|  |  |
| --- | --- |
| RECORDING REQUESTED BY  AND WHEN RECORDED MAIL TO: |  |

**MULTIFAMILY DEED OF TRUST,**

**ASSIGNMENT OF RENTS,**

**SECURITY AGREEMENT AND FIXTURE FILING**

**CALIFORNIA**

**(Revised 3-15-2022)**

ATTENTION COUNTY RECORDER: THIS INSTRUMENT IS INTENDED TO BE EFFECTIVE AS A FINANCING STATEMENT FILED AS A FIXTURE FILING PURSUANT TO SECTION 9502 OF THE CALIFORNIA COMMERCIAL CODE. PORTIONS OF THE GOODS COMPRISING A PART OF THE MORTGAGED PROPERTY ARE OR ARE TO BECOME FIXTURES RELATED TO THE LAND DESCRIBED IN EXHIBIT A HERETO. THIS INSTRUMENT IS TO BE FILED FOR RECORD IN THE RECORDS OF THE COUNTY WHERE DEEDS OF TRUST ON REAL PROPERTY ARE RECORDED AND SHOULD BE INDEXED AS BOTH A DEED OF TRUST AND AS A FINANCING STATEMENT COVERING FIXTURES. THE ADDRESSES OF BORROWER (DEBTOR) AND LENDER (SECURED PARTY) ARE SPECIFIED IN THE FIRST PARAGRAPH ON PAGE 1 OF THIS INSTRUMENT.

**MULTIFAMILY DEED OF TRUST,**

**ASSIGNMENT OF RENTS,**

**SECURITY AGREEMENT AND FIXTURE FILING**

**CALIFORNIA**

**(Revised 3-15-2022)**

THIS MULTIFAMILY DEED OF TRUST, ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND FIXTURE FILING (“**Instrument**”) is made to be effective this \_\_\_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_, by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, a \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ organized and existing under the laws of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, whose address is \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, as trustor (“**Borrower**”), to \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, as trustee (“**Trustee**”), for the benefit of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, a \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ organized and existing under the laws of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, whose address is \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, as beneficiary (“**Lender**”). Borrower’s organizational identification number, if applicable, is .

**AGREEMENT**

Borrower, in consideration of the Indebtedness and the trust created by this Instrument, irrevocably grants, conveys and assigns to Trustee, in trust, with power of sale, the Mortgaged Property, including the Land located in County, State of California and described in Exhibit A attached to this Instrument.

TO SECURE TO LENDER the repayment of the Indebtedness evidenced by Borrower’s Multifamily Note payable to Lender, dated as of the date of this Instrument, and maturing on \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_ (“**Maturity Date**”), in the principal amount of $ , and all renewals, extensions and modifications of the Indebtedness, the payment of all sums advanced by or on behalf of Lender to protect the security of this Instrument under Section 7, and the performance of the covenants and agreements of Borrower contained in the Loan Agreement or any other Loan Document.

Borrower represents and warrants that Borrower is lawfully seized of the Mortgaged Property and has the right, power and authority to grant, convey and assign the Mortgaged Property, and that the Mortgaged Property is unencumbered, except as shown on the schedule of exceptions to coverage in the title policy issued to and accepted by Lender contemporaneously with the execution and recordation of this Instrument and insuring Lender’s interest in the Mortgaged Property (“**Schedule of Title Exceptions**”). Borrower covenants that Borrower will warrant and defend generally the title to the Mortgaged Property against all claims and demands, subject to any easements and restrictions listed in the Schedule of Title Exceptions.

**[INSERT CURRENT FORM OF UNIFORM COVENANTS]**

**21-30. Reserved.**

**31. Acceleration; Remedies.**

(a) If an Event of Default has occurred and is continuing, Lender, at Lender’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 California law or provided in this Instrument, the Loan Agreement or in any other Loan Document. Borrower acknowledges that the power of sale granted in this Instrument may be exercised by Lender without prior judicial hearing. Lender will be entitled to collect all costs and expenses incurred in pursuing such remedies, including Attorneys’ Fees and Costs and costs of documentary evidence, abstracts and title reports.

