encumbrances being contested as provided above, in the event that the Trustor shall suffer or permit any superior or junior lien, charge or encumbrance to be attached to the Mortgaged Property and shall fail to discharge same as described above, the Beneficiary, at its option, shall have the unqualified right to accelerate the maturity of the Note causing the full principal balance and accrued interest on the Note to become immediately due and payable without notice to the Trustor.

(c) In the event title to the Mortgaged Property is now or hereafter becomes vested in a trustee, any prohibition or restriction contained herein upon the creation of any lien against the Mortgaged Property shall also be construed as a similar prohibition or limitation against the creation of any lien or security interest upon the beneficial interest under such trust.

(d) In the event that the Trustor shall sell, transfer, convey or assign the title to all or any portion of the Mortgaged Property, whether by operation of law, voluntarily, or otherwise, or the Trustor shall contract to do any of the foregoing, the Beneficiary, at its option, shall have the unqualified right to accelerate the maturity of the Note causing the full principal balance and accrued interest on the Note to become immediately due and payable without notice to the Trustor.

(e) Any waiver by the Beneficiary of the provisions of this Section shall not be deemed to be a waiver of the right of the Beneficiary to insist upon strict compliance with the provisions of this Section in the future.

Section 2.14. Taxes Affecting Deed of Trust.

(a) If at any time any federal, State or municipal law shall require any documentary stamps or other tax hereon or on the Note, or shall require payment of any tax upon the indebtedness secured hereby, then the said indebtedness and the accrued interest thereon shall be and become due and payable at the election of the Beneficiary upon 30 days' notice to the Trustor; provided, however, that said election shall be unavailing and this Deed of Trust and the Note shall be and remain in effect, if the Trustor lawfully may pay for such stamps or such tax including interest and penalties thereon to or on behalf of the Beneficiary and the Trustor does in fact pay, when payable, for all such stamps or such tax, as the case may be, including interest and penalties thereon.

(b) In the event of the enactment after the date of this Deed of Trust of any law of the State in which the Mortgaged Property are located deducting from the value of the Mortgaged Property for the purpose of taxation any lien thereon, or imposing upon the Beneficiary the payment of the whole or any part of the taxes or assessments or charges or liens herein required to be paid by the Trustor, or changing in any way the laws relating to the taxation of mortgages or debts secured by mortgages or the Beneficiary's interest in the Mortgaged Property, or the manner of collection of taxes, so as to affect this Deed of Trust or the debt secured hereby or the holder hereof, then, and in any such event, the Trustor, upon demand by the Beneficiary, shall pay such taxes or assessments, or reimburse the Beneficiary therefor; provided, however, that if, in the opinion of counsel for the Beneficiary, (i) it might be unlawful to require Trustor to make such payment or (ii) the making of such payment might result in the imposition of interest beyond the maximum amount permitted by law, then, and in such event, the Beneficiary may elect, by notice in writing given to the Trustor, to declare all of the indebtedness secured hereby to be due and payable within 30 days from the giving of such notice. Notwithstanding the foregoing, it is understood and agreed that the Trustor is not obligated to pay any portion of Beneficiary's federal or State income tax.

Section 2.15. Environmental Matters.

(a) The Trustor hereby represents and warrants to the Beneficiary that, except as disclosed in the environmental site assessment referred to in the Loan Agreement, neither the Trustor nor any of its affiliates or subsidiaries, nor, to the best of the Trustor's knowledge, any other person or entity, has ever caused or permitted any Hazardous Material to be placed, held, located or disposed of on, under or at the Mortgaged Property or any part thereof, and that none of the property described above has ever been used by the Trustor or any of its affiliates or subsidiaries, or, to the best of the Trustor's knowledge, by any other person or entity, as a treatment, storage or disposal site, whether permanent or temporary, for any Hazardous Material, and that there are no underground storage tanks located on the Mortgaged Property.

(b) Without limitation on any other provision hereof, the Trustor hereby agrees to indemnify and hold the Beneficiary harmless from and against any and all losses, liabilities, damages, injuries, costs, expenses and claims of any kind whatsoever, including, without limitation, any losses, liabilities, damages, injuries, costs, expenses or claims asserted or arising under any Environmental Law, paid, incurred or suffered by or asserted against the

Beneficiary as a direct or indirect result of any of the following, regardless of whether or not caused by, or within the control of, the Trustor: (i) the presence of any Hazardous Material on or under, or the escape, seepage, leakage, spillage, discharge, emission, discharging or release of any Hazardous Material from the Mortgaged Property or any part thereof, or (ii) any liens against the Mortgaged Property permitted or imposed by any Environmental Law, or any actual or asserted liability or obligations of the Trustor or any of its affiliates or subsidiaries under any Environmental Law, or (iii) any actual or asserted liability or obligations of the Beneficiary or any of its affiliates or subsidiaries under any Environmental Law relating to the Mortgaged Property.

(c) The representations, warranties, covenants, indemnities and obligations provided for in this Section 2.15 shall be continuing and shall survive the payment, performance, satisfaction, discharge, cancellation, termination, release and foreclosure of this Deed of Trust; provided, however, that such representations, warranties, covenants, indemnities and obligations shall not apply with respect to Hazardous Materials which are first placed on the Mortgaged Property on or after the date on which the Beneficiary or any other party obtains title to and possession of the Mortgaged Property as a result of an exercise by the Beneficiary of its remedies under this Deed of Trust or any of the other Loan Documents or as a result of a conveyance of title to the Mortgaged Property by the Trustor to the Beneficiary or such other party in lieu of such exercise of remedies.

Section 2.16. Estoppel Letters. The Trustor shall furnish from time to time within 15 days after the Beneficiary's request, a written statement, duly acknowledged, of the amount due upon this Deed of Trust and whether any alleged offsets or defenses exist against the indebtedness secured by this Deed of Trust. Beneficiary shall make such request no more frequently than once per calendar quarter; provided, however, that Beneficiary may make such request more frequently if (a) any event of default has occurred and is continuing, or (b) such information is requested by USDA.

Section 2.17. RHS Covenants Regarding Occupancy. Trustor shall do all of the following until the Maturity Date (with respect to the requirement to maintain the covenants set forth in this Section 2.17, the Maturity Date shall remain fixed notwithstanding whether the Note is voluntarily or involuntarily paid in full prior to such date or there occurs a Trustee's sale hereunder):

(a) Maintain the Mortgaged Property in accordance with 7 C.F.R. Section 3565.352.

