

**WHEN RECORDED RETURN TO:**

Multnomah County Attorney  
Attn: Kenneth M. Elliott  
501 SE Hawthorne, Suite 500  
Portland, OR 97214

The address of the entity holding a lien or  
other interest by this instrument is:

501 SE Hawthorne, Suite 600  
Portland, OR 97214

**SECOND TRUST DEED**

**GRANTOR  
HUMAN SOLUTIONS, INC.**

Andy Miller  
Registered Agent  
12350 SE Powell  
Portland, OR 97236

**TRUSTEE  
TICOR TITLE INSURANCE COMPANY**

111 SW Columbia Street, Suite 1000  
Portland, OR 97201

**BENEFICIARY  
MULTNOMAH COUNTY**

501 SE Hawthorne, Suite 600  
Portland, Oregon 97214

**THIS SECOND TRUST DEED (“Trust Deed”)** is made this \_\_\_\_ day of October, 2015, by **HUMAN SOLUTIONS, INC.**, an Oregon non-profit, public benefit corporation (“**Grantor**”) to **TICOR TITLE COMPANY OF OREGON (“Trustee”)**, for the benefit of **MULTNOMAH COUNTY**, a political subdivision of the State of Oregon (“**Beneficiary**”).

**RECITALS:**

A. Beneficiary has offered to make a loan to Grantor in the sum of Three Hundred Thousand and no/100s Dollars (\$300,000.00) to be used for Grantor’s acquisition and improvement of that certain real property described in **Exhibit A**, attached hereto and incorporated herein by reference (the “**Property**”). The loan shall be evidenced by a Promissory Note of even date herewith and shall be secured by the Property. (The Promissory Note as modified, supplemented, extended, renewed, or replaced from time to time is referred to below as the “**Note.**”) The loan, if not sooner paid, is due and payable in full on the earlier of November 1, 2020, or the second anniversary following Grantor’s closure of the Warming Shelter on the Property.

B. As a condition to the making of the loan to Grantor, Beneficiary has required, and Grantor has agreed to execute and deliver, this Trust Deed. This Trust Deed is in second position, subordinate to the first position trust deed encumbering the Property and securing Grantor’s repayment of the loan from the Housing Development Corporation (“**HDC**”) Community Loan Fund LLC (the “**HDC CLF Note**”).

C. In addition to the \$300,000 loan referenced in Recital A, Beneficiary is prepared to advance Three Hundred Ninety Seven Thousand Six Hundred Ninety Seven and no/100s Dollars (\$397,697.00) to Grantor for its use in planning, designing, managing and constructing capital improvements to the Property and to an interim warming shelter leased by Grantor, all in compliance with applicable zoning and building regulations (collectively, the “**Construction Aid**”). This Trust Deed is also conveyed to secure Grantor’s performance of the Construction Aid Agreement conditions.

**AGREEMENTS:**

NOW, THEREFORE, for good and valuable consideration, receipt of which is hereby acknowledged, and for the purpose of securing the Obligations described in Sections 1.01, 1.02 and 1.03 below, Grantor irrevocably grants, bargains, sells, conveys, assigns, and transfers to Trustee in trust for the benefit and security of the Beneficiary, with power of sale and right of entry and possession, all of Grantor’s right, title, and interest in and to the Property;

TOGETHER WITH all easements, rights-of-way, and rights used in connection with the Property or as a means of access to the Property and all appurtenances in any manner relating to the Property; and

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

TOGETHER WITH all rights, titles, and interests of Grantor, now owned or hereafter acquired, in and to any and all buildings and other improvements of every nature now or hereafter located on the Property and all fixtures, machinery, and equipment attached or affixed to any such buildings and other improvements on the Property, and all additions to and substitutions and replacements of the Property (all of the foregoing being collectively referred to below as the **“Improvements”**).

TOGETHER WITH all the estate, interest, right, title, other claim or demand, including claims or demands with respect to the proceeds of insurance, which Grantor now has or may hereafter acquire in the 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 Property, including, without limitation, any awards resulting from a change of grade of streets and awards for severance damages;

TOGETHER WITH Grantor’s right, title, and interest in any and all existing and future leases (including subleases), whether written or oral, rental agreements and all future agreements for use and occupancy, and any and all extensions, renewals and replacements thereof, upon all or relating to any part of the Property (hereinafter collectively referred to as the **“Leases”**) and any and all guaranties of a tenant’s performance under any and all of the Leases;

TOGETHER WITH all of Grantor’s interest in and to all contracts and general intangibles relating to the Property and/or the construction of improvements thereon, and any and all construction contracts, architect contracts and plans and specifications created thereunder, development contracts, and property management contracts;

All of the above is sometimes referred to below as the **“Trust Property.”**

TO HAVE AND TO HOLD the Trust Property to Trustee and its successors and assigns for the benefit of Beneficiary and its successors and assigns, forever.

PROVIDED ALWAYS, that if all of the Obligations (as defined in Section 1.01 below) shall be paid, performed, and satisfied in full, then the lien and estate granted by this Trust Deed shall be reconveyed.

This Trust Deed, the Note, and the Construction Aid Agreement, as they may be amended or supplemented from time to time, are sometimes collectively referred to below as the **“Loan Documents.”**

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

**ARTICLE I**  
**Covenants and Warranties of Grantor**

**1.01 Obligations Secured.** This Trust Deed secures the following, collectively referred to as the “Obligations”:

(1) Covenants; Payment of Indebtedness. The performance of all covenants and obligations of Grantor, under the Note, or, in satisfaction of such covenants, the payment of all principal indebtedness, whether such performance and payment is now due or becomes due in the future; and

(2) Other Obligations. The performance of all covenants and obligations in the Loan Documents.