(b) If the power of sale is invoked, Lender will 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 will cause the notice to be recorded in each county in which the Mortgaged Property or some part of the Mortgaged Property is located. Trustee will give notice of default and notice of sale and will sell the Mortgaged Property according to California law. 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. Trustee may postpone the 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 and Lender or such designee will have the right to credit bid all or any part of the Indebtedness toward the purchase price at such sale.

(c) Within a reasonable time after the sale, Trustee will deliver to the purchaser at the sale, a deed conveying the Mortgaged Property so sold without any express or implied covenant or warranty. The recitals in such deed of any matters or facts will be conclusive proof of the truthfulness thereof. Trustee will apply the proceeds of the sale in the following order: (i) to all costs and expenses of the sale, including Trustee’s fees not to exceed the statutory maximum therefor, Attorneys’ Fees and Costs, including the cost of any trustee’s sale guarantee policy and any other evidence of title; (ii) to the Indebtedness in such order as Lender, in Lender’s discretion, directs; and (iii) the excess, if any, to the person or persons legally entitled to the excess.

**32. Reconveyance****.** Upon payment of the Indebtedness, Lender will request Trustee to reconvey the Mortgaged Property and will surrender this Instrument and the Note to Trustee. Trustee will reconvey the Mortgaged Property without warranty to the person or persons legally entitled to the Mortgaged Property. Such person or persons will pay Trustee’s reasonable costs incurred in so reconveying the Mortgaged Property.

**33. Substitute Trustee.** Lender, at Lender’s option, may from time to time, by a written instrument, appoint a successor trustee, which instrument, when executed and acknowledged by Lender and recorded in the office of the Recorder of the county or counties where the Mortgaged Property is situated, will be conclusive proof of proper substitution of the successor trustee. The successor trustee will, without conveyance of the Mortgaged Property, succeed to all the title, power and duties conferred upon the Trustee in this Instrument and by California law. The instrument of substitution will contain the name of the original Lender, Trustee and Borrower under this Instrument, the book and page where this Instrument is recorded, and the name and address of the successor trustee. The procedure provided for substitution of trustee in this Instrument will govern to the exclusion of all other provisions for substitution, statutory or otherwise.

**34. Statement Of Obligation.** Lender may collect a fee not to exceed the maximum allowed by applicable law for furnishing the statement of obligation as provided in Section 2943 of the Civil Code of California.

**35. Spouse’s Separate Property.** Each Borrower who is a married person expressly agrees that recourse may be had against his or her separate property.

**36. Fixture Filing.** This Instrument is also a fixture filing under the Uniform Commercial Code of California.

**37. Additional Provision Regarding Application of Payments.** In addition to the provisions of Section 6, Borrower further agrees that, if Lender accepts a guaranty of only a portion of the Indebtedness, Borrower waives its right under California Civil Code Section 2822(a), to designate the portion of the Indebtedness which will be satisfied by a guarantor’s partial payment.

**38. Waiver of Marshalling; Other Waivers.** To the extent permitted by law, Borrower waives all of the following:

(a) The benefit of all present or future laws providing for any appraisement before sale of any portion of the Mortgaged Property.

(b) All rights of redemption, valuation, appraisement, stay of execution, notice of election to mature or declare due the whole of the Indebtedness and marshalling in the event of foreclosure of the Lien created by this Instrument.

(c) All rights and remedies which Borrower may have or be able to assert by reason of the laws of the State of California pertaining to the rights and remedies of sureties.

(d) The right to assert any statute of limitations as a bar to the enforcement of the Lien of this Instrument or to any action brought to enforce the Note or any other obligation secured by this Instrument.

(e) Any rights, legal or equitable, to require marshalling of assets or to require upon foreclosure sales in a particular order, including any rights under California Civil Code Sections 2899 and 3433.

Lender will have the right to determine the order in which any or all of the Mortgaged Property will be subjected to the remedies provided by this Instrument. Lender will have the right to determine the order in which any or all portions of the Indebtedness are satisfied from the proceeds realized upon the exercise of the remedies provided by this Instrument.

