

FREE RECORDING REQUESTED
PURSUANT TO GOVERNMENT CODE
SECTION 27383

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

Bank of the West
Attention: Lynn Kniveton
CBG Loan Administration
2527 Camino Ramon
San Ramon, California 94583
Mail Sort No. NC-B07-3E-I

**ASSIGNMENT OF DEED OF TRUST
AND LOAN DOCUMENTS**

This Assignment of Deed of Trust and Loan Documents ("**Assignment**") is made as of _____, 2020, by the City of San Jose a municipal corporation and charter city of the State of California ("**Assignor**" or "**Governmental Lender**"), to Bank of the West, a California banking corporation (the "**Assignee**") under the "Funding Loan Agreement" (defined below).

RECITALS

A. Pursuant to the Act, Governmental Lender has determined to make a mortgage loan to Page Street, L.P., a California limited partnership ("**Borrower**") in the maximum sum of [\$ _____] (the "**Loan**") to provide financing for the construction of an 82-unit (including one manager's unit) multifamily rental housing project known or to be known as Page Street Studios (the "**Improvements**") to be situated on the real property located at [329, 341 and 353] Page Street, San Jose, CA 95126, and more particularly described in Exhibit A attached hereto (the "**Property**," and together with the Improvements, the "**Project**"). The Loan will be made pursuant to that certain Borrower Loan Agreement dated as of _____, 2020 (the "**Borrower Loan Agreement**"), by and between Governmental Lender, as lender, and Borrower, as borrower, and acknowledged by the Assignee. The Loan shall be evidenced by the Borrower Construction Note, and the Borrower Construction/Permanent Note executed by Borrower in favor of Governmental Lender in the aggregate, original principal amount of the Loan (collectively, the "**Borrower Notes**"). To secure Borrower's obligations under the Borrower Loan Agreement and the Borrower Notes, Borrower, as trustor, is, concurrently herewith, executing, acknowledging and delivering to Governmental Lender, as beneficiary, a Construction Leasehold Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing of even date herewith (as amended from time to time, the "**Trust Deed**"), encumbering, among other things, Borrower's interest in the Project and related personal property. The Trust Deed is being recorded in the Official Records of the County of Santa Clara, State of California, substantially concurrently with the recordation of this Assignment. Borrower has also executed and delivered to Governmental Lender, as additional security for the Loan, the

additional Borrower Loan Documents identified on Schedule 1. The documents identified on Schedule 1, together with all of the other "Borrower Loan Documents" (as defined in the Funding Loan Agreement, defined below), are collectively referred to herein as the "**Assigned Instruments.**"

B. Governmental Lender, in order to obtain the funds necessary to enable it to make the Loan to the Borrower, has determined to obtain a loan (the "**Funding Loan**") from Assignee, whose address for notice purposes is 2527 Camino Ramon (NC-B07-3E-I), San Ramon, CA 94583, Attn: CBG Loan Administration, in the maximum aggregate principal amount of the Loan. The Funding Loan will be made by Assignee to Governmental Lender pursuant to that certain Funding Loan Agreement of even date herewith (as amended from time to time, the "**Funding Loan Agreement**"), by and between Assignee, as lender, and Governmental Lender, as borrower. The Funding Loan will be evidenced by, among other things, the Governmental Lender Construction Note and the Governmental Lender Construction/Permanent Note (as amended from time to time, collectively, the "**Governmental Lender Notes**"), made by Governmental Lender to the order of Assignee. The Assignee, pursuant to the terms and subject to the conditions of the Funding Loan Agreement, has agreed to fund the proceeds of the Funding Loan to Governmental Lender on a draw-down basis, which proceeds of the Funding Loan will in turn be used by Governmental Lender to fund the Loan to the Borrower.

C. In order to secure the repayment of the Funding Loan, Governmental Lender has pledged to Assignee, pursuant to the terms and conditions of the Funding Loan Agreement, all of Governmental Lender's right, title and interest in, to and under the Loan (except for the Unassigned Rights, as defined in the Funding Loan Agreement) and the Assigned Instruments. To further evidence and perfect such pledge, Governmental Lender, substantially concurrently herewith, has duly endorsed the Borrower Notes to the order of Assignee, and has agreed to execute this Assignment, which assigns (except for the Unassigned Rights) to Assignee, among other items, all of Governmental Lender's right, title and interest under the Trust Deed. This Assignment is being recorded in the Official Records of the County of Santa Clara, State of California, substantially concurrently with the recordation of the Trust Deed and the other Assigned Instruments.