**1.02 Performance of Covenants.** Grantor shall duly and punctually perform all of the following Obligations:

(1) Contract for construction of roof repairs, interior modifications, improvements, plumbing and electrical upgrades and installation of fixtures on the Property, all in compliance with applicable zoning and building regulations, to permit its licensed operation and occupancy as a family warming shelter, by up to one hundred thirty (130) individuals at a time (the “**Shelter**”), beginning February 1, 2016, or such earlier or later date when all required licenses and occupancy permits are issued (the “**Shelter Opening Date**”);

(2) Operate the Shelter, in consideration for which Beneficiary will credit Fifty Thousand Dollars (\$50,000) per year on each anniversary of the Shelter Opening Date toward satisfaction of the principal due on the Note;

(3) In lieu of (2), lease the Property to a qualified service provider selected by Beneficiary based on a competitive solicitation to operate the Shelter; in consideration for which Beneficiary will credit Fifty Thousand Dollars (\$50,000) for each year the Shelter is operated on each anniversary of the Shelter Opening Date toward satisfaction of the principal due on the Note; and

(4) If Grantor ceases to operate the Shelter or lease the Property for such operation, under the provisions of (2) or (3) hereof, or decides to sell the Property or redevelop the Property for a use other than the Shelter, Grantor shall provide Beneficiary with thirty (30) days’ advance written notice of such intent to close the Shelter, sell or redevelop the Property, and Beneficiary shall have the exclusive option to purchase the Property at a price equal to its appraised fair market value, after deducting the balance of principal remaining due and payable on the Note (the “**Option**”). Grantor shall use the sale proceeds to repay the HDC CLF Note in full, as well as any other monetary liens against the Property, and shall retain any net proceeds following such repayment(s). Beneficiary shall exercise or provide written notice not to exercise the Option by delivering written notice, including the written resolution of Beneficiary’s Board of County

Commissioners approving such exercise, to Grantor at the address specified on page 1 hereof within thirty (30) days after Beneficiary's receipt of Grantor's notice of intent to close the Shelter or sell or redevelop the Property.

**1.03 Payment of Indebtedness.** For any part of the Note obligation not satisfied by Grantor's performance of the covenants as described in Section 1.02 and upon Grantor's sale of the Property or receipt of construction financing for redevelopment of the Property, Grantor shall pay to Beneficiary all remaining principal indebtedness under the Note, following Grantor's full repayment of the HDC CLF Note, from the proceeds of Grantor's sale of the Property or the proceeds of Grantor's construction financing secured for redevelopment of the Property.

**1.04 Property.** Grantor warrants that it holds good and merchantable title to the Property and the Improvements, free and clear of all liens and encumbrances except the first position trust deed securing Grantor's repayment of the HDC CLF Note and those other encumbrances specifically listed in **Exhibit "B,"** attached hereto and incorporated herein by reference.

**1.05 Further Assurances; Filing & Re-filing of Security Instruments**

(1) Grantor shall execute, acknowledge, and deliver, from time to time, such further instruments as Beneficiary or Trustee may require to accomplish the purposes of this Trust Deed.

(2) Grantor, immediately on the execution and delivery of this Trust Deed, and thereafter from time to time, shall cause this Trust Deed and any supplemental security agreement, mortgage, or Trust Deed and each instrument of further assurance, or a memorandum thereof, to be recorded and rerecorded in such manner and in such places as may be required by any present or future law in order to perfect, and continue perfected, the lien and estate of this Trust Deed.

(3) Grantor shall pay all filing and recording fees and all expenses incident to the execution, filing, recording, and acknowledgment of this Trust Deed; any security agreement, mortgage, or Trust Deed supplemental hereto; and any instrument of further assurance or memorandum thereof.

**1.06 Definitions; Environmental Covenants; Warranties and Compliance**

(1) For purposes of this section, "**Environmental Law**" means any federal, state, or local law, statute, ordinance, or regulation pertaining to Hazardous Substances, health, industrial hygiene, or environmental conditions, including without limitation the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended, 42 USC §§9601-9675, and the Resource Conservation and Recovery Act of 1976 (RCRA), as amended, 42 USC §§6901-6992.

(2) For the purposes of this section, "**Hazardous Substance**" includes without limitation, any material, substance, or waste that is or becomes regulated or that is or becomes

classified as hazardous, dangerous, or toxic under any federal, state, or local statute, ordinance, rule, regulation, or law.

(3) Grantor will not use, generate, manufacture, produce, store, release, discharge, or dispose of on, under or about the Property or the Property's groundwater, or transport to or from the Property, any Hazardous Substance and will not permit any other person to do so, except for such Hazardous Substances that may be used in the ordinary course of Grantor's improvement of the Property or operation of the Shelter and in compliance with all Environmental Laws, including but not limited to those relating to licensure, notice, and recordkeeping.

(4) Grantor will keep and maintain the Property in compliance with, and shall not cause or permit all or any portion of the Property, including groundwater, to be in violation of any Environmental Law.