(b) Without limiting the generality of Subsection (a), make the Mortgaged Property available for occupancy only by families or individuals whose incomes at the time of initial occupancy do not exceed one hundred fifteen percent (115%) of the area median income. After initial occupancy, a tenant's income may exceed these limits. "Area median income" shall be determined and adjusted for family size in accordance with guidance on the subject issued by RHS. To the extent utilities are paid by the tenant, "rent" or "rental" shall consist of the rent for the dwelling unit payable under the lease plus an allowance for utilities determined in accordance with administrative guidance issued by RHS.



(c) Lease each dwelling unit in the Mortgaged Property for a rental that does not exceed thirty percent (30%) of one hundred fifteen percent (115%) of area median income, adjusted for family size.

(d) Establish rents for dwelling units in the Mortgaged Property so that, on an annual basis, the average rent for dwelling units in the Mortgaged Property does not exceed thirty (30%) of one hundred percent (100%) of area median income, adjusted for family size.

(e) Lease dwelling units only to tenants who are United States citizens or a non-citizen who is a qualified alien as defined in 7 C.F.R. Section 3565.3.

(f) Trustor will obtain, complete, and maintain on file a certification by each prospective tenant of its income, using a form acceptable to Beneficiary. Trustor shall make a good faith effort to verify that the income information provided by a prospective tenant is accurate by taking one or more of the following steps as a part of the verification process: (1) obtain a pay stub for the most recent pay period, (2) obtain an income tax return for the most recent tax year, (3) conduct a credit report or similar search, (4) obtain an income verification from the applicant's current employer, (5) obtain an income verification from the Social Security Administration if the applicant receives assistance from either of such agencies, or (6) if the applicant is unemployed and does not have an income tax return, obtain another form of independent verification.

### **ARTICLE III**

#### **ASSIGNMENT OF RENTS AND LEASES**

##### Section 3.1. Assignment of Rents.

(a) As part of the consideration for the Indebtedness, Trustor absolutely and unconditionally assigns and transfers to Beneficiary all Rents. It is the intention of Trustor to establish a present, absolute and irrevocable transfer and assignment to Beneficiary of all Rents and to authorize and empower Beneficiary to collect and receive all Rents without the necessity of further action on the part of Trustor. Promptly upon request by Beneficiary, Trustor agrees to execute and deliver such further assignments as Beneficiary may from time to time require. Trustor and Beneficiary intend this assignment of Rents to be immediately effective and to constitute an absolute present assignment and not an assignment for additional security only. For purposes of giving effect to this absolute assignment of Rents, and for no other purpose, Rents shall not be deemed to be a part of the "Mortgaged Property," as that term is defined in Article 1. However, if this present, absolute and unconditional assignment of Rents is not enforceable by its terms under the laws of the State, then the Rents shall be included as a part of the Mortgaged Property and it is the intention of the Trustor that in this circumstance this Deed of Trust create and perfect a lien on Rents in favor of Beneficiary, which lien shall be effective as of the date of this Deed of Trust.

(b) After the occurrence of an Event of Default which constitutes the expiration of all applicable notice, grace and cure periods, Trustor authorizes Beneficiary to collect, sue for and

compromise Rents and directs each tenant of the Mortgaged Property to pay all Rents to, or as directed by, Beneficiary, and Trustor shall, upon Trustor's receipt of any Rents from any sources (including, but not limited to subsidy payments under any Housing Assistance Payments Contract), pay the total amount of such receipts to the Beneficiary. However, until the occurrence of an Event of Default, Beneficiary hereby grants to Trustor a revocable license to collect and receive all Rents, to hold all Rents in trust for the benefit of Beneficiary and to apply all Rents to pay the installments of interest and principal then due and payable under the Note and the other amounts then due and payable under the other Loan Documents, including Imposition Escrows, and to pay the current costs and expenses of managing, operating and maintaining the Mortgaged Property, including utilities, taxes and insurance premiums (to the extent not included in Imposition Escrows), tenant improvements and other capital expenditures. Unless an Event of Default has occurred and is continuing, the Rents remaining after application pursuant to the preceding sentence may be retained by Trustor free and clear of, and released from, Beneficiary's rights with respect to Rents under this Deed of Trust. From and after the occurrence and continuing beyond the expiration of all applicable notice, grace and cure periods of an Event of Default, and without the necessity of Beneficiary entering upon and taking and maintaining control of the Mortgaged Property directly, or by a receiver, Trustor's license to collect Rents shall automatically terminate and Beneficiary shall without notice be entitled to all Rents as they become due and payable, including Rents then due and unpaid. Trustor shall pay to Beneficiary upon demand all Rents to which Beneficiary is entitled. At any time on or after the date of Beneficiary's demand for Rents, Beneficiary may give, and Trustor hereby irrevocably authorizes Beneficiary to give, notice to all tenants of the Mortgaged Property instructing them to pay all Rents to Beneficiary, no tenant shall be obligated to inquire further as to the occurrence or continuance of an Event of Default, and no tenant shall be obligated to pay to Trustor any amounts which are actually paid to Beneficiary in response to such a notice. Any such notice by Beneficiary shall be delivered to each tenant personally, by mail or by delivering such demand to each rental unit. Trustor shall not interfere with and shall cooperate with Beneficiary's collection of such Rents.

(c) Trustor represents and warrants to Beneficiary that Trustor has not executed any prior assignment of Rents (other than an assignment of Rents securing indebtedness that will be paid off and discharged with the proceeds of the loan evidenced by the Note and/or an assignment of Rents made subordinate to this Deed of Trust through a subordination agreement), that Trustor has not performed, and Trustor covenants and agrees that it will not perform, any acts and has not executed, and shall not execute, any instrument which would prevent Beneficiary from exercising its rights under this Section 3.1, and that at the time of execution of this Deed of Trust there has been no anticipation or prepayment of any Rents for more than two months prior to the due dates of such Rents. Trustor shall not collect or accept payment of any Rents more than two months prior to the due dates of such Rents.