By signing this Instrument, Borrower does not waive its rights under Section 2924c of the California Civil Code.

**39. Additional Provisions Concerning Environmental Hazards.** In addition to the provisions of Sections 5.05 and 6.12 of the Loan Agreement:

(a) Except for matters covered by an O&M Program or lawful conditions expressly excluded from the definition of Prohibited Activity or Condition in the Loan Agreement, Borrower will not cause or permit any Lien (whether or not such Lien has priority over the Lien created by this Instrument) upon the Mortgaged Property imposed pursuant to any Hazardous Materials Laws. Any such Lien will be considered a Prohibited Activity or Condition.

(b) Borrower represents and warrants to Lender that, except as previously disclosed by Borrower to Lender in writing, each of the following are true:

(i) At the time of acquiring the Mortgaged Property, Borrower undertook all appropriate inquiry into the previous ownership and uses of the Mortgaged Property consistent with good commercial or customary practice and no evidence or indication came to light which would suggest that the Mortgaged Property has been or is now being used for any Prohibited Activities or Conditions.

(ii) The Mortgaged Property has not been designated as “hazardous waste property” or “border zone property” pursuant to former Article 11 (commencing with Section 25220) of the California Health and Safety Code.

The representations and warranties in this Section will be continuing representations and warranties that will be deemed to be made by Borrower throughout the term of the loan evidenced by the Note, until the Indebtedness has been paid in full.

(c) Without limiting any of the remedies provided in this Instrument, Borrower acknowledges and agrees that each of the provisions in Sections 5.05 and 6.12 of the Loan Agreement and in this Section is an environmental provision (as defined in Section 736(f)(2) of the California Code of Civil Procedure) made by Borrower relating to the real property security (“**Environmental Provisions**”), and that Borrower’s failure to comply with any of the Environmental Provisions will be a breach of contract that will entitle Lender to pursue the remedies provided by Section 736 of the California Code of Civil Procedure (“**Section 736**”) for the recovery of damages and for the enforcement of the Environmental Provisions. Pursuant to Section 736, Lender’s action for recovery of damages or enforcement of the Environmental Provisions will not constitute an action within the meaning of Section 726(a) of the California Code of Civil Procedure or constitute a money judgment for a deficiency or a deficiency judgment within the meaning of Sections 580a, 580b, 580d, or 726(b) of the California Code of Civil Procedure.

(d) Any reference in this Instrument or in any other Loan Document to Section 5.05 and/or Section 6.12 of the Loan Agreement will be construed as referring together to such Section(s) of the Loan Agreement.

**40. WAIVER OF TRIAL BY JURY.**

(a) **BORROWER AND LENDER EACH COVENANTS AND AGREES NOT TO ELECT A TRIAL BY JURY WITH RESPECT TO ANY ISSUE ARISING OUT OF THIS INSTRUMENT OR THE RELATIONSHIP BETWEEN THE PARTIES AS BORROWER AND LENDER THAT IS TRIABLE OF RIGHT BY A JURY.**

(b) **BORROWER AND LENDER EACH 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.**

**41. Attached Riders.** The following Riders are attached to this Instrument:

**[LIST EACH RIDER ATTACHED OR STATE “NONE”]**

**42. Attached Exhibits.** The following Exhibits, if marked with an “X” in the space provided, are attached to this Instrument:

|X| Exhibit A Description of the Land (required)

| | Exhibit B Modifications to Instrument

| | Exhibit C Ground Lease Description (if applicable)

**REMAINDER OF PAGE INTENTIONALLY LEFT BLANK**

IN WITNESS WHEREOF, Borrower has signed and delivered this Instrument or has caused this Instrument to be signed and delivered by its duly authorized representative.

**[INSERT SIGNATURES AND ACKNOWLEDGMENTS]**

**[INSERT RIDER(S) IF APPLICABLE]**

**EXHIBIT A**

DESCRIPTION OF THE LAND

**EXHIBIT B**

MODIFICATIONS TO INSTRUMENT

The following modifications are made to the text of the Instrument that precedes this Exhibit: