

RECORDING REQUESTED BY AND  
WHEN RECORDED MAIL TO:

City of San Luis Obispo  
Community Development Department  
919 Palm Street  
San Luis Obispo, CA 93401-3249  
Attn: Community Development Director

No fee for recording pursuant to  
Government Code Section 27383

*(Space above for Recorder's Use)*

The undersigned declare that there is no documentary  
transfer tax on this matter.

**DEED OF TRUST, DEED OF TRUST COVENANTS, ASSIGNMENT OF  
RENTS, SECURITY AGREEMENT  
AND FIXTURE FILING**

THIS DEED OF TRUST, DEED OF TRUST COVENANTS, ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND FIXTURE FILING (this "Deed of Trust") is made as of this [enter date] day of [enter month], 20\_\_\_, between [enter name of Trustor], a California limited partnership ("Trustor"), the lessee of the real property described herein below, whose address is: [enter address] and [enter name of title company] ("Trustee") and the **CITY OF SAN LUIS OBISPO**, a municipal corporation, whose address is 990 Palm Street, San Luis Obispo, California 93401 ("Beneficiary").

WHEREAS, Trustor desires to develop a [ ]-unit apartment complex ("Project") on its leasehold interest in certain real property located in the City of San Luis Obispo, State of California, which is further described in Exhibit A attached hereto and incorporated herein by this reference ("the Real Property").

WHEREAS, Beneficiary and Trustor desire to ensure that the Real Property remain affordable to extremely-low, very-low and low-income persons for a period of not less than 55 years following the Borrower's occupancy of the completed project pursuant to the **Affordable Housing Agreement** entered between Trustor and Beneficiary on [date] and Promissory Note executed by Trustor on [date.]

WHEREAS, to implement the Project, Beneficiary has agreed to make a loan to Trustor in the amount of \$[enter amount] (the "Loan"), for the purpose of deferring development impact fee costs associated with development of the Real Property related to the Project, and Trustor has delivered that certain Promissory Note ("Note") in favor of Beneficiary on the even date hereof.

WHEREAS, the Affordable Housing Agreement and Note impose certain restrictions on the sale or transfer of the Real Property.

NOW, THEREFORE, THIS DEED OF TRUST WITNESSETH:

Trustor, in consideration of the indebtedness referred to below and the trust herein created, irrevocably grants, conveys, transfers and assigns to Trustee, in trust, with the power of sale and

right of entry and possession, all of Trustor's estate, right, title and interest in, to and under the Real Property;

TOGETHER WITH all structures and improvements now existing or hereafter erected on the Real Property, all easements, rights and appurtenances thereto or used in connection therewith, all rents, royalties, issues, profits, revenues, income and other benefits thereof or arising from the use or enjoyment of all or any portion thereof (subject, however, to the right, power and authority given herein to Trustor to collect and apply such rents, royalties, issues, profits, revenues, income and other benefits prior to an Event of Default hereunder), all interests in and rights, royalties and profits in connection with all minerals, oil and gas and other hydrocarbon substances thereon or therein, development rights or credits, air rights, water, water rights (whether riparian, appropriative or otherwise and whether or not appurtenant) and water stock, all intangible property and rights relating to the Real Property or the operation thereof or used in connection therewith, including, without limitation, trade names and trademarks and all furniture and fixtures, now or hereafter located in, or on, or attached or affixed to, or used or intended to be used in connection with, the Real Property, including, but without limitation, all heating, lighting, laundry, incinerating, gas, electric and power equipment, pipes, plumbing, fire prevention and fire extinguishing, refrigerating, ventilating and communication apparatus, air cooling and air conditioning apparatus, shades, awnings, blinds, curtains, drapes, attached floor coverings, including rugs and carpeting and other installed appliances, attached cabinets, trees, plants and other items of landscaping, shall, to the fullest extent permitted by law and for the purposes of this Deed of Trust, be deemed to be part and parcel of, and appropriated to the use of, the Real Property and, whether or not affixed or annexed thereto, be deemed conclusively to be real property and conveyed by this Deed of Trust, and Trustor agrees to execute and deliver, from time to time, such further instruments and documents as may be required by Beneficiary to confirm the lien of this Deed of Trust on any of the foregoing;

TOGETHER WITH all of the estate, interest, right, title, other claim or demand which Trustor now has or may hereafter acquire in 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 Property (as hereinafter defined), including, without limitation, any awards resulting from a change of grade of streets and awards for severance damages;

TOGETHER WITH all of the estate, interest, right, title and other claim or demand which Trustor now has or may hereafter acquire with respect to the unearned premiums accrued, accruing or to accrue and the proceeds of insurance in effect with respect to all or any part of the foregoing. All of the foregoing property referred to in this Deed of Trust, together with the Real Property, is herein referred to as the "Property."

**ARTICLE 1. PURPOSE AND CONSIDERATION.** This Deed of Trust is established for the purpose of securing, in such order of priority as Beneficiary may elect:

- (a) The repayment of the indebtedness evidenced by the Promissory Note Secured by Deed of Trust (the "Promissory Note"), of even date herewith, executed by Trustor as Maker, payable to the order of Beneficiary, in the initial principal amount of [enter principal amount in words] (\$XXX,XXX) ("Principal"), and any and all late charges, interest costs

or fees required thereunder, and all extensions, renewals, modifications, amendments and replacements thereof.