(5) Grantor shall give prompt written notice to Beneficiary of:

(a) Any proceeding, inquiry, or notice by or from any governmental authority with respect to any alleged violation of any Environmental Law or the presence of any Hazardous Substance on the Property or the migration of any Hazardous Substance from or to other properties;

(b) All known claims made or threatened by any person against Grantor or with respect to the Property or Improvements relating to any loss or injury resulting from any Hazardous Substance or the violation of any Environmental Law;

(c) The existence of any Hazardous Substance on or about all or any portion of the Property; or

(d) Grantor's discovery of any occurrence or condition on any real property adjoining or in the vicinity of the Property that could in Grantor's judgment cause any restrictions on the ownership, occupancy, transferability, or use of the Property under any Environmental Law.

(6) Grantor shall promptly provide to Beneficiary copies of all reports, documents, and notices provided to or received from any agency administering any Environmental Laws. Beneficiary shall have the right to join and participate, in its own name if it so elects, in any legal proceeding or action initiated with respect to the Property or Improvements in connection with any Environmental Law and have its attorney fees in connection with such an action paid by Grantor, if Beneficiary determines that such participation is reasonably necessary to protect its interest in the Trust Property.

(7) If, at any time, Beneficiary has reason to believe that any release, discharge, or disposal of any Hazardous Substance affecting the Property or Improvements has occurred or is threatened, or if Beneficiary has reason to believe that a violation of an Environmental Law has occurred or may occur with respect to the Property or Improvements, Beneficiary may require Grantor to obtain or may itself obtain, at Grantor's expense, an environmental assessment of such condition or threatened condition by a qualified environmental consultant. Grantor shall promptly provide to Beneficiary a complete copy of any environmental assessment obtained by Grantor.

(8) If any investigation, site monitoring, containment, cleanup, removal, restoration, or other remedial work of any kind or nature (the “**Remedial Work**”) is required under any applicable Environmental Law, any judicial order, or by any governmental agency or person because of, or in connection with, the current or future presence, suspected presence, release or suspected release of a Hazardous Substance on, under, or about all or any portion of the Property, or the contamination (whether presently existing or occurring after the date of this Trust Deed) of the buildings, facilities, soil, groundwater, surface water, air, or other elements on or under any other property as a result of Hazardous Substances emanating from the Property, Grantor shall, within 30 days after written demand by Beneficiary for Grantor’s performance under this provision (or such shorter period of time as may be required under any applicable law, regulation, order, or agreement), commence and thereafter diligently prosecute to completion all the Remedial Work. All costs and expenses of the Remedial Work shall be paid by Grantor including, without limitation, Beneficiary’s reasonable attorney fees and costs incurred in connection with monitoring or review of the legal aspects of the Remedial Work. If Grantor shall fail to timely commence, or cause to be commenced, the Remedial Work, Beneficiary may, but shall not be required to, cause the Remedial Work to be performed. In that event, all costs and expenses incurred in connection with the Remedial Work shall become part of the Obligations secured by this Trust Deed and shall bear interest until paid at the rate provided in the Note.

(9) Grantor shall hold Beneficiary, its directors, officers, employees, agents, successors, and assigns, harmless from, indemnify them for, and defend them against any and all losses, damages, liens, costs, expenses, and liabilities directly or indirectly arising out of or attributable to any violation of any Environmental Law or the use, generation, manufacture, production, storage, release, threatened release, discharge, disposal, or presence of a Hazardous Substance on, under, or about the Property, including without limitation the costs of any required repair, cleanup, containment, or detoxification of the Property, the preparation and implementation of any closure, remedial or other required plans, attorney fees and costs (including but not limited to those incurred in any proceeding and in any review or appeal), fees, penalties, and fines.

(10) All representations and covenants in this Section shall survive the satisfaction of the Obligations, the reconveyance of the Trust Property, or the foreclosure of this Trust Deed by any means.

**1.06 Maintenance and Improvements.** Grantor shall not permit all or any part of the Improvements to be removed, demolished, or materially altered without Beneficiary’s prior written consent; provided, however, that Grantor may remove, demolish, or materially alter such Improvements as become obsolete in the usual operation of the Shelter, if the removal or material alteration does not materially detract from the operation of the Shelter and if all Improvements that are demolished or removed are promptly replaced with Improvements of like value and quality. Grantor shall maintain every portion of the Property and Improvements in good repair, working order, and condition, except for reasonable wear and tear, and shall at Beneficiary’s election restore, replace, or rebuild all or any part of the Improvements now or hereafter damaged or destroyed by any casualty (whether or not insured against or insurable) or affected by any

Condemnation (as defined in Section 2.01 below). Grantor shall not commit, permit, or suffer any waste, strip, or deterioration of the Trust Property.

**1.07 Liens.** Grantor shall pay when due all claims for labor, materials, or supplies that if unpaid might become a lien on all or any portion of the Trust Property. Notwithstanding the foregoing provisions of this Section 1.07, Grantor shall not be deemed to be in default under this Section 1.07 if and so long as (i) Grantor contests in good faith the validity or amount of any asserted lien or other charge and diligently prosecutes or defends an action appropriate to obtain a binding determination of the disputed matter; (ii) nonpayment of such lien or charge does not result in the loss or forfeiture of any of the Property or any interest therein; or (iii) Grantor furnishes cash, a surety bond or other security in form and content and issued by a company reasonably satisfactory to Beneficiary, as security for any payment which may ultimately be required to discharge the lien or charge.