D. The Governmental Lender desires to assign and transfer to the Assignee all of its right, title and interest in and to (and its obligations under) the Assigned Instruments, excluding all Unassigned Rights expressly reserved to the Governmental Lender in the Funding Loan Agreement (which reservations include, without limitation, rights as to payment of certain fees and expenses and rights to indemnification and notices), and the Assignee desires to acquire the Governmental Lender's rights, title, interest and obligations as aforesaid under the Assigned Instruments in accordance with the terms hereof. The Assignee is joining in the execution of this Assignment in order to evidence its acceptance hereof.

E. The Borrower is joining in the execution of this Assignment in order to evidence its consent hereto and in order to agree that the obligations of the Borrower under the Assigned Instruments shall continue to be effective notwithstanding the assignment by the Governmental Lender to the Assignee of its rights therein.

TERMS AND CONDITIONS

NOW THEREFORE, FOR GOOD AND VALUABLE CONSIDERATION, the receipt whereof is hereby acknowledged, the parties hereby agree as follows:

1. **Definitions.** Unless otherwise defined herein, capitalized terms used herein shall have the meanings set forth in the Borrower Loan Agreement and the Funding Loan Agreement. In all references herein to any parties, persons, entities or corporations the use of any particular gender on the plural or singular number is intended to include the appropriate gender or number as the text of the within instrument may require.

2. **Assignment.** Except for the Unassigned Rights, Assignor hereby assigns to Assignee, all of Governmental Lender's right, title and interest under the Trust Deed and other Assigned Instruments, together with all moneys now owing or that may hereafter become due or owing in respect thereof, and the full benefit of all the powers and of all the covenants and provisions therein contained, and the said Assignor hereby grants and conveys unto the said Assignee, the said property, TO HAVE AND TO HOLD the said Trust Deed and other Assigned Instruments, and also the said property unto Assignee forever, subject to the terms contained in said Trust Deed and other Assigned Instruments, AND the said Assignor hereby constitutes and appoints the Assignee as the Assignor's true and lawful attorney, irrevocable in law or in equity, in the Assignor's name, place and stead, but at Assignee's cost and expense, to have, use and take all lawful ways and means for the recovery of all of the said money; and in case of payment, to discharge the same as fully as the Assignor might or could if these presents were not made.

3. **Overriding Limitations.** In no event shall Assignor:

- (i) prosecute any action pursuant to the Unassigned Rights to a lien on the Project; or
- (ii) take any action pursuant to the Unassigned Rights which may have the effect, directly or indirectly, of impairing the ability of Borrower to timely pay the principal of, interest on, or other amounts due under, the Borrower Loan or of causing Borrower to file a petition seeking reorganization, arrangement, adjustment or composition of or in respect of Borrower under any applicable liquidation, insolvency, bankruptcy, rehabilitation, composition, reorganization, conservation or other similar law in effect now or in the future; or
- (iii) interfere with the exercise by Assignee or any servicer of any of its rights under the Borrower Loan Documents upon the occurrence of an event of default by Borrower under the Borrower Loan Documents; or
- (iv) take any action to accelerate or, except with respect to Unassigned Rights, otherwise enforce payment or seek other remedies with respect to the Borrower Loan.

4. **Borrower Fees.** Notwithstanding anything to the contrary contained elsewhere in this Assignment, Assignor hereby absolutely assigns to Assignee all of Assignor's rights to receive extension fees, conversion fees, late fees, interest at the Default Rate (as defined in the Borrower Notes) to the extent it exceeds interest calculated at the non-default rate, and payment of other costs, fees, and expenses as provided in the Borrower Loan Agreement, the Borrower Notes, the fee letter between Assignor and Borrower dated as of even date herewith, the Trust Deed, and

any and all documents, instruments, and agreements now or hereafter securing any thereof, excluding, in any event, any fees payable to the Assignor for its own account pursuant to any of the Unassigned Rights.

5. **Payments.** Borrower will make all payments under the Borrower Notes and the Assigned Instruments (other than payments with respect to the Unassigned Rights, which shall be payable to Assignor as provided in the Borrower Loan Agreement) to Assignee at the following address unless and until Assignee notifies Borrower otherwise in writing:

Bank of the West
Attention: Lynn Kniveton
CBG Loan Administration
2527 Camino Ramon
San Ramon, CA 94583
Mail Sort No. NC-B07-3E-I

6. **Administration of Borrower Loan; Rights of Assignor.** Notwithstanding the collateral nature of part of this Assignment, the parties acknowledge that it is anticipated that, after application of the payments of principal, interest, and any prepayment premium on the Borrower Loan to repayment of the Governmental Lender Notes, no further amounts thereof will remain. In recognition of that fact, upon and after the effectiveness of this Assignment, Assignor hereby authorizes and empowers Assignee or its agent, in Assignee's sole discretion, to exercise all of Assignor's rights to and under the Assigned Instruments, other than the Unassigned Rights. Without limiting the generality of the foregoing, Assignee will be entitled: (a) to administer all disbursements of funds under the Borrower Loan Agreement; (b) to hold Borrower's Funds Account; (c) to receive and collect any and all fees, costs, damages, awards, and other monies set forth in the Assigned Instruments, except with respect to the Unassigned Rights and to apply the same to the repayment of the Governmental Lender Notes; and (d) to be named as mortgagee, loss payee, or additional insured (as appropriate) under all insurance policies required to be maintained under the terms of the Assigned Instruments.

7. **Enforcement.** In the event of a default on the Governmental Lender Notes, or if an Event of Default exists, even if there is no default on the Governmental Lender Notes, Assignee may enforce all obligations of Borrower under the Assigned Instruments and applicable law and no further consent or agreement of Assignor will be required as a condition to such enforcement. With respect to the collateral assignment provided under this Assignment, Assignee will have all the rights and remedies of Assignor under the Assigned Instruments and all the rights and remedies of a secured party under the Uniform Commercial Code, as enacted in the state where the Property is located, as it may be amended from time to time.

8. **Releases Upon Payment of Governmental Lender Notes.** Upon payment in full of the Governmental Lender Notes, Assignee will be entitled, without further consent or agreement of Assignor, to mark the Borrower Notes "paid" and return the original thereof to Borrower or its successor and to release the lien of the Trust Deed and such other documents, if any, as may then secure the Borrower Notes; provided that any such release shall not pertain to the Unassigned Rights under the Borrower Loan Agreement, so long as any amount is owing by the Borrower to the Assignor in respect of the Unassigned Rights.

9. **Representations and Warranties.** Assignor represents and warrants to Assignee that no previous assignment of its rights in the Assigned Instruments has been made and that Assignor has not done or permitted any act, matter or thing whereby the Trust Deed has been released or discharged, either partly or in entirety, and has the right to assign the Trust Deed and will upon request, do, perform and execute every act necessary to enforce the full performance of the covenants and agreements therein contained. Except as expressly and specifically set forth in this Section, Assignor makes no representation or warranties whatsoever with respect to the assignment provided for herein and, in any event, such assignment is made without recourse to Assignor.

10. **Further Assurances.** Assignor will execute and deliver to Assignee such other and further documents, and do such other acts and things as Assignee may reasonably request in order to more fully carry out the purpose and intent of this Assignment, at the written request of the Assignee and at the expense of the Borrower.

11. **Binding Effect.** This Assignment will be binding upon and inure to the benefit of the successors and assigns of Assignee and Assignor.

12. **Governing Law.** This Assignment will be governed by and construed in accordance with the laws of the State of California, applicable to contracts made and performed in California.

Dated as of _____, 2020 (the foregoing date is for reference purposes only and this Assignment shall not be effective until the Initial Closing Date.

[signature page follows]

IN WITNESS WHEREOF, the undersigned has duly executed and delivered this Assignment of Deed of Trust and Loan Documents as of the date last set forth above.

ASSIGNOR:

CITY OF