(b) The payment of all other sums which may be advanced by or otherwise be due to Trustee or Beneficiary under any provision of this Deed of Trust with interest (if any) thereon at the rate provided herein or therein.

(c) Performance of all covenants of Trustor made in this Deed of Trust.

(d) Performance of all covenants of Trustor as set forth in the Promissory Note.

(e) Performance of all covenants of Trustor as set forth in the Affordable Housing Agreement .

(f) Performance of all covenants of Trustor as set forth in the Development Impact Fee Deferral Agreement.

**ARTICLE 2. DEED COVENANTS.** To protect the security of this Deed of Trust, Trustor and Trustee hereby covenant and agree as follows:

**SECTION 2.01. Restrictions on Use and Occupancy.** The Real Property shall be used solely for low, very-low, and/or extremely-low income rental housing purposes.

**SECTION 2.02. Term of Use and Occupancy Restrictions.** Trustor agrees that the above restrictions to the use and occupancy of the Real Property shall remain in effect for a period of fifty-five (55) years from the date of Borrower's occupancy of the completed project.

**SECTION 2.03. Covenants Binding.** These affordability requirements shall be covenants running with the land as defined in California Civil Code Section 1460, and shall apply to the Real Property as further described in Exhibit A. Pursuant to Civil Code Section 1468, which governs such covenants, the provisions of this Deed of Trust shall be binding upon all parties having any right, title, or interest in any of the Real Property, or any portion thereof, and on their heirs, successors in interest and assigns for a period of 55 years from the date of Borrower's occupancy of the completed project. The parties agree that all future deeds or transfers of interest regarding the Real Property shall show the restrictions of this Agreement for as long as the Agreement is in effect.

**SECTION 2.04. Performance of Obligations Secured.** Trustor shall promptly pay when due the indebtedness evidences by the Note and any late charges, costs and/or fees provided for in the Note and shall further perform fully and in a timely manner all other obligations of Trustor contained herein or in the Note.

### **ARTICLE 3 – INSURANCE REQUIREMENTS**

**SECTION 3.01.** Trustor shall keep the Property and all improvements thereon insured against loss or damage by fire with extended all-risk coverage clauses, including vandalism and malicious

mischief clauses, in an amount not less than one hundred percent (100%) of the full replacement cost of such improvements with a company or companies and in such form and with such endorsements as may be approved or required by Beneficiary.

SECTION 3.02. Trustor shall also maintain in full force and effect a policy of homeowners' general liability insurance insuring Trustor against liability for bodily injury, property damage and personal injury arising out of the operation, use or occupancy of the Property. The initial amount of such insurance shall be One Hundred Thousand Dollars (\$100,000.00) per occurrence and not in the aggregate and shall be subject to periodic increase based upon increased liability awards or the reasonable recommendation of Trustor's professional insurance advisor. Trustor shall name Beneficiary as an additional insured under such policy. Such insurance shall be primary with respect to any insurance maintained by Beneficiary and shall not call on Beneficiary's insurance for contributions.

SECTION 3.03. Trustor shall pay all premiums for the insurance policies required to be maintained under this Deed of Trust within fifteen (15) days after Trustor's receipt of a copy of the premium statement or other evidence of the amount due. At least thirty (30) days prior to the expiration of such policy, Trustor shall deliver to Beneficiary a renewal of such policy.

SECTION 3.04. Any insurance which Trustor is required to maintain under this Deed of Trust shall include a provision requiring that the insurance carrier give Beneficiary not less than thirty (30) days written notice prior to any cancellation or modification of such coverage. If Trustor (i) fails to deliver any policy or renewal to Beneficiary required under this Deed of Trust within the prescribed time period or (ii) if any such policy is canceled or modified to reduce the amount or type of coverage without Beneficiary's consent and no substituted comparable coverage is obtained by Trustor prior to such cancellation or modification, Beneficiary may obtain such insurance. In such case, Trustor shall reimburse Beneficiary for the cost of such insurance within fifteen (15) days after receipt of a statement that indicates the cost of such insurance and upon proof that Beneficiary has paid said statement.

SECTION 3.05. Trustor shall maintain all insurance required under this Deed of Trust with companies holding a "general policy rating" of A-8 or better, as set forth in the most current issue of "Best Key Rating Guide." Trustor acknowledges that the insurance described in this Section is for the primary benefit of Beneficiary. Beneficiary makes no representation as to the adequacy of such insurance to protect Trustor's or Beneficiary's interests. Therefore, Trustor shall obtain any additional property or liability insurance that Trustor deems necessary to protect Beneficiary and Trustor, in the exercise of reasonable judgment.

SECTION 3.06. Notwithstanding anything to the contrary contained herein, Trustor's obligation to carry the insurance provided for herein may be brought within the coverage of a so-called blanket policy or policies of insurance carried and maintained by Trustor; provided, however, that Beneficiary shall be named as an additional insured thereunder and that the coverage afforded Beneficiary will not be reduced or diminished by reason of the use of such blanket policy of insurance and provided further that the requirements set forth herein are otherwise satisfied.

SECTION 3.07. All of the above-mentioned insurance policies or certificates of insurance must be satisfactory to Beneficiary. Trustor's compliance with each of the requirements in Sections 3.01 through 3.06 shall be considered material terms of this Deed of Trust. Beneficiary shall not by the fact of approving, disapproving, accepting, preventing, obtaining or failing to obtain any insurance, incur any liability for or with respect to the amount of insurance carried, the form or legal sufficiency of insurance contracts, insolvency of insurance companies or payment or defense of lawsuits and Trustor hereby expressly assumes full responsibility therefor and all liability, if any, with respect thereto.