(d) If an Event of Default has occurred and is continuing, Beneficiary may, regardless of the adequacy of Beneficiary's security or the solvency of Trustor and even in the absence of waste, enter upon and take and maintain full control of the Mortgaged Property in order to perform all acts that Beneficiary in its discretion determines to be necessary or desirable for the operation and maintenance of the Mortgaged Property, including the execution, cancellation or modification of Leases, the collection of all Rents, the making of repairs to the Mortgaged Property and the execution or termination of contracts providing for the management, operation or

maintenance of the Mortgaged Property, for the purposes of enforcing the assignment of Rents pursuant to Section 3.1(a), protecting the Mortgaged Property or the security of this Deed of Trust, or for such other purposes as Beneficiary in its discretion may deem necessary or desirable. Alternatively, if an Event of Default has occurred and is continuing, regardless of the adequacy of Beneficiary's security, without regard to Trustor's solvency and without the necessity of giving prior notice (oral or written) to Trustor, Beneficiary may apply to any court having jurisdiction for the appointment of a receiver for the Mortgaged Property to take any or all of the actions set forth in the preceding sentence. If Beneficiary elects to seek the appointment of a receiver for the Mortgaged Property at any time after an Event of Default has occurred and is continuing, Trustor, by its execution of this Deed of Trust, expressly consents to the appointment of such receiver, including the appointment of a receiver *ex parte* if permitted by applicable law. Beneficiary or the receiver, as the case may be, shall be entitled to receive a reasonable fee for managing the Mortgaged Property. Immediately upon appointment of a receiver or immediately upon the Beneficiary's entering upon and taking possession and control of the Mortgaged Property, Trustor shall surrender possession of the Mortgaged Property to Beneficiary or the receiver, as the case may be, and shall deliver to Beneficiary or the receiver, as the case may be, all documents, records (including records on electronic or magnetic media), accounts, surveys, plans, and specifications relating to the Mortgaged Property and all security deposits and prepaid Rents. In the event Beneficiary takes possession and control of the Mortgaged Property, Beneficiary may exclude Trustor and its representatives from the Mortgaged Property. Trustor acknowledges and agrees that the exercise by Beneficiary of any of the rights conferred under this Section 3.1 shall not be construed to make Beneficiary a mortgagee-in-possession of the Mortgaged Property so long as Beneficiary has not itself entered into actual possession of the Land and Improvements.

(e) If Beneficiary enters the Mortgaged Property, Beneficiary shall be liable to account only to Trustor and only for those Rents actually received. Beneficiary shall not be liable to Trustor, anyone claiming under or through Trustor or anyone having an interest in the Mortgaged Property, by reason of any act or omission of Beneficiary under this Section 3.1, and Trustor hereby releases and discharges Beneficiary from any such liability to the fullest extent permitted by law. The foregoing shall be inapplicable in the event of gross negligence or willful misconduct by Beneficiary or its agents.

(f) If the Rents are not sufficient to meet the costs of taking control of and managing the Mortgaged Property and collecting the Rents, any funds expended by Beneficiary for such purposes shall become an additional part of the Indebtedness.

(g) Any entering upon and taking of control of the Mortgaged Property by Beneficiary or the receiver, as the case may be, and any application of Rents as provided in this Deed of Trust shall not cure or waive any Event of Default or invalidate any other right or remedy of Beneficiary under applicable law or provided for in this Deed of Trust.

### Section 3.2. Assignment of Leases.

(a) As part of the consideration for the Indebtedness, Trustor absolutely and unconditionally assigns and transfers to Beneficiary all of Trustor's right, title and interest in, to and under the Leases, including Trustor's right, power and authority to modify the terms of any such

Lease, or extend or terminate any such Lease. It is the intention of Trustor to establish a present, absolute and irrevocable transfer and assignment to Beneficiary of all of Trustor's right, title and interest in, to and under the Leases. Trustor and Beneficiary intend this assignment of the Leases to be immediately effective and to constitute an absolute present assignment and not an assignment for additional security only. For purposes of giving effect to this absolute assignment of the Leases, and for no other purpose, the Leases shall not be deemed to be a part of the "Mortgaged Property," as that term is defined in Article 1. However, if this present, absolute and unconditional assignment of the Leases is not enforceable by its terms under the laws of the State, then the Leases shall be included as a part of the Mortgaged Property and it is the intention of the Trustor that in this circumstance this Deed of Trust create and perfect a lien on the Leases in favor of Beneficiary, which lien shall be effective as of the date of this Deed of Trust.

(b) Until Beneficiary gives notice to Trustor of Beneficiary's exercise of its rights under this Section 3.2, Trustor shall have all rights, power and authority granted to Trustor under any Lease (except as otherwise limited by this Section or any other provision of this Deed of Trust), including the right, power and authority to modify the terms of any Lease or extend or terminate any Lease. Upon the occurrence of an Event of Default, the permission given to Trustor pursuant to the preceding sentence to exercise all rights, power and authority under Leases shall automatically terminate. Trustor shall comply with and observe Trustor's obligations under all Leases, including Trustor's obligations pertaining to the maintenance and disposition of tenant security deposits.

(c) Trustor acknowledges and agrees that the exercise by Beneficiary, either directly or by a receiver, of any of the rights conferred under this Section 3.2 shall not be construed to make Beneficiary a mortgagee-in-possession of the Mortgaged Property so long as Beneficiary has not itself entered into actual possession of the Land and the Improvements. The acceptance by Beneficiary of the assignment of the Leases pursuant to Section 3.2(a) shall not at any time or in any event obligate Beneficiary to take any action under this Deed of Trust or to expend any money or to incur any expenses. Beneficiary shall not be liable in any way for any injury or damage to person or property sustained by any person or persons, firm or corporation in or about the Mortgaged Property. Prior to Beneficiary's actual entry into and taking possession of the Mortgaged Property, Beneficiary shall not (i) be obligated to perform any of the terms, covenants and conditions contained in any Lease (or otherwise have any obligation with respect to any Lease); (ii) be obligated to appear in or defend any action or proceeding relating to the Lease or the Mortgaged Property; or (iii) be responsible for the operation, control, care, management or repair of the Mortgaged Property or any portion of the Mortgaged Property. The execution of this Deed of Trust by Trustor shall constitute conclusive evidence that all responsibility for the operation, control, care, management and repair of the Mortgaged Property is and shall be that of Trustor, prior to such actual entry and taking of possession.

(d) Upon delivery of notice by Beneficiary to Trustor of Beneficiary's exercise of Beneficiary's rights under this Section 3.2 at any time after the occurrence of an Event of Default, and without the necessity of Beneficiary entering upon and taking and maintaining control of the Mortgaged Property directly, by a receiver, or by any other manner or proceeding permitted by the laws of the State, Beneficiary immediately shall have all rights, powers and authority granted

to Trustor under any Lease, including the right, power and authority to modify the terms of any such Lease, or extend or terminate any such Lease.

(e) Trustor shall, promptly upon Beneficiary's request, deliver to Beneficiary an executed copy of each residential Lease then in effect. All Leases for residential dwelling units shall be on forms approved by Beneficiary, shall be for initial terms of at least six months and not more than two years, and shall not include options to purchase. If customary in the applicable market, residential Leases with terms of less than six months may be permitted with Beneficiary's prior written consent.

(f) With the exception of cable television, internet services agreements and laundry leases, Trustor shall not lease any portion of the Mortgaged Property for non-residential use except with the prior written consent of Beneficiary and Beneficiary's prior written approval of the Lease agreement. Trustor shall not modify the terms of, or extend or terminate, any Lease for non-residential use (including any Lease in existence on the date of this Deed of Trust) without the prior written consent of Beneficiary. Trustor shall, without request by Beneficiary, deliver an executed copy of each non-residential Lease to Beneficiary promptly after such Lease is signed. All non-residential Leases, including renewals or extensions of existing Leases, shall specifically provide that (1) such Leases are subordinate to the lien of this Deed of Trust (unless waived in writing by Beneficiary); (2) the tenant shall attorn to Beneficiary and any purchaser at a foreclosure sale, such attornment to be self-executing and effective upon acquisition of title to the Mortgaged Property by any purchaser at a foreclosure sale or by Beneficiary in any manner; (3) the tenant agrees to execute such further evidences of attornment as Beneficiary or any purchaser at a foreclosure sale may from time to time request; (4) the Lease shall not be terminated by foreclosure or any other transfer of the Mortgaged Property; (5) after a foreclosure sale of the Mortgaged Property, Beneficiary or any other purchaser at such foreclosure sale may, at Beneficiary's or such purchaser's option, accept or terminate such Lease; and (6) the tenant shall, upon receipt after the occurrence of an Event of Default of a written request from Beneficiary, pay all Rents payable under the Lease to Beneficiary.

(g) Trustor shall not receive or accept Rent under any Lease (whether residential or non-residential) for more than two months in advance.

Section 3.3. Declaration of Subordination to Leases. At the option of the Beneficiary, this Deed of Trust shall become subject and subordinate, in whole or in part (but not with respect to priority of entitlement to insurance proceeds or any award in condemnation) to any and all leases and subleases of all or any part of the Mortgaged Property upon the execution by the Beneficiary and recording thereof, at any time hereafter, in the Recording Office, of a unilateral declaration to that effect.

#### **ARTICLE IV**

#### **EVENTS OF DEFAULT AND REMEDIES**

Section 4.1. Events of Default. Any one or more of the following shall constitute an Event of Default under this Deed of Trust:

(a) An Event of Default occurs under the Loan Agreement or any other Loan Document, or

(b) A Default by the Trustor shall occur under any provision of this Deed of Trust and is not cured within thirty (30) days written notice from Beneficiary to Trustor; provided, however, that if Beneficiary determines in its sole discretion that Trustor is diligently pursuing the cure of a non-monetary default and if Beneficiary determines in its sole discretion that Trustor can reasonably cure such non-monetary default if given more time, then so long as Trustor is diligently pursuing such cure, the non-monetary default shall not constitute an Event of Default until ninety (90) days after the occurrence of such Default.

The Investor shall receive a courtesy copy of any notice of an Event of Default provided to Trustor (Investor, however, shall have no recourse against Trustee or Beneficiary if it fails to provide such courtesy notice). Such courtesy notice shall be sent to the Investor at the addresses set forth herein. The Investor, and its successors and assigns under the Partnership Agreement, shall have the same period of time to cure an Event of Default as Trustor, but shall have no obligation to do so. Such time to cure an Event of Default by the Investor, or its successors or assigns shall run concurrently with the time within which the Trustor must cure any Event of Default, and shall not expand or be in addition to the time within which the Trustor must cure such Event of Default.

Section 4.2. Acceleration; Remedies. At any time during the existence of an Event of Default, Beneficiary, at Beneficiary's option, may declare the Indebtedness to be immediately due and payable without further demand, and may invoke the power of sale and any other remedies permitted by applicable law or provided in this Deed of Trust or in any other Loan Document. Trustor acknowledges that the power of sale herein granted may be exercised by Beneficiary without prior judicial hearing. Trustor has the right to bring an action to assert the nonexistence of an Event of Default or any other defense of Trustor to acceleration and sale. Beneficiary shall be entitled to collect all costs and expenses incurred in pursuing such remedies, including attorneys' fees and costs of documentary evidence, abstracts and title reports.

If Beneficiary invokes the power of sale, Beneficiary or Trustee shall mail to Trustor, in the manner provided in Section 5.13 of this Deed of Trust, notice of Beneficiary's election to cause the Mortgaged Property to be sold. Trustee shall give notice of sale and shall sell the Mortgaged Property according to the laws of the State of Oregon. Trustee may sell the Mortgaged Property at the time and place and under the terms designated in the notice of sale in one or more parcels and in such order as Trustee may determine at public auction to the highest bidder for cash. Trustee may postpone sale of all or any part of the Mortgaged Property by public announcement at the time and place of any previously scheduled sale. Beneficiary or Beneficiary's designee may purchase the Mortgaged Property at any sale.

Trustee shall deliver to the purchaser at the sale, within a reasonable time after the sale, a Trustee's deed conveying the Mortgaged Property so sold without any covenant or warranty, express or implied. The recitals in the Trustee's deed shall be prima facie evidence of the truth of the statements made therein. Trustee shall apply the proceeds of the sale in the following order: (a) to all costs and expenses of the sale, including Trustee's and attorneys' fees and costs of title

evidence; (b) to the Indebtedness in such order as Beneficiary, in Beneficiary's discretion, directs; and (c) the excess, if any, to the person or persons legally entitled thereto.

Nothing in this Section 4.2 is intended to limit or modify the provisions of Section 4.11 of this Deed of Trust, Section 17 of the Note, or Section 2.6 of the Loan Agreement.

Section 4.3. Appointment of Receiver. Upon or at any time after the filing of a complaint to foreclose this Deed of Trust, the court in which such complaint is filed may appoint a receiver of the Mortgaged Property or any portion thereof. Such appointment may be made either before or after sale, without notice, without regard to the solvency or insolvency of the Trustor at the time of application for such receiver and without regard to the then value of the Mortgaged Property and the Beneficiary or any holder of the Note may be appointed as such receiver. Such receiver shall have power (i) to collect the rents, issues and profits of the Mortgaged Property during the pendency of such foreclosure suit, as well as during any further times when the Trustor, except for the intervention of such receiver, would be entitled to collect such rents, issues and profits; (ii) to extend or modify any then existing leases and to make new leases, which extension, modifications and new leases may provide for terms to expire, or for options to lessees to extend or renew terms to expire, beyond the maturity date of the indebtedness secured by this Deed of Trust and beyond the date of the issuance of a deed or deeds to a purchaser or purchasers at a foreclosure sale, it being understood and agreed that any such leases, and the options or other such provisions to be contained therein, shall be binding upon the Trustor and all persons whose interests in the Mortgaged Property are subject to the lien hereof and upon the purchaser or purchasers at any foreclosure sale, notwithstanding discharge of the indebtedness secured by this Deed of Trust, satisfaction of any foreclosure judgment, or issuance of any certificate of sale or deed to any purchaser; and (iii) all other powers which may be necessary or are usual in such cases for the protection, possession, control, management and operation of the Mortgaged Property during the whole of said period. The court from time to time may authorize the receiver to apply the net income in his hands in payment in whole or in part of the indebtedness secured by this Deed of Trust, or found due or secured by any judgment foreclosing this Deed of Trust, or any tax, special assessment or other lien which may be or become superior to the lien hereof or of such decree, provided such application is made prior to foreclosure sale.