### **1.08 Impositions**

(1) Grantor shall pay or cause to be paid, when due and before any fine, penalty, interest, or cost attaches, all taxes, assessments, fees, levies, and all other governmental and nongovernmental charges of every nature now or hereafter assessed or levied against any part of the Trust Property, or on the lien or estate of Beneficiary or Trustee (collectively, the **“Impositions”**); provided, however, that if by law any Imposition may be paid in installments, whether or not interest shall accrue on the unpaid balance, Grantor may pay the same in installments, together with accrued interest on the unpaid balance, as the same become due, before any fine, penalty, or cost attaches

(2) Grantor may, at its expense and after prior notice to Beneficiary, contest by appropriate legal, administrative, or other proceedings conducted in good faith and with due diligence, the amount, validity, or application, in whole or in part, of any Imposition or lien on the Trust Property or any claim of any laborer, materialman, supplier, or vendor or lien, and may withhold payment of the same pending completion of such proceedings if permitted by law, provided that (a) such proceedings shall suspend collection from the Trust Property; (b) no part of or interest in the Trust Property will be sold, forfeited, or lost if Grantor pays the amount or satisfies the condition being contested, and Grantor would have the opportunity to do so in the event of Grantor’s failure to prevail in the contest; (c) neither Beneficiary nor Trustee shall, by virtue of such permitted contest, be exposed to any risk of liability for which Grantor has not furnished additional security as provided in clause (d) below; and (d) Grantor shall have furnished to Beneficiary cash, corporate surety bond, or other additional security in respect of the claim being contested or the loss or damage that may result from Grantor’s failure to prevail in such contest in an amount sufficient to discharge the Imposition and all interest, costs, attorney fees, and other charges that may accrue in connection with the Imposition. Grantor shall promptly satisfy any final judgment.

(3) Grantor shall furnish to Beneficiary, promptly on request, satisfactory evidence of the payment of all Impositions. Beneficiary is hereby authorized to request and receive from the

responsible governmental and nongovernmental personnel written statements with respect to the accrual and payment of all Impositions.

**1.09 Inspection of the Property.** Grantor shall permit Beneficiary to enter and inspect the Property and the Improvements at reasonable times and after reasonable notice to Grantor.

**1.10 Limitations of Use.** Grantor shall not initiate, join in, or consent to any rezoning of the Property or any change in any public or private restrictions limiting or defining the uses that may be made of all or any part of the Property and the Improvements without the prior written consent of Beneficiary.

**1.11 Insurance.**

(1) Grantor shall at all times provide, maintain, and keep in force, or cause to be provided, maintained, and kept in force the following policies of insurance:

(a) Insurance against loss or damage to the Improvements situated on the Property by fire and any of the risks covered by insurance of the type now known as "All Risk Coverage," in an amount not less than the greater of (i) one hundred percent (100%) of the full replacement cost of the Improvements (exclusive of the cost of excavations, foundations, and footings below the lowest basement floor), or (ii) an amount sufficient to prevent Grantor and/or Beneficiary from becoming a co-insurer within the terms of the applicable policies; and with not more than Five Thousand and No/100 Dollars (\$5,000.00) deductible from the loss payable for any loss. The policies of insurance carried in accordance with this subparagraph a. shall contain the "Replacement Cost Endorsement." Such policy or policies shall also include coverage for risk of loss or damage to the Improvements resulting from earthquake;

(b) Insurance against loss or damage to the Personal Property by fire and other risks covered by insurance of the type now known as "All Risk Coverage";

(c) Commercial general liability insurance, including liabilities assumed under contract, with limits, coverages, and risks insured acceptable to Beneficiary, and in no event less than \$1,000,000 combined single limit coverage. The policy shall contain an endorsement that Multnomah County is an additional insured for this coverage; and

(d) Such other insurance and in such amounts as may, from time to time, be required by Beneficiary against the same or other hazards, including, without limitation, business interruption insurance or insurance covering loss of rents and flood insurance where applicable.

(2) All policies of insurance required by the terms of this Trust Deed shall contain an endorsement or agreement by the insurer that any loss shall be payable in accordance with the terms of such policy notwithstanding any act or negligence of Grantor which might otherwise result in forfeiture of said insurance and the further agreement of the insurer waiving all rights of set-off, counterclaim, or deductions against Grantor. (Non-Contributory Standard Mortgage Clause and Beneficiary's Loss Payable Endorsement - Form CP 12 18 or its equivalent.)

(3) All insurance shall be issued by a company or companies reasonably acceptable to Beneficiary with a rating of A X or better by AM Best and in amounts in each company satisfactory to Beneficiary. All policies of insurance shall have attached thereto a Beneficiary's

loss payable endorsement for the benefit of Beneficiary in form satisfactory to Beneficiary. Grantor shall furnish Beneficiary with a certificate of insurance for each such policy setting forth the coverage, the limits of liability, the name of the carrier, the policy number, and the expiration date.

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

### **1.12 Casualty/Loss Restoration**

(1) Notice and Proof of Loss. After the occurrence of any casualty to the Property, whether or not required to be insured against as provided in this Trust Deed, Grantor shall give prompt written notice of the casualty to Beneficiary. Beneficiary may make proof of loss if it is not made promptly and to Beneficiary's satisfaction by Grantor.

(2) Assignment of Proceeds. Grantor assigns to Beneficiary all insurance proceeds that Grantor may be entitled to receive with respect to any casualty. Beneficiary may, at its sole option, apply the insurance proceeds to the reduction of the Obligations in such order as Beneficiary may determine, whether or not such Obligations are then due, or apply all or any portion of the insurance proceeds to the cost of restoring and rebuilding the portion of the Trust Property that was damaged or destroyed. If the insurance proceeds are applied to rebuilding and restoration, Beneficiary shall be entitled to hold the proceeds, and the proceeds shall be released only on such terms and conditions as Beneficiary shall require in its sole discretion, including but not limited to prior approval of plans and release of liens. No proceeds shall be released if Grantor is in default under this Trust Deed.

**1.13 Actions to Protect Trust Property** If Grantor shall fail to obtain the insurance required herein and make the required payments or perform or observe any of its other covenants or agreements under this Trust Deed, Beneficiary may, without obligation to do so, obtain or pay the same or take other action that it deems appropriate to remedy such failure. All sums, including reasonable attorney fees, so expended to maintain the lien or estate of this Trust Deed or its priority, or to protect or enforce any of Beneficiary's rights, or to recover any indebtedness secured by this Trust Deed, shall be a lien on the Property, shall be secured by this Trust Deed, and shall be paid by Grantor upon demand, together with interest at the rate set forth in the Note. No payment or other action by Beneficiary under this section shall impair any other right or remedy available to Beneficiary or constitute a waiver of any default.

**1.14 Insurance Warning.** Unless Grantor provides Beneficiary with evidence of the insurance coverage required hereby, Beneficiary may purchase insurance at Grantor's expense to protect Beneficiary's interest. This insurance may, but need not, also protect Grantor's interest. If the Trust Property becomes damaged, the coverage Beneficiary purchases may not pay any claim Grantor makes or any claim made against Grantor. Grantor may later cancel this coverage by providing evidence that Grantor has obtained property coverage elsewhere.

Grantor is responsible for the cost of any insurance purchased by Beneficiary. The cost of this insurance may be added to Grantor's loan balance. If the cost is added to Grantor's loan balance, the interest rate on the underlying loan will apply to this added amount. The effective date of coverage may be the date Grantor's prior coverage lapsed or the date Grantor failed to provide proof of coverage.

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

## **ARTICLE II Condemnation**

### **2.01 Condemnation**

(1) Notice. Should any part of or interest in the Trust Property be taken or damaged by reason of any public improvement, eminent domain, condemnation proceeding, or in any similar manner (a "**Condemnation**"), or should Grantor receive any notice or other information regarding such action, Grantor shall give immediate notice of such action to Beneficiary.

(2) Condemnation Proceeds. Beneficiary shall be entitled to Grantor's interest in all compensation, awards, and other payments or relief (following full repayment of the HDC CLF Note) ("**Net Condemnation Proceeds**") up to the full amount of the obligations secured by this Trust Deed, and shall be entitled, at its option, to commence, appear in, and prosecute any Condemnation proceeding in its own or Grantor's name and make any compromise or settlement in connection with such Condemnation. In the event the Trust Property is taken in its entirety by Condemnation, all obligations secured by this Trust Deed, at Beneficiary's election, shall become immediately due and collectible.

(3) Application of Net Condemnation Proceeds. Beneficiary may, at its sole option, apply the Net Condemnation Proceeds to the reduction of the obligations secured hereby in such order as Beneficiary may determine, or apply all or any portion of the Net Condemnation Proceeds to the cost of restoring and improving the remaining Trust Property. In the event that Beneficiary elects in its sole discretion to apply the Net Condemnation Proceeds to restoration and improvement, the proceeds shall be held by Beneficiary and shall be released only upon such terms and conditions as Beneficiary shall require, including but not limited to, prior approval of plans and release of liens. The net proceeds of the award shall mean the award after payment of

all reasonable costs, expenses, and attorney fees necessarily paid or incurred by Grantor and Beneficiary in connection with the Condemnation.

### **ARTICLE III**

#### **Assignment of Leases, Rents, Issues, and Profits**

**3.01 Assignment.** Grantor assigns and transfers to Beneficiary (1) all leases, subleases, licenses, rental contracts, and other agreements, whether now existing or hereafter arising, and relating to the occupancy or use of all or any portion of the Trust Property, including all modifications, extensions, and renewals thereof (the “**Leases**”), and (2) all rents, revenues, issues, profits, income, proceeds, and benefits derived from the Trust Property and the lease, rental, or license of all or any portion thereof, including but not limited to lease and security deposits (collectively, the “**Rents**”). This assignment is intended by Grantor and Beneficiary to create a present and unconditional assignment to Beneficiary, subject only to the license set forth in Section 3.04 below.

**3.02 Rights of Beneficiary.** Subject to the provisions of Section 3.04 below giving Grantor a revocable, limited license, Beneficiary shall have the right, power, and authority to:

(1) Notice of Assignment. Notify any and all tenants, renters, licensees, and other obligors under any of the Leases that the same have been assigned to Beneficiary and that all Rents are to be paid directly to Beneficiary, whether or not Beneficiary shall have foreclosed or commenced foreclosure proceedings against the Trust Property, and whether or not Beneficiary has taken possession of the Trust Property;

(2) Modifications. Discount, settle, compromise, release, or extend the time for payment of, any amounts owing under any of the Leases and any Rents, in whole or in part, on terms acceptable to Beneficiary;

(3) Collection Activities. Collect and enforce payment of Rents and all provisions of the Leases, and prosecute any action or proceeding, in the name of Grantor or Beneficiary, with respect to any and all Leases and Rents; and

(4) Other. Exercise any and all other rights and remedies of the lessor in connection with any of the Leases and Rents.

**3.03 Application of Receipts.** Following full repayment of the HDC CLF Note, Beneficiary shall have the right, power, and authority to use and apply any Rents received under this Trust Deed (1) for the payment of any and all costs and expenses incurred in connection with enforcing or defending the terms of this assignment or the rights of Beneficiary, and in collecting any Rents; and (2) for the operation and maintenance of the Trust Property and the payment of all costs and expenses in connection therewith, including but not limited to the payment of utilities, taxes, assessments, governmental charges, and insurance. Beneficiary shall apply all remaining Rents collected and received by it to the reduction of the Obligations in such order as Beneficiary shall determine. The exercise or failure by Beneficiary to exercise any of the rights or powers

granted in this assignment shall not constitute a waiver of default by Grantor under this Trust Deed, the Note, or any of the other Loan Documents.

**3.04 License.** Beneficiary hereby grants to Grantor a revocable license to collect and receive the Rents. Such license may be revoked by Beneficiary, without notice to Grantor, on the occurrence of any event of default under this Trust Deed, including any default by Grantor of its covenants in this Article III. Unless and until such license is revoked, Grantor agrees to apply the proceeds of Rents to the payment of the Obligations and to the payment of taxes, assessments, governmental charges, insurance premiums, and other obligations in connection with the Trust Property, and to the maintenance of the Trust Property, before using such proceeds for any other purpose. Grantor agrees to (1) observe and perform every obligation of Grantor under the Leases, (2) enforce or secure at its expense the performance of every obligation to be performed by any lessee or other party under the Leases, and (3) appear in and defend, at Grantor's sole cost and expense, any action or proceeding arising out of or in connection with the Leases or the Rents.

**3.05 Limitation of Beneficiary's Obligations.** Notwithstanding the assignment provided for in this Article III, Beneficiary shall not be obligated to perform or discharge, and Beneficiary does not undertake to perform or discharge, any obligation or liability with respect to the Leases or the Rents. This assignment shall not operate to place responsibility for the control, care, maintenance, or repair of the Trust Property on Beneficiary, or to make Beneficiary responsible for any condition of the Property. Beneficiary shall be accountable to Grantor only for the sums actually collected and received by Beneficiary pursuant to this assignment. Grantor shall hold Beneficiary fully harmless from, indemnify Beneficiary for, and defend Beneficiary against any and all claims, demands, liabilities, losses, damages, and expenses, including attorney fees, arising out of any of the Leases, with respect to any of the Rents, or in connection with any claim that may be asserted against Beneficiary on account of this assignment or any obligation or undertaking alleged to arise therefrom.

**3.06 Termination.** The assignment provided for in this Article III shall continue in full force and effect until all the Obligations have been fully paid and satisfied. At such time, this assignment and the authority and powers herein granted by Grantor to Beneficiary shall cease and terminate.

**3.07 Attorney-in-Fact.** Grantor irrevocably constitutes and appoints Beneficiary, and each of its officers, as its true and lawful attorney-in-fact, with power of substitution, to undertake and execute any and all of the rights, powers, and authorities described in this Article III with the same force and effect as if undertaken or performed by Grantor, and Grantor ratifies and confirms any and all such actions that may be taken or omitted to be taken by Beneficiary, its employees, agents, and attorneys.

**ARTICLE IV**  
**Events of Default; Remedies**

**4.01 Events of Default.** Each of the following shall constitute an “Event of Default” under this Trust Deed and under each of the other Loan Documents:

(1) Nonpayment. Failure of Grantor to pay any of the Obligations before the due date.

(2) Breach of Other Covenants. Failure of Grantor to perform or abide by any other covenant included in the Obligations, including without limitation those covenants in the Note or this Trust Deed, within 20 days after written notice thereof given to Grantor by Beneficiary or, if such cure cannot be completed within such 20-day period, the failure by Grantor to commence the required cure within such 20-day period and thereafter to continue and complete the cure with diligence.

(3) Misinformation. Falsity when made in any material respect of any representation, warranty, or information furnished by Grantor or its agents to Beneficiary in or in connection with any of the Obligations.

(4) Bankruptcy. The occurrence of any of the following with respect to Grantor: (a) appointment of a receiver, liquidator, or trustee for any such party or any of its properties; (b) adjudication as a bankrupt or insolvent; (c) filing of any petition by or against any such party under any state or federal bankruptcy, reorganization, moratorium or insolvency law; (d) institution of any proceeding for dissolution or liquidation; (e) inability to pay debts when due; (f) any general assignment for the benefit of creditors; or (g) abandonment of the Trust Property.

(5) Transfer; Due-on-Sale. The Property, any portion thereof or other interest therein is transferred in violation of the terms of Article V of this Trust Deed.

**4.02 Remedies in Case of Default.** If an Event of Default shall occur, Beneficiary may exercise any one or more of the following rights and remedies, in addition to any other remedies that may be available by law, in equity, or otherwise:

(1) Acceleration. Beneficiary may declare all or any portion of the Obligations immediately due and payable.

(2) Receiver. Beneficiary may have a receiver appointed for the Trust Property. Beneficiary shall be entitled to the appointment of a receiver as a matter of right whether or not the apparent value of the Trust Property exceeds the amount of the indebtedness secured by this Trust Deed. Employment by Trustee or Beneficiary shall not disqualify a person from serving as receiver. Grantor consents to the appointment of a receiver at Beneficiary’s option and waives any and all defenses to such an appointment.

(3) Possession. Beneficiary may, either through a receiver or as Beneficiary-in-possession, enter and take possession of all or any part of the Trust Property and use, operate, manage, and control it as Beneficiary shall deem appropriate in its sole discretion. On request after an Event of Default, Grantor shall peacefully relinquish possession and control of the Trust Property to Beneficiary or any receiver appointed under this Trust Deed.

(4) Rents. Beneficiary may revoke Grantor's right to collect the Rents, and may, either itself or through a receiver, collect the same. Beneficiary shall not be deemed to be in possession of the Property solely by reason of exercise of the rights contained in this subsection (2). If Rents are collected by Beneficiary under this subsection, Grantor hereby irrevocably appoints Beneficiary as Grantor's attorney-in-fact, with power of substitution, to endorse instruments received in payment thereof in the name of Grantor and to negotiate such instruments and collect their proceeds. After payment of all Obligations, any remaining amounts shall be paid to Grantor and this power shall terminate.

(5) Power of Sale. Beneficiary may direct Trustee, and Trustee shall be empowered, to foreclose the Property by advertisement and sale under applicable law.

(6) Foreclosure. Beneficiary may judicially foreclose this Trust Deed and obtain a judgment foreclosing Grantor's interest in all or any part of the Property and giving Beneficiary the right to collect any deficiency remaining due after disposition of the Trust Property.

**4.03 Sale.** In any sale under this Trust Deed or pursuant to any judgment, the purchaser at any such sale shall take title to the Trust Property or the part thereof so sold, free and clear of the estate of Grantor, the purchaser being hereby discharged from all liability to see to the application of the purchase money. Any person, including Beneficiary, its officers, agents, and employees, may purchase at any such sale. Beneficiary and each of its officers are irrevocably appointed Grantor's attorney-in-fact, with power of substitution, to make all appropriate transfers and deliveries of the Trust Property or any portions thereof so sold and, for that purpose, Beneficiary and its officers may execute all appropriate instruments of transfer. Nevertheless, Grantor shall ratify and confirm, or cause to be ratified and confirmed, any such sale or sales by executing and delivering, or by causing to be executed and delivered, to Beneficiary or to such purchaser or purchasers all such instruments as may be advisable, in the judgment of Beneficiary, for such purpose.

**4.04 Cumulative Remedies.** All remedies under this Trust Deed are cumulative and not exclusive. Any election to pursue one remedy shall not preclude the exercise of any other remedy. An election by Beneficiary to cure under Section 1.13 shall not constitute a waiver of the default or of any of the remedies provided in this Trust Deed. No delay or omission in exercising any right or remedy shall impair the full exercise of that or any other right or remedy or constitute a waiver of the default.

**4.05 Receiver or Trustee-in-Possession.** On taking possession of all or any part of the Trust Property, Trustee, Beneficiary, or a receiver may:

(1) Management. Use, operate, manage, control, and conduct business with the Trust Property and make expenditures for such purposes and for such maintenance and improvements as are deemed reasonably necessary.

(2) Rents and Revenues. Collect all rents, revenues, income, issues, and profits from the Trust Property and apply such sums to the reasonable expenses of use, operation, management, maintenance, and improvements.

(3) Construction. At its option, complete any construction in progress on the Property, and in that connection pay bills, borrow funds, employ contractors, and make any changes in plans and specifications as it deems appropriate.

(4) Additional Indebtedness. If the revenues produced by the Trust Property are insufficient to pay expenses, Beneficiary, Trustee, or the receiver may borrow or advance such sums on such terms as it deems reasonably necessary for the purposes stated in this section. All advances shall bear interest, unless otherwise provided, at the rate set forth in the Note, and repayment of such sums shall be secured by this Trust Deed.

**4.06 Application of Proceeds.** All proceeds realized from the exercise of the rights and remedies under this Section 4 shall be applied as follows:

(1) Costs and Expenses. To pay all costs of exercising such rights and remedies, including the costs of maintaining and preserving the Trust Property, the costs and expenses of any receiver or Beneficiary-in-possession, the costs of any sale, and the costs and expenses provided for in Section 6.06 below.

(2) Indebtedness. To pay all Obligations, in such order as Beneficiary shall determine in its sole discretion.

(3) Surplus. The surplus, if any, remaining after satisfaction of all the Obligations shall be paid to the clerk of the court in the case of a judicial foreclosure proceeding, otherwise to the person or persons legally entitled to the surplus.

**4.07 Deficiency.** No sale or other disposition of all or any part of the Trust Property pursuant to this Section 4 shall be deemed to relieve Grantor of any of the Obligations, except to the extent that the proceeds are applied to the payment of such Obligations. If the proceeds of a sale, a collection, or other realization of or on the Trust Property are insufficient to cover the costs and expenses of such realization and the payment in full of the Obligations, Grantor shall remain liable for any deficiency to the fullest extent permitted by law.

**4.08 Waiver of Stay, Extension, Moratorium, and Valuation Laws.** To the fullest extent permitted by law, Grantor waives the benefit of any existing or future stay, extension, or moratorium law that may affect observance or performance of the provisions of this Trust Deed and any existing or future law providing for the valuation or appraisal of the Trust Property prior to any sale.

## **ARTICLE V Due on Sale**

**5.01 Due on Sale.** Borrower agrees and acknowledges that the indebtedness evidenced by the Note is personal to Borrower and that Borrower's personal responsibility and control of the Property is a material inducement to Holder to agree to enter into this transaction. Any conveyance of the whole or any part of the property securing payment of this Note whether by deed, contract, further encumbrance, or otherwise, or lease of the same (other than a lease of any portion of the space in the improvements on the Property in the ordinary course of business without an option to purchase) without Holder's prior written consent, which consent Holder may withhold in its sole discretion, shall be deemed to increase the risk of Holder, and Holder or other holder of this Note may, upon such conveyance, declare the entire unpaid balance immediately due and payable, following full repayment of the HDC CFL Note.

## **ARTICLE VI General Provisions**

**6.01 Time Is of the Essence.** Time is of the essence with respect to all covenants and obligations of Grantor under this Trust Deed.

**6.02 Reconveyance by Trustee.** At any time on the request of Beneficiary, payment of Trustee's fees, if any, and presentation of this Trust Deed, without affecting liability of any persons for the payment of the Obligations, Trustee may reconvey, without warranty, all or any part of the Trust Property. In addition, upon payment of the Obligations, Beneficiary shall request Trustee to reconvey the Property and shall surrender to Trustee this Trust Deed and all notes evidencing indebtedness secured by this Trust Deed. The grantee in any reconveyance may be described as the "person or persons legally entitled thereto," and the recitals therein of any facts shall be conclusive proof of the truthfulness thereof.

**6.03 Notice.** Except as otherwise provided in this Trust Deed, all notices pertaining to this Trust Deed shall be in writing and may be delivered by hand, or mailed by first-class, registered, or certified mail, return receipt requested, postage prepaid, and addressed to the appropriate party at its address set forth at the outset of this Trust Deed. Any party may change its address for such notices from time to time by notice to the other parties. Notices given by mail in accordance with this paragraph shall be deemed to have been given two (2) days following the date of mailing; notices given by hand shall be deemed to have been given when actually received.

**6.04 Substitute Trustee.** In the event of dissolution or resignation of Trustee, Beneficiary may substitute one or more trustees to execute the trust hereby created, and the new trustee(s) shall succeed to all the powers and duties of the prior trustee(s).

**6.05 Trust Deed Binding on Successors and Assigns.** This Trust Deed shall be binding on and inure to the benefit of the successors and assigns of Grantor, Trustee, and

Beneficiary. If the Trust Property or any portion thereof shall at any time be vested in any person other than Grantor, Beneficiary shall have the right to deal with such successor regarding this Trust Deed, the Trust Property, and the Obligations in such manner as Beneficiary deems appropriate in its sole discretion, without notice to or approval by Grantor and without impairing Grantor's liability for the Obligations.

**6.06 Indemnity.** Grantor shall hold Beneficiary and Trustee and their respective directors, officers, employees, agents, and attorneys, harmless from and indemnify them for any and all claims, demands, damages, liabilities, and expenses, including but not limited to attorney fees and court costs, arising out of or in connection with Trustee's or Beneficiary's interest under this Trust Deed, except Grantor shall not be liable for acts performed by Beneficiary or Trustee in violation of applicable law.

**6.07 Expenses and Attorney Fees.** If Beneficiary refers any of the Obligations to a lawyer for collection or seeks legal advice following a default; if Beneficiary is the prevailing party in any litigation instituted in connection with any of the Obligations; or if Beneficiary or any other person initiates any judicial or nonjudicial action, suit, or proceeding in connection with any of the Obligations or the Trust Property (including but not limited to proceedings under federal bankruptcy law, eminent domain, under probate proceedings, or in connection with any state or federal tax lien), and a lawyer is employed by Beneficiary to (1) appear in any such action, suit, or proceeding, or (2) reclaim, seek relief from a judicial or statutory stay, sequester, protect, preserve, or enforce Beneficiary's interests, then in any such event Grantor shall pay reasonable attorney fees, costs, and expenses incurred by Beneficiary or its lawyer in connection with the above-mentioned events or any appeals related to such events, including but not limited to costs incurred in searching records, the cost of title reports, and the cost of surveyors' reports. Such amounts shall be secured by this Trust Deed and, if not paid on demand, shall bear interest at the rate specified in the Note.

**6.08 Applicable Law.** The Trust Deed and the validity, interpretation, performance, and enforcement of the Trust Deed shall be governed by the laws of the State of Oregon.

**6.09 Captions.** The captions to the sections and paragraphs of this Trust Deed are included only for the convenience of the parties and shall not have the effect of defining, diminishing, or enlarging the rights of the parties or affecting the construction or interpretation of any portion of this Trust Deed.

**6.10 Person Defined.** As used in this Trust Deed, the word *person* shall mean any natural person, partnership, trust, corporation, or other legal entity of any nature.

**6.11 Severability.** If any provision of this Trust Deed shall be held to be invalid, illegal, or unenforceable, such invalidity, illegality, or unenforceability shall not affect any other provisions of this Trust Deed, and such other provisions shall be construed as if the invalid, illegal, or unenforceable provision had never been contained in the Trust Deed.





**EXHIBIT A**

**LEGAL DESCRIPTION OF THE PROPERTY**

**PARCEL I:**

The South 175 feet of Lot 12, Block 3, MEYERMEAD, in the City of Portland, Multnomah County, Oregon.

**PARCEL II:**

Lot 12, EXCEPTING THEREFROM the South 175 feet thereof, Block 3, MEYERMEAD, in the City of Portland, Multnomah County, Oregon.

**EXHIBIT B**

**LIENS AND ENCUMBRANCES**

[to be attached]