**SECTION 3.08. Condemnation and Insurance Proceeds.**

SUBSECTION 3.08(a). Any award of damages in connection with any taking or condemnation, or for injury to the Property by reason of public use, or for damages for private trespass or entry onto the Property is hereby assigned and shall be paid to Beneficiary as further security for all obligations secured by this Deed of Trust. Upon receipt of such proceeds, Beneficiary may hold the proceeds as further security or apply or release them in the same manner and with the same effect as provided in this Deed of Trust for the disposition of proceeds of fire or other insurance.

SUBSECTION 3.08(b). Any insurance proceeds or awards in connection with any casualty or damage or injury to the Property covered by insurance ("Insurance Proceeds") are hereby assigned to Beneficiary to be held and applied by Beneficiary in the manner hereinafter provided. Beneficiary may, at its option, and at its own expense, appear in and prosecute in its own name any action or proceeding to enforce any cause of action for such Insurance Proceeds. All Insurance Proceeds shall be applied by Beneficiary upon any indebtedness secured by this Deed of Trust and in any order determined by Beneficiary or, at the option of Beneficiary, the entire amount so collected or any part of that amount may be released to Trustor. This application or release shall not cure or waive any default or notice of default under this Deed of Trust or invalidate any act done pursuant to such notice.

SUBSECTION 3.08(c). Trustor, immediately upon obtaining knowledge of the institution of any proceedings relating to condemnation or other taking of or damage or injury to the Property or any portion thereof, or knowledge of any casualty damage to the Property or damage in any other manner, shall immediately notify Beneficiary in writing. Beneficiary may participate, at its own expense, in any such proceedings and may join Trustor in adjusting any loss covered by insurance.

**ARTICLE 4. TAXES, LIENS AND OTHER ITEMS.** Trustor shall pay, when due, all taxes, bonds, assessments, fees, liens (including prior trust deed liens), charges, fines, impositions and any and all other items which are attributable to or affect the Property and which may attain a priority over this Deed of Trust or the indebtedness or evidence of indebtedness secured hereby, by making payment prior to delinquency directly to the payee thereof. Trustor may initiate proceedings to contest any such taxes, bonds, assessments, fees, liens, charges, fines, impositions or other items so long as Trustor takes steps to ensure that Beneficiary's security is not threatened in any manner. Trustor shall pay all costs of the proceedings, including any costs or fees incurred by Beneficiary. Upon the final determination of any proceeding or contest, Trustor shall immediately pay the amounts due, together with all costs, charges, interest and penalties incidental to the proceedings.

**ARTICLE 5. PRESERVATION AND MAINTENANCE OF PROPERTY.** Trustor shall keep the Property and every part thereof in good condition and repair, ordinary wear and tear excepted, and shall not permit or commit any waste, impairment or deterioration of the Property nor commit, suffer or permit any act upon or use of the Property in violation of law or applicable order of any governmental authority, whether now existing or hereafter enacted and whether foreseen or unforeseen, including, without limitation, violation of any zoning, building or environmental protection statutes, ordinances, regulations, orders and restrictions or in violation of any covenants, conditions or restrictions affecting the Property or bring or keep any article upon any of the Property or cause or permit any condition to exist thereon which would be prohibited by or could invalidate any insurance coverage maintained or required hereunder to be maintained by Trustor on or with respect to any part of the Property and further shall do all other acts which from the character or use of the Property may be reasonably necessary to protect the security hereof, the specific enumerations herein not excluding the general. Trustor shall completely restore and repair promptly and in a good and workmanlike manner any building, structure or improvement thereon which may be damaged or destroyed and pay, when due, all claims for labor performed and materials furnished therefor, whether or not insurance or other proceeds are available to cover, in whole or in part, the costs of any such restoration or repair. Trustor shall notify Beneficiary immediately in writing of any damage to the Property in excess of Ten Thousand Dollars (\$10,000.00).

**ARTICLE 6. PROTECTION OF SECURITY: COSTS AND EXPENSES.** Trustor shall appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee and shall pay all reasonable costs and expenses, including, without limitation, costs of evidence of title and reasonable attorney's fees, in any such action or proceeding in which Beneficiary or Trustee may appear and in any suit brought by Beneficiary to foreclose this Deed of Trust or to enforce or establish any other rights or remedies of Beneficiary hereunder. If Trustor fails to perform any of the covenants or agreements in this Deed of Trust or if any action or proceeding is commenced which affects Beneficiary's interest in the Property or any part thereof, including, but not limited to, eminent domain, code enforcement or proceedings of any nature whatsoever under any federal or state law, whether now existing or hereafter enacted or amended, relating to bankruptcy, insolvency, arrangement, reorganization or other form of debtor relief, or to a decedent, then Beneficiary or Trustee may, but without obligation to do so and upon ten (10) days' prior written notice to and demand upon Trustor (unless a shorter notice period is necessary to protect Beneficiary's interest in the security hereof, in which case only reasonable notice and demand under the circumstances shall be required) and without releasing Trustor from any obligation hereunder, make such appearances, disburse such sums and take such action as Beneficiary or Trustee deems necessary or appropriate to protect Beneficiary's interest, including, but not limited to, disbursement of reasonable attorney's fees, entry upon the Property to make repairs or otherwise protect the security hereof, and payment, purchase, contest or compromise of any encumbrance, charge or lien which in the judgment of either Beneficiary or Trustee appear to be prior or superior hereto. Trustor further agrees to pay all reasonable expenses of Beneficiary (including fees and disbursements of counsel) reasonably related to the protection of the rights of Beneficiary hereunder, and enforcement or collection of payment of the Promissory Note, whether by judicial or non-judicial proceedings, or in connection with any bankruptcy, insolvency, arrangement, reorganization or other debtor relief proceeding of Trustor, or otherwise.