Section 4.4. Remedies Not Exclusive; No Waiver of Remedies.

(a) The Beneficiary 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 of the other Loan Documents or other agreement or any laws now or hereafter in force, notwithstanding that some or all of the said 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 other powers herein contained, shall prejudice or in any manner affect the Beneficiary's right to realize upon or enforce any other security now or hereafter held by the Beneficiary, it being agreed that the Beneficiary shall be entitled to enforce this Deed of Trust and any other security now or hereafter held by the Beneficiary in such order and manner as it may in its absolute discretion determine. No remedy herein conferred upon or

reserved to the 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 the Beneficiary or to which it may be otherwise entitled, may be exercised, concurrently or independently, from time to time and as often as it may be deemed expedient by the Beneficiary and the Beneficiary may pursue inconsistent remedies. Failure by the Beneficiary to exercise any right which it may exercise hereunder, or the acceptance by the Beneficiary of partial payments, shall not be deemed a waiver by the Beneficiary of any Default or Event of Default hereunder or of its right to exercise any such rights thereafter.

(b) In the event the Beneficiary at any time holds additional security for any of the indebtedness secured by this Deed of Trust, it may enforce the sale thereof or otherwise realize upon the same, at its option, either before or concurrently with exercising remedies under this Deed of Trust or after a sale is made hereunder.

Section 4.5. Waiver of Certain Rights. The Trustor shall not and will not apply for or avail itself of any appraisal, valuation, stay, extension or exemption laws, or any so-called "Moratorium Laws," now existing or hereafter enacted, in order to prevent or hinder the enforcement or foreclosure of this Deed of Trust, but rather waives the benefit of such laws. The Trustor for itself and all who may claim through or under it waives any and all right to have the property and estates comprising the Mortgaged Property marshalled upon any foreclosure of the lien hereof and agrees that any court having jurisdiction to foreclose such lien may order the Mortgaged Property sold as an entirety. The Trustor hereby waives any and all rights of redemption under any applicable law, including, without limitation, redemption from sale or from or under any order, judgment or decree of foreclosure, pursuant to rights herein granted, on behalf of the Trustor and all persons beneficially interested therein and each and every person acquiring any interest in or title to the Mortgaged Property subsequent to the date of this Deed of Trust, and on behalf of all other persons to the extent permitted by the provisions of the laws of the State in which the Mortgaged Property is located.

TO THE FULLEST EXTENT PERMITTED BY LAW, THE TRUSTOR HEREBY WAIVES TRIAL BY JURY IN ANY JUDICIAL PROCEEDING RELATING TO THIS DEED OF TRUST.

Section 4.10. Beneficiary's Use of Deposits. With respect to any deposits made with or held by the Beneficiary or any depository pursuant to any of the provisions of this Deed of Trust, when any Event of Default shall exist under this Deed of Trust, the Note or any of the other Loan Documents, the Beneficiary may, at its option, without being required to do so, apply any moneys or securities which constitute such deposits on any of the obligations under this Deed of Trust, the Note or the other Loan Documents, in such order and manner as the Beneficiary may elect. When the indebtedness secured hereby has been fully paid, any remaining deposits shall be paid to the subordinate mortgagee(s), if any, in order of priority, or to the Trustor in the event there is no subordinate mortgagee. Such deposits are hereby pledged as additional security for the prompt payment of the Note and any other indebtedness hereunder and



shall be held to be irrevocably applied by the depository for the purposes for which made hereunder and shall not be subject to the direction or control of the Trustor.

Section 4.11. Non-Recourse Loan. Notwithstanding anything in this Deed of Trust, the Note or any of the other Loan Documents to the contrary, the Loan and all amounts due under the Deed of Trust are non-recourse obligations of the Trustor and its partner(s), and the sole recourse and remedy accruing to Beneficiary, upon the occurrence and continuation beyond the expiration of all applicable notice, grace and cure period of an Event of Default shall be the right to foreclose the liens and security interests created under the Loan Documents as provided therein, in order to pay and discharge any amount of the Indebtedness, interest or other charges due thereon. Notwithstanding the foregoing, nothing contained in this Section shall be deemed to prejudice the rights of Beneficiary: (i) to proceed against Trustor personally for damages resulting from fraud or intentional material misrepresentation in connection with any affidavit, certification, warranty or representation given by Trustor in connection with the making of the Loan evidenced by the Note; or (ii) to recover any condemnation or insurance proceeds or other similar funds or payments from Trustor personally which under the terms of any of the Loan Documents should have been paid to Beneficiary; or (iii) to recover from Trustor personally any tenant security deposits, advance, prepaid rents or other similar sums or other revenues paid to or held by Trustor or any other party on behalf of Trustor in connection with the operation of the Mortgaged Property which are received after notice of an Event of Default and which have not been applied as follows: to pay any portion of the Indebtedness due at the time such revenues were received, to pay any operating and maintenance expenses of the Mortgaged Property including, without limitation, real estate taxes and assessments and insurance premiums for the Mortgaged Property, or to pay deposits into a reserve for taxes, insurance, replacements or other sums required by the Loan Documents or as approved by Beneficiary.

## **ARTICLE V MISCELLANEOUS**

Section 5.1. Recitals. The recitals hereto are hereby incorporated into and made a part of this Deed of Trust.

Section 5.2. Time of Essence. Time is of the essence of this Deed of Trust and of each and every provision hereof.

Section 5.3. Usury. The Trustor hereby represents and covenants that the proceeds of the Note will be used for business purposes.

Section 5.4. Lien for Service Charges and Expenses. At all times, regardless of whether any loan proceeds have been disbursed, this Deed of Trust secures, in addition to any loan proceeds disbursed from time to time, the payment of any and all origination fees, loan commissions, service charges, liquidated damages, expense and advances due to or incurred by the Beneficiary in connection with the loan to be secured hereby, all in accordance with the Loan Agreement and the other Loan Documents.