Beneficiary shall give Trustor ten (10) days' prior written notice before disbursing any amounts pursuant to this Article. Any amounts disbursed by Beneficiary or Trustee pursuant to this Section shall be additional indebtedness of Trustor secured by this Deed of Trust as of the date of disbursement. All such amounts shall be payable by Trustor immediately without demand. Nothing contained herein shall be construed to require Beneficiary or Trustee to incur any expense, make any appearance or take any other action.

## **ARTICLE 7. ENFORCEMENT.**

**Acknowledgement of Enforceability.** Trustor represents, warrants, covenants and agrees that it has a leasehold interest in the Real Property and that it has good right and lawful authority to encumber the same as provided herein; that the Real Property is free from any and all liens and encumbrances excepting only such as have been approved by Beneficiary and that Trustor warrants and will defend the title to the Property against all claims and demands whatsoever not specifically excepted herein (and except for claims and demands arising from acts or omissions of Beneficiary or any predecessor-in-interest to Beneficiary not previously disclosed to Trustor), and Trustor will execute, acknowledge and deliver all and every such further assurances unto Beneficiary of the title to the Property hereby conveyed and intended so to be or that Trustor may be or shall become hereinafter bound so to do. Trustor covenants and warrants that the Promissory Note and this Deed of Trust are valid and enforceable obligations of Trustor in accordance with the terms thereof and hereof; and that this Deed of Trust does not, nor does the Promissory Note, nor does the performance or observance by Trustor of any of the matters or things in the Promissory Note or this Deed of Trust, contravene any covenant in any indenture or agreement affecting Trustor.

**ARTICLE 8. EVENTS OF DEFAULT.** Each of the following shall constitute an event of default ("Event of Default") hereunder (including, if Trustor and Trustee consists of more than one person or entity, the occurrence of any of such events with respect to any one or more of such persons or entities):

**SECTION 8.01. Breach of Covenants.** Default by Trustor in the performance of any of the material covenants or agreements of Trustor contained herein, in the Promissory Note, in the Affordable Housing Agreement, or any other note or instrument, trust deed or other obligation of Trustor relating to the Property secured by any part of or all of the Property, whether junior or senior to this Deed of Trust. Unless otherwise provided in this Deed of Trust, any default or failure to perform any covenant under this Deed of Trust shall not be an Event of Default if it is cured within thirty (30) days after written notice thereof given by the Beneficiary, provided, however, that if such failure to perform shall not be reasonably susceptible of cure within such 30-day period, such failure shall not constitute an Event of Default if Trustor shall commence to cure such failure within such 30-day period and diligently prosecute such cure to completion; provided, however, any such cure shall be completed within one hundred and twenty (120) days from the date of such written notice.

**SECTION 8.02. Appointment of Trustee.** The appointment pursuant to an order of a court of competent jurisdiction, of a trustee, receiver or liquidator of the Property or any part thereof, or of Trustor, or any termination or voluntary suspension of the transaction of business of Trustor, or any attachment, execution or other judicial seizure of all or any substantial portion of Trustor's

assets; provided, however, that if such attachment, execution or seizure is involuntary, Trustor shall not be deemed in default unless the same is not discharged within ninety (90) days.

**SECTION 8.03. Bankruptcy Filing.** The filing by or against Trustor of a petition in bankruptcy or for an arrangement or for reorganization or for other form of debtor relief pursuant to the federal Bankruptcy Act, as the same may be amended or replaced from time to time, or any other law, federal or state, whether now existing or hereafter amended or enacted relating to insolvency or debtor relief (except that in the case of a filing against Trustor, an Event of Default shall not exist unless Trustor fails to have the proceeding discharged within ninety (90) days after such filing), or the adjudication of Trustor as a bankrupt or an insolvent by a decree of a court of competent jurisdiction, or the making of an assignment for the benefit of creditors, or the admission by Trustor in writing of its inability to pay its debts generally as they become due, or the giving of consent by Trustor to the appointment of a receiver or receivers of all or substantially all of its property.

**SECTION 8.04. Misrepresentations.** Any representation or disclosure made to Beneficiary by Trustor as an inducement to the making of the Loan evidenced by the Promissory Note that proves to be false or misleading in any material respect as of the time the same was made, whether or not any such representation or disclosure appears as part of this Deed of Trust.

**SECTION 8.05. Other Events.** Any other event which, under this Deed of Trust, or under the Promissory Note or the Agreement, constitutes an Event of Default by Trustor hereunder or thereunder or gives Beneficiary the right to accelerate the maturity of the indebtedness, or any part thereof, secured hereby.

**SECTION 8.06. Cure Rights.**

(a) **Monetary Default.** If a monetary Event of Default occurs, prior to exercising any remedies thereunder, Beneficiary shall give the Trustor written notice of such default. Trustor shall have a period of ten (10) days after such notice is given within which to cure the default prior to exercise of remedies by Beneficiary.