Section 5.5. Subrogation. If, and to the extent that, the proceeds of the loan evidenced by the Note are used to pay, satisfy or discharge any obligation of Trustor for the payment of money that is secured by a pre-existing mortgage, deed of trust or other lien encumbering the Mortgaged Property (a “**Prior Lien**”), such loan proceeds shall be deemed to have been advanced by Beneficiary at Trustor’s request, and Beneficiary shall automatically, and without further action on its part, be subrogated to the rights, including lien priority, of the owner or holder of the obligation secured by the Prior Lien, whether or not the Prior Lien is released.

Section 5.6. Recording; Fixture Filing. The Trustor shall cause this Deed of Trust and all other documents securing the indebtedness secured by this Deed of Trust at all times to be properly filed and/or recorded at the Trustor’s own expense and in such manner and in such places as may be required by law in order to fully preserve and protect the rights of the Beneficiary. This Deed of Trust is intended to be effective, from the date of recording of this Deed of Trust, as a financing statement filed as a fixture filing pursuant Chapter 9 to the Code.

Section 5.7. Further Assurances. The Trustor will do, execute, acknowledge and deliver all and every further acts, deeds, conveyances, transfers and assurances necessary or advisable, in the judgment of the Beneficiary, for the better assuring, conveying, mortgaging, assigning and confirming unto the Beneficiary all property mortgaged hereby or property intended so to be, whether now owned by the Trustor or hereafter acquired, provided, however, that Trustor shall not be required to take any such action that increases the liability of the Trustor or any guarantor under the Loan Documents.

Section 5.8. No Defenses. No action for the enforcement of the lien or any provision hereof shall be subject to any defense which would not be good and available to the party interposing the same in an action at law upon the Note.

Section 5.9. Invalidity of Certain Provisions. If the lien of this Deed of Trust is invalid or unenforceable as to any part of the indebtedness secured by this Deed of Trust, or if such lien is invalid or unenforceable as to any part of the Mortgaged Property, the unsecured or partially secured portion of the indebtedness secured by this Deed of Trust shall be completely paid prior to the payment of the remaining and secured or partially secured portion thereof, and all payments made on the indebtedness secured by this Deed of Trust, 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 thereof which is not secured or fully secured by the lien of this Deed of Trust.

Section 5.10. Illegality of Terms. Nothing herein or in the Note contained nor any transaction related thereto shall be construed or shall so operate either presently or prospectively, (i) to require the Trustor to pay interest at a rate greater than is now lawful in such case to contract for, but shall require payment of interest only to the extent of such lawful rate, or (ii) to require the Trustor to make any payment or do any act contrary to law. If any provision contained in this Deed of Trust shall otherwise so operate to invalidate this Deed of Trust, in whole or in part, then such provision only shall be held for naught as though not herein contained and the remainder of this Deed of Trust shall remain operative and in full force and effect, and the Beneficiary shall be given a reasonable time to correct any such error.

Section 5.11. Beneficiary’s Right to Deal with Transferee. In the event of the voluntary sale, or transfer by operation of law, or otherwise, of all or any part of the Mortgaged Property, the Beneficiary is hereby authorized and empowered to deal with such vendee or transferee with reference to the Mortgaged Property, or the debt secured hereby, or with reference to any of the terms or conditions hereof, as fully and to the same extent as it might with the Trustor, without in any way releasing or discharging the Trustor from the covenants and/or undertakings hereunder, specifically including Section 2.13(d) hereof, and without the Beneficiary waiving its rights to accelerate the Note as set forth in Section 2.13(d).

Section 5.12. Releases. The Beneficiary, without notice, and without regard to the consideration, if any, paid therefor, and notwithstanding the existence at that time of any inferior liens, may release any part of the Mortgaged Property, or any person liable for any indebtedness secured hereby, without in any way affecting the liability of any party to the Note or this Deed of Trust, and without in any way affecting the priority of the lien of this Deed of Trust, and may agree with any party obligated on said indebtedness to extend the time for payment of any part or all of the indebtedness secured hereby. Such agreement shall not, in any way, release or impair the lien created by this Deed of Trust, or reduce or modify the liability, if any, of any person or entity personally obligated for the indebtedness secured hereby, but shall extend the lien hereof as against the title of all parties having any interest in said security which interest is subject to the indebtedness secured by this Deed of Trust.

Section 5.13. Notices. All notices and other communications provided for in this Deed of Trust (“Notices”) shall be in writing. The “Notice Addresses” of the parties for purposes of this Deed of Trust are as follows:

- Beneficiary: Bellwether Enterprise Real Estate Capital, LLC  
1375 E. 9<sup>th</sup> Street, Suite 2400  
Cleveland, OH 44114  
Attn: Loan Servicing
  
- With copies to: Tiber Hudson, LLC  
35773 Bowen Place  
Hillsboro, VA 20132  
Attn: James R. Peck, Esq.
  
- Trustor: Mountain View Associates of Payson, LLC  
987 E. 200 N  
Payson, Utah 84651
  
- With a copy to: Faegre Drinker Biddle & Reath LLP  
1144 15th Street, Suite 3400  
Denver, Colorado 80202, USA  
Attn: J. William Callison, Esq.
  
- If to the Investor: Wincopin Circle LLLP  
c/o Enterprise Community Asset Management, Inc.

70 Corporate Center  
11000 Broken Land Parkway, Suite 700  
Columbia, Maryland 21044

or such other address as a party may designate by notice duly given in accordance with this Section to the other parties. A Notice to a party shall be effective when delivered to such party's Notice Address by any means, including, without limitation, personal delivery by the party giving the Notice, delivery by United States regular, certified or registered mail, or delivery by a commercial courier or delivery service. If the Notice Address of a party includes a facsimile number or electronic mail address, Notice given by facsimile or electronic mail shall be effective when delivered at such facsimile number or email address. If delivery of a Notice is refused, it shall be deemed to have been delivered at the time of such refusal of delivery. The party giving a Notice shall have the burden of establishing the fact and date of delivery or refusal of delivery of a Notice.

Section 5.14. Binding Effect. This Deed of Trust and each and every covenant, agreement and other provision hereof shall be binding upon the Trustor and its successors and assigns, including, without limitation, each and every from time to time record owner of the Mortgaged Property or any other person having an interest therein, and shall inure to the benefit of the Beneficiary and its successors and assigns. Wherever herein the Beneficiary is referred to, such reference shall be deemed to include the holder from time to time of the Note, whether so expressed or not; and each such holder of the Note shall have and enjoy all of the rights, privileges, powers, options and benefits afforded hereby and hereunder, and may enforce all and every of the terms and provisions hereof, as fully and to the same extent and with the same effect as if such from time to time holder were herein by name specifically granted such rights, privileges, powers, options and benefits and was herein by name designated the Beneficiary.

Section 5.15. Covenants to Run with the Land. All the covenants hereof shall run with the land.

Section 5.16. Entire Agreement. The Loan Documents, including, without limitation, this Deed of Trust set forth all of the covenants, promises, agreements, conditions and understandings of the parties relating to the subject matter of the Loan, and there are no covenants, promises, agreements, conditions or understandings, either oral or written, between them relating to the subject matter of the Loan Documents other than as are therein set forth.

Section 5.17. Governing Law; Severability; Modification. This Deed of Trust shall be governed by the laws of the State. In the event that any provision or clause of this Deed of Trust conflicts with applicable laws, such conflicts shall not affect other provisions hereof which can be given effect without the conflicting provision, and to this end the provisions of this Deed of Trust are declared to be severable. This Deed of Trust and each provision hereof may be modified, amended, changed, altered, waived, terminated or discharged only by a written instrument signed by the party sought to be bound by such modification, amendment, change, alteration, waiver, termination or discharge.

Section 5.18. Defined Terms. Unless otherwise defined in this Deed of Trust, capitalized terms used in this Deed of Trust shall have the meaning set forth in the Loan Agreement

Section 5.19. Meanings. Wherever in this Deed of Trust the context requires or permits, the singular shall include the plural, the plural shall include the singular and the masculine, feminine and neuter shall be freely interchangeable.

Section 5.20. Captions. The captions or headings at the beginning of each Article and Section hereof are for the convenience of the parties and are not a part of this Deed of Trust.

Section 5.21. Approval or Consent of Beneficiary.

(a) Wherever in this Deed of Trust provision is made for the approval or consent of the Beneficiary, or that any matter is to be to the Beneficiary's satisfaction, or that any matter is to be as estimated or determined by the Beneficiary, or the like, unless specifically stated to the contrary, such approval, consent, satisfaction, estimate, determination or the like shall be made, given or determined by the Beneficiary pursuant to a reasonable application of judgment in accordance with institutional lending practice and commercial custom in connection with major real estate loans.

(b) Notwithstanding any other provision of this Deed of Trust or any of the other Loan Documents, wherever in this Deed of Trust provision is made for the approval or consent of the Beneficiary with respect to a matter, if the Beneficiary elects to grant such approval or consent, it shall not be unreasonable for the Beneficiary to make such approval or consent subject to the condition that such matter must also be approved or consented to in writing by any one or more any guarantors of the Loan and any parties other than the Trustor that have provided collateral for the Loan.

Section 5.22. Construction and Interpretation. The Trustor and the Beneficiary, and their respective legal counsel, have participated in the drafting of this Deed of Trust, and accordingly the general rule of construction to the effect that any ambiguities in a contract are to be resolved against the party drafting the contract shall not be employed in the construction and interpretation of this Deed of Trust.

Section 5.23. Section 42 Provisions. Beneficiary acknowledges that Trustor and the Agency intend to enter into an extended use agreement, which constitutes the extended low-income housing commitment described in Section 42(h)(6)(B) of the Internal Revenue Code, as amended (the "Code"). As of the date hereof, Code Section 42(h)(6)(E)(ii) does not permit the eviction or termination of tenancy (other than for good cause) of an existing tenant of any low-income unit or any increase in the gross rent with respect to such unit not otherwise permitted under Code Section 42 for a period of three (3) years after the date the building is acquired by foreclosure or by instrument in lieu of foreclosure. In the event the extended use agreement required by the Credit Agency is recorded against the Property, Trustor agrees to comply with the provisions set forth in Code Section 42(h)(6)(E)(ii).

**ARTICLE VI**  
**JURISDICTION-SPECIFIC PROVISIONS**

Section 6.1. Release. Upon payment in full of the Indebtedness, Beneficiary or Trustee shall release this Deed of Trust. Trustor shall pay Beneficiary's reasonable costs incurred in releasing this Deed of Trust. If Trustee is requested to release this Deed of Trust, all notes evidencing the Indebtedness shall be surrendered to Trustee.

Section 6.2. Substitute Trustee. Beneficiary, at Beneficiary's option, may from time to time remove Trustee and appoint a successor trustee in accordance with the laws of the Property Jurisdiction. Without conveyance of the Mortgaged Property, the successor trustee shall succeed to all the title, power and duties conferred upon the Trustee in this Deed of Trust and by applicable law.

Section 6.3. Loan Charges. If any applicable law limiting the amount of interest or other charges permitted to be collected from Trustor is interpreted so that any charge provided for in any Loan Document, whether considered separately or together with other charges levied in connection with any other Loan Document, violates that law, and Trustor is entitled to the benefit of that law, that charge is hereby reduced to the extent necessary to eliminate that violation. The amounts, if any, previously paid to Beneficiary in excess of the permitted amounts shall be applied by Beneficiary to reduce the principal of the Indebtedness. For the purpose of determining whether any applicable law limiting the amount of interest or other charges permitted to be collected from Trustor has been violated, all Indebtedness which constitutes interest, as well as all other charges levied in connection with the Indebtedness which constitute interest, shall be deemed to be allocated and spread over the stated term of the Note. Unless otherwise required by applicable law, such allocation and spreading shall be effected in such a manner that the rate of interest so computed is uniform throughout the stated term of the Note.

Section 6.4. ENTIRE AGREEMENT. **TO THE FULLEST EXTENT PERMITTED BY LAW, THIS DEED OF TRUST, THE NOTE, THE LOAN AGREEMENT AND THE OTHER LOAN DOCUMENTS REPRESENT THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.**

Section 6.5. WAIVER OF TRIAL BY JURY. **TRUSTOR AND BENEFICIARY EACH (A) COVENANTS AND AGREES NOT TO ELECT A TRIAL BY JURY WITH RESPECT TO ANY ISSUE ARISING OUT OF THIS DEED OF TRUST OR THE RELATIONSHIP BETWEEN THE PARTIES AS TRUSTOR AND BENEFICIARY THAT IS TRIABLE OF RIGHT BY A JURY AND (B) WAIVES ANY RIGHT TO TRIAL BY JURY WITH RESPECT TO SUCH ISSUE TO THE EXTENT THAT ANY SUCH RIGHT EXISTS NOW OR IN THE FUTURE. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS SEPARATELY GIVEN BY EACH PARTY, KNOWINGLY AND VOLUNTARILY WITH THE BENEFIT OF COMPETENT LEGAL COUNSEL.**

Section 6.6 Acceleration; Remedies.

Insofar as the terms of this Section 6.6 contradicts with any section of this Deed of Trust, this Section shall control:

(a) If an Event of Default occurs and is continuing for a period of thirty (30) days, Lender, at Lender's option, but so long as the Loan is guaranteed by USDA, may declare the Indebtedness to be immediately due and payable without further demand, and may invoke the power of sale and any other remedies permitted by applicable law or provided in this Deed of Trust or in the Note. Borrower acknowledges that the power of sale granted in this Deed of Trust may be exercised by Lender without prior judicial hearing. Lender shall be entitled to collect all costs and expenses incurred in pursuing such remedies, including reasonable attorneys' fees (including but not limited to appellate litigation), costs of documentary evidence, abstracts and title reports.

(b) In addition to the provisions of paragraph (a), the following rights and remedies are available to Lender at any time. Borrower has the right to bring an action to assert the non-existence of an Event of Default or any other defense of Borrower to acceleration and sale. If the power of sale is invoked, Trustee shall execute a written notice of the occurrence of an Event of Default and of Lender's election to cause the Mortgaged Property to be sold and shall record such notice in each county in which the Mortgaged Property is located. Lender or Trustee shall mail notice of default in the manner provided by the laws of Utah to Borrower and to such other persons as the laws of Utah prescribe. Trustee shall give public notice of sale and shall sell the Mortgaged Property according to the laws of Utah. Trustee may sell the Mortgaged Property at the time and place and under the terms designated in the notice of sale in one or more parcels. Trustee may postpone sale of all or any part of the Mortgaged Property by public announcement at the time and place of any previously scheduled sale. Lender or Lender's designee may purchase the Mortgaged Property at any sale. Trustee shall deliver to the purchaser at the sale, within a reasonable time after the sale, a deed conveying the Mortgaged Property so sold without any covenant or warranty, express or implied. The recitals in Trustee's deed shall be prima facie evidence of the truth of the statements made therein. Trustee shall apply the proceeds of the sale in the following order: (a) to all costs and expenses of the sale, including Trustee's fees and attorney's fees together not to exceed 5% of the gross sales price, and costs of title evidence; (b) to the Indebtedness in such order as Lender, in Lender's discretion, directs; and (c) the excess, if any, to the person or persons legally entitled thereto or to the county clerk of the county in which the sale took place.

Section 6.7 Reconveyance. Upon payment of the Indebtedness, Lender shall request Trustee to reconvey the Mortgaged Property and shall surrender this Deed of Trust and the Note to Trustee. Trustee shall reconvey the Mortgaged Property without warranty to the person or persons legally entitled thereto. Such person or persons shall pay Trustee's reasonable costs incurred in so reconveying the Mortgaged Property. [U.C.A. § 57-1-40]

Section 6.8 Substitute Trustee. Lender, at Lender's option, may from time to time remove Trustee and appoint a successor trustee to any Trustee appointed under this Deed of Trust by filing a substitution of trustee in accordance with Utah law. Without conveyance of the

Mortgaged Property, the successor trustee shall succeed to all the title, power and duties conferred upon the Trustee herein and by applicable law. [U.C.A. § 57-1-22]

Section 6.9 Request for Notices. Borrower requests that copies of the notice of default and notice of sale be sent to Borrower at Borrower's address stated in the first paragraph on page 1 of this Security Instrument. [U.C.A. § 57-1-26]

Section 6.10 Integration Clause. In addition to the provisions of Section 5.17 of this Deed of Trust, this Deed of Trust and the Loan Documents represent the final expression of the agreement between Lender and Borrower and may not be contradicted by evidence of any alleged oral agreement, whether prior, contemporaneous or subsequent. There are no unwritten oral agreements between the parties to this Security Instrument. [U.C.A. § 25-5-4(2)(d)]

[SIGNATURE PAGES FOLLOW]



IN WITNESS WHEREOF, Trustor has signed and delivered this Deed of Trust or has caused this Deed of Trust to be signed and delivered by its duly authorized representative on the date set forth in the acknowledgement below, to be effective as the date first set forth herein.

**TRUSTOR:**

**MOUNTAIN VIEW ASSOCIATES OF PAYSON, LLC,**  
a Utah limited liability company

By: CMN MOUNTAIN VIEW INC.,  
a Utah corporation,  
its Managing Member

By: Shawne C. Mastronardi  
Shawne C. Mastronardi  
Vice President

STATE OF COLORADO  
COUNTY OF ~~DENVER~~ Arapahoe (sw)

This record was acknowledged before me on march 24 2023, by Shawne C. Mastronardi as Vice President of CMN Mountain View, Inc., a Utah corporation, as Managing Member of Mountain View Associates of Payson, LLC, a Utah limited liability company, on behalf of said corporation and limited liability company.

[Signature]

\_\_\_\_\_  
(Notary's official signature)

Notary Public  
\_\_\_\_\_  
(Title of Office)

09/15/2026  
\_\_\_\_\_  
(Commission Expiration)



**EXHIBIT A**  
**LEGAL DESCRIPTION OF THE PROJECT**

A portion of the Southeast quarter of Section 9, Township 9 South, Range 2 East, Salt Lake Base and Meridian, located in Payson, Utah, more particularly described as follows:

Beginning at the Southwest corner of that real property described in Deed Book 2241 at Page 386 of the official records of Utah County located South 89°47'08" West along the section line 1,762.90 feet and North 1,572.21 feet from the Southeast corner of Section 9, Township 9 South, Range 2 East, Salt Lake Base and Meridian; thence North 00°24'46" East along the Easterly right-of-way of 900 East Street 378.54 feet; thence along the arc of a 16.00 foot radius curve to the right 25.09 feet through a central angle of 89°50'05" (chord: North 45°19'49" East 22.60 feet); thence South 89°45'09" East along the Southerly right-of-way of 300 North Street 337.86 feet; thence along the arc of a 16.00 foot radius curve to the right 25.12 feet through a central angle of 89°58'09" (chord: South 44°46'05" East 22.62 feet); thence South 00°13'00" West along the Westerly right-of-way line of 1000 East Street 363.21 feet; thence along the arc of a 16.00 foot radius curve to the right 25.17 feet through a central angle of 90°08'50" (chord: South 45°17'25" West 22.66 feet); thence North 89°38'10" West along the Northerly right-of-way line of 200 North Street 355.11 feet to the point of beginning.