(b) **Non-Monetary Default.** If a non-monetary Event of Default occurs, prior to exercising any remedies thereunder, Beneficiary shall give Trustor written notice of such default. If the default is reasonably capable of being cured within thirty (30) days, Trustor shall have such period to effect a cure prior to exercise of remedies by Beneficiary. If the default is such that it is not reasonably capable of being cured within thirty (30) days, and if Trustor (a) initiates corrective action within said period, and (b) diligently, continually, and in good faith works to effect a cure as soon as possible, then Trustor shall have such additional time as is reasonably necessary to cure the default prior to exercise of any remedies by Beneficiary. In no event shall Beneficiary be precluded from exercising remedies if its security becomes or is about to become materially jeopardized by any failure to cure a default or the default is not cured within one hundred twenty (120) days after the first notice of default is given.

**ARTICLE 9. REMEDIES.** Upon the occurrence of any Event of Default and the expiration of any applicable period within which to cure the same, Trustee and Beneficiary shall have the following rights and remedies:



**SECTION 9.01. Acceleration.** Beneficiary may declare the entire outstanding Principal, accrued and **unpaid interest** and all other sums or payments required hereunder to be due and payable immediately and notwithstanding the date such sums would otherwise be due in accordance with the Promissory Note and the Agreement.

**SECTION 9.02. Entry.** Whether or not Beneficiary exercises the right provided in Section 9.01 above, Beneficiary, in person or by agent or court-appointed receiver, may enter upon, take possession of, manage and operate the Property or any part thereof and do all things necessary or appropriate in Beneficiary's sole discretion in connection therewith, including, without limitation, making and enforcing, and if the same be subject to modification or cancellation, modifying or canceling leases upon such terms or conditions as Beneficiary deems proper, obtaining and evicting tenants, and fixing or modifying rents, contracting for and making repairs and alterations, and doing any and all other acts which Beneficiary deems proper to protect the security hereof; and either with or without so taking possession, in its own name, in the name of Trustor or by court-appointed receiver (which may be appointed on notice or on ex parte application without notice), suing for or otherwise collecting and receiving the rents and profits, including those past due and unpaid, and applying the same less costs and expenses of operation and collection, including reasonable attorney's fees, upon any indebtedness secured hereby and in such order as Beneficiary may determine. Upon request of Beneficiary, Trustor shall assemble and make available to Beneficiary at the site of the Real Property any of the Property which has been removed therefrom. The entering upon and taking possession of the Property, or any part thereof, the collection of any rents and profits and the application thereof as aforesaid shall not cure or waive any Event of Default theretofore or thereafter occurring or affect any notice or Event of Default or notice, and, notwithstanding continuance in possession of the Property or any part thereof by Beneficiary, Trustor or a receiver, and the collection, receipt and application of the rents and profits, Beneficiary shall be entitled to exercise every right provided for in this Deed of Trust or by law or in equity upon or after the occurrence of an Event of Default, including, without limitation, the right to exercise the power of sale. Any of the actions referred to in this Section may be taken by Beneficiary irrespective of whether any notice of an Event of Default or election to sell has been given hereunder and without regard to the adequacy of the security for the indebtedness hereby secured.

**SECTION 9.03. Judicial Action.** Beneficiary may bring an action in any court of competent jurisdiction to foreclose this Deed of Trust or to enforce any of the covenants and agreements of this Deed of Trust, or the Promissory Note and the Affordable Housing Agreement.

**SECTION 9.04. Power of Sale.**

**SUBSECTION 9.04(a).** Beneficiary may elect to cause the Property or any part thereof to be sold under the power of sale herein granted in any manner permitted by applicable law. In connection with any sale or sales hereunder, Beneficiary may elect to treat any of the Property that consists of a right in action or that is property that can be severed from the Real Property or any improvements thereon without causing structural damage thereto as if the same were personal property and dispose of the same in accordance with applicable law, separate and apart from the sale of the Real Property.

SUBSECTION 9.04(b). Trustee may, and upon request of Beneficiary shall, from time to time, postpone any sale hereunder by public announcement thereof at the time and place noticed therefor. If the Property consists of several items of property, Beneficiary may designate the order in which such items shall be offered for sale or sold. Any person, including Trustor, Trustee or Beneficiary, may purchase at any sale hereunder, and Beneficiary shall have the right to purchase at any sale hereunder by crediting upon the bid price the amount of all or any part of the indebtedness hereby secured.

SUBSECTION 9.04(c). Should Beneficiary desire that more than one sale or other disposition of the Property be conducted, Beneficiary may, at its option, cause the same to be conducted simultaneously, or successively, on the same day, or at such different days or times and in such order as Beneficiary may deem to be in its best interests, and no such sale shall terminate or otherwise affect the lien of this Deed of Trust on any part of the Property not sold until all indebtedness secured hereby has been fully paid. Upon any sale hereunder, Trustee shall execute and deliver to the purchaser or purchasers a deed or deeds conveying the Property so sold, but without any covenant or warranty whatsoever, express or implied, whereupon such purchaser or purchasers shall be let into immediate possession; and the recitals in any such deed or deeds of facts, such as default, the giving of notice of default and notice of sale and other facts affecting the regularity or validity of such sale or disposition, shall be conclusive proof of the truth of such facts and any such deed or deeds shall be conclusive against all persons as to such facts recited therein.

SUBSECTION 9.04(d). In case of any sale of the Property pursuant to any judgment or decree of any court or at public auction or otherwise in connection with the enforcement of any of the terms of this Deed of Trust, Beneficiary, its successors or assigns, may become the purchaser, and for the purpose of making settlement for or payment of the purchase price, shall be entitled to deliver over and use the Promissory Note, together with all other sums, with interest, advanced and unpaid hereunder, in order that there may be credited as paid on the purchase price the sum then due under the Promissory Note, including principal thereon and all other sums, with interest, advanced and unpaid hereunder.

**SECTION 9.05. Proceeds of Sale.** The proceeds of any sale made under or by virtue of this Article, together with all other sums that then may be held by Trustee or Beneficiary under this Deed of Trust, whether under the provisions of this Article or otherwise, shall be applied as follows:

(a) First, to the payment of the costs and expenses of sale and of any judicial proceedings wherein the same may be made, including reasonable compensation to Trustee and Beneficiary, their agents and counsel, and to the payment of all expenses, liabilities and advances made or incurred by Trustee under this Deed of Trust, together with interest on all advances made by Trustee at the maximum rate permitted by law to be charged by Trustee.

(b) Second, to the payment of any and all sums expended by Beneficiary under the terms hereof (including, but not limited to, sums paid by Beneficiary on the prior trust deed) not then repaid and all other sums required to be paid by Trustor pursuant to any provisions of this Deed of Trust or the Promissory Note, including, without limitation, all expenses, liabilities and advances made or

incurred by Beneficiary under this Deed of Trust or in connection with the enforcement hereof, together with interest thereon as herein provided.

(c) Third, to the payment of the entire amount then due, owing or unpaid upon the Promissory Note, including attorney's fees and costs.

(d) Fourth, all amounts otherwise due Beneficiary.

(e) The remainder, if any, to the person or persons legally entitled thereto.

**SECTION 9.06. Waiver of Marshaling.** Trustor, for itself and for all persons hereafter claiming through or under it or who may at any time hereafter become holders of liens junior to the lien of this Deed of Trust, hereby expressly waives and releases all rights to direct the order in which any of the Property shall be sold in the event of any sale or sales pursuant hereto, and to have any of the Property and/or other property now or hereafter constituted security for any of the indebtedness secured hereby, marshaled upon any foreclosure of this Deed of Trust or for any other security for any of said indebtedness.

**SECTION 9.07. Remedies Cumulative.** No remedy herein conferred upon or reserved to Trustee or Beneficiary is intended to be exclusive of any other remedy herein or by law provided, 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. No delay or omission of Trustee or Beneficiary to exercise any right or power accruing upon any Event of Default shall impair any right or power or shall be construed to be a waiver of any Event of Default or any acquiescence therein; and every power and remedy given by this Deed of Trust to Trustee or Beneficiary may be exercised from time to time as often as may be deemed expedient by Trustee or Beneficiary. If there exists additional security for the performance of the obligations secured hereby, the holder of the Promissory Note, at its sole option, and without limiting or affecting any of its rights or remedies hereunder, may exercise any of the rights and remedies to which it may be entitled hereunder either concurrently with whatever rights and remedies it may have in connection with such other security or in such order as it may determine. Any application of any amounts or any portion thereof held by Beneficiary at any time as additional security hereunder, whether pursuant to this deed of trust or otherwise, to any indebtedness secured hereby shall not extend or postpone the due dates of any payments due from Trustor to Beneficiary hereunder or under the Promissory Note, or change the amounts of any such payments or otherwise be construed to cure or waive any default or notice of default hereunder or invalidate any act done pursuant to any such default or notice. In the event that Beneficiary shall have proceeded to enforce any right under this Deed of Trust by foreclosure, sale, entry or otherwise, and such proceedings shall have been discontinued or abandoned for any reason or shall have been determined adversely, then, and in every such case, Trustor and Beneficiary shall be restored to their former positions and rights hereunder with respect to the Property subject to the lien hereof.

**SECTION 9.08. Indemnity.** Trustor agrees to defend, indemnify, and hold Beneficiary harmless from all losses, damages, liabilities, claims, actions, judgments, costs, and reasonable attorney's fees that Borrower may incur as a direct or indirect result of:

- a) Trustor's default, performance, or failure to perform any obligations as and when required by the Note and Deed of Trust;
- b) Trustor's ownership of the Property; or
- c) The failure at any time of any of Trustor's certifications, representations, or warranties to be true and correct.

## ARTICLE 10. MISCELLANEOUS

SECTION 10.01. **Severability; captions.** In the event that any one or more of the provisions contained in this Deed of Trust shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Deed of Trust, and this Deed of Trust shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein. The captions and headings in this Deed of Trust are for convenience only and are not to be used to interpret or define the provisions hereof.

SECTION 10.02. **Certain Charges.** Trustor agrees to pay the charges of Beneficiary for any service rendered Trustor, or on its behalf, connected with this Deed of Trust or the indebtedness secured hereby, including, without limitation, delivering to an escrow holder a request for full or partial reconveyance of this Deed of Trust, transmitting to an escrow holder moneys secured hereby, changing the records pertaining to this Deed of Trust and indebtedness secured hereby, showing a new owner of the Property and replacing an existing policy of insurance held hereunder with another such policy.

SECTION 10.03. **Notices.** All notices required or permitted to be given under this Deed of Trust shall be in writing and shall be deemed to have been given upon (i) one business day after being deposited with Federal Express or another reliable overnight courier service for next day delivery, or (ii) five (5) business days after being deposited in the United States mail, by first class or registered or certified mail, postage prepaid, return receipt requested, and addressed as follows (or at such other address or which said party shall have theretofore notified in writing, as provided above, the party giving such notice).

To the Beneficiary:  
City of San Luis Obispo  
990 Palm Street  
San Luis Obispo, CA 93401  
Attn: Community Development Director

To the Trustee:  
[enter title company info]

To the Trustor:  
[enter trustor info]

With copies to:  
[enter managing director info]

**SECTION 10.04. Trustor Not Released.** Extension of the time for payment or modification of the terms of payment of any sums secured by this Deed of Trust granted by Beneficiary to any successor-in-interest of Trustor shall not operate to release, in any manner, the liability of the original Trustor. Beneficiary shall not be required to commence proceedings against such successor or refuse to extend time for payment or otherwise modify the terms of the payment of the sums secured by this Deed of Trust by reason of any demand made by the original Trustor. Without affecting the liability of any person, including Trustor, for the payment of any indebtedness secured hereby, or the lien of this Deed of Trust on the remainder of the Property for the full amount of any such indebtedness and liability unpaid, Beneficiary and Trustee are respectively empowered as follows: Beneficiary may from time to time and without notice (a) release any person liable for the payment of any of the indebtedness, (b) extend the time or otherwise alter the terms of payment of any of the indebtedness, (c) accept additional real or personal property of any kind as security therefor, whether evidenced by deeds of trust, mortgages, security agreements or any other instruments of security, or (d) alter, substitute or release any property securing the indebtedness; Trustee may, at any time and from time to time, upon the written request of Beneficiary (a) consent to the making of any map or plat of the Property or any part thereof, (b) join in granting any easement or creating any restriction thereon, (c) join in any subordination agreement or other agreement affecting this Deed of Trust or the lien or charge hereof, or (d) reconvey, without any warranty, all or part of the Property.

**SECTION 10.05. Inspection.** Beneficiary may at any reasonable time or times make or cause to be made entry upon and inspections of the Property or any part thereof in person or by agent.

**SECTION 10.06. Reconveyance.** Upon the payment in full of all sums secured by this Deed of Trust, Beneficiary shall request that Trustee reconvey the Property and shall surrender this Deed of Trust and Promissory Note evidencing indebtedness secured by this Deed of Trust to Trustee. Upon payment of its fees and any other sums owing to it under this Deed of Trust, Trustee shall reconvey the Property without warranty to the person or persons legally entitled thereto. Such person or persons shall pay all costs of recordation, if any. The recitals in such reconveyance of any matters of facts shall be conclusive proof of the truthfulness thereof. The grantee in such reconveyance may be described as "the person or persons legally entitled thereto." Five (5) years after issuance of such full reconveyance, Trustee may destroy the Promissory Note and this Deed of Trust unless otherwise directed by Beneficiary.

**SECTION 10.07. Interpretation.** Wherever used in this Deed of Trust, unless the context indicates a contrary intent, or unless otherwise specifically provided herein, the word "Trustor" shall mean and include both Trustor and any subsequent owner or owners of the Property, and the word "Beneficiary" shall mean and include not only the original Beneficiary hereunder but also any future owner and holder, including pledgees, of the Promissory Note secured hereby. In this Deed of Trust wherever the context so requires, the masculine gender includes the feminine and/or neuter, and the neuter includes the feminine and/or masculine, and the singular number includes the plural and conversely. In this Deed of Trust, the use of the word "including" shall not be deemed to limit the generality of the term or clause to which it has reference, whether or not non-limiting language (such as "without limitation," or "but not limited to" or words of similar import) is used with reference thereto. The captions and headings of the Articles and Sections of this Deed

of Trust are for convenience only and are not to be used to interpret, define or limit the provisions hereof. Unless otherwise specified, in computing any period of time described herein, the term “days” means calendar days, unless the final days of any designated period of time is not a “business day” (as defined below), in which case the period shall run until the end of the next business day. A “business day” is any day that is not a Saturday, Sunday or legal holiday for national banks located in California. The last day of any period of time described herein shall be deemed to end at 5:00 p.m., Pacific Time.

**SECTION 10.08. Consent.** The granting or withholding of consent by Beneficiary to any transaction as required by the terms hereof shall not be deemed a waiver of the right to require consent to future or successive transactions.

**SECTION 10.09. Successors and Assigns.** All of the grants, obligations, covenants, agreements, terms, provisions and conditions herein shall run with the land and shall apply to, bind, and inure to the benefit of the heirs, administrators, executors, legal representatives, successors and assigns of Trustor and the successors-in-trust of Trustee and the endorsees, transferees, successors and assigns of Beneficiary. In the event that Trustor is composed of more than one party, the obligations, covenants, agreements and warranties contained herein as well as the obligations arising therefrom are and shall be joint and several as to each such party.

**SECTION 10.10. Governing Law.** This Deed of Trust shall be governed by and construed under the laws of the State of California. Venue for any action or proceeding arising out of or in connection to this Deed of Trust shall be the Superior Court for the County of San Luis Obispo.

**SECTION 10.11. Trustor Waivers.** Trustor waives the benefit of all laws now existing or that hereafter may be enacted with respect to any statute of limitations for the filing of any action or claims by Beneficiary.

**SECTION 10.12. Subordination.** This Deed of Trust shall not diminish or affect the rights of Senior Lenders (as defined below). Beneficiary and Trustor acknowledge and agree that this Deed of Trust is subject and subordinate in all respects to the liens, terms, covenants and conditions of the Senior Financing Documents (as defined below) and to all advances heretofore made or which may hereafter be made pursuant to any of the Senior Financing Documents, including all sums advances for the purposes of (i) protecting or further securing the lien of any of the Senior Financing Documents, curing defaults by the Trustor under any of the Senior Financing Documents or for any other purpose expressly permitted by any of the Senior Financing Documents, or (ii) constructing, renovating, repairing, furnishing, fixturing or equipping the Project or the Property. The terms and provisions of the Senior Financing Documents are paramount and controlling, and they superseded any other terms and provisions hereof in conflict therewith. Trustor shall be permitted to refinance the loans evidenced by the Senior Financing Documents, and this Deed of Trust shall be subject and subordinate to the liens, terms, covenants and conditions of any such refinancing. Beneficiary shall execute instruments further evidencing such subordination upon request. The “Senior Financing Documents” shall mean, collectively described below, and recorded concurrently herewith:

(a)



**SECTION 10.13. Request for Notices of Default and Sale.**

SUBSECTION 10.13(a). Beneficiary hereby requests that a copy of any notice of default and notice of sale as may be required by law or by this Deed of Trust be mailed to Beneficiary at its address above stated.

**SECTION 10.14. Transfer.** Trustor shall not voluntarily or involuntarily assign or otherwise transfer any of its rights, duties, liabilities or obligations hereunder or under the Note without the prior written consent of Beneficiary. Notwithstanding the forgoing, Trustor shall have the right to sell, convey, transfer or dispose of the Property or any part thereof or any interest therein, or the enter into an agreement to do so, to the extent permissible under and pursuant to the requirements of the Affordable Housing Agreement, provided also that transferee agrees to assume all of the obligations of Trustor under this Deed of Trust, the Note and the Affordability Agreement, and the Note shall not become due and payable.

In addition, and notwithstanding anything to the contrary in this Deed of Trust or the other documents evidencing and/or securing the Loan (the “Loan Documents”), (a) the withdrawal, removal and/or replacement of a general partner of the Trustor (the “General Partner”) by the limited partner of Trustor for cause pursuant to the terms of the Trustor’s amended and restated agreement of limited partnership shall not constitute a default under any of the Loan Documents, and any such actions shall not accelerate the maturity of the Loan, provided that any substitute general partner that is not an affiliate of the limited partner is reasonably acceptable to Beneficiary and is selected with reasonable promptness (it being agreed that no consent of Beneficiary shall be required if the substitute general partner is an affiliate of the Limited Partner), and (b) all or a portion of the interests of Trustor’s limited partners shall be transferable without the consent of the Beneficiary except that, prior to payment in full of all capital contributions, the interest the limited partners in the Trustor shall be transferable to a non-affiliate of the limited partners only with the consent of the Beneficiary, which consent shall not be unreasonably withheld.

**SECTION 10.15 Attorney’s Fees.** In any action, to interpret or enforce any provision of this Deed of Trust, the prevailing party shall be entitled to reasonable costs and attorney’s fees.

**SECTION 10.16 Extended Use Agreement.** In order to receive and allocation of federal low income housing tax credits, Trustor will be require to record in the real property records of the County in which the property is located, an “extended low-income housing commitment” (as defined in Section 42(h)(6)(B) of the Internal Revenue Code of 1986, as amended (“Code”)) (“Extended Use Agreement”). Beneficiary acknowledges and agrees that, in the event of a foreclosure of its interest under this Deed of Trust or delivery by the Trustor of a deed in lieu thereof (collectively, a “Foreclosure”), Beneficiary agrees to comply with the following rule contained in Section 42(h)(6)(E)(ii) of the Code: For a period of three (3) years from the date of Foreclosure, with respect to any unit that had been regulated by the Extended Use Agreement, (i) none of the eligible tenants occupying those units at the time of Foreclosure may be evicted or their tenancy terminated (other than for good cause, including by not limited to, the tenants’ ineligibility pursuant to regulations of Section 42 of the Code, (ii) not may any rent be increased except as otherwise permitted under Section 42 of the Code.

[Signatures appear on the following page]

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

**BORROWER:**

[*enter LP name*],  
a California limited partnership

By: [*enter managing general partner name*],  
a California nonprofit public benefit corporation,  
its managing general partner

By: \_\_\_\_\_  
[*enter CEO name*], CEO

**SIGNATURE MUST BE NOTARIZED**

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

State of California }  
County of San Luis Obispo }

On \_\_\_\_\_, before me, \_\_\_\_\_,  
Date Name and Title of the Officer  
personally appeared, \_\_\_\_\_,  
Name of Signer(s)

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

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

WITNESS my hand and official seal.

Signature \_\_\_\_\_  
Signature of Notary Public Place Notary Seal Above

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

State of California }  
County of San Luis Obispo }

On \_\_\_\_\_, before me, \_\_\_\_\_,  
Date Name and Title of the Officer  
personally appeared, \_\_\_\_\_,  
Name of Signer(s)

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

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

WITNESS my hand and official seal.

Signature \_\_\_\_\_  
Signature of Notary Public Place Notary Seal Above

**Exhibit A**  
**Legal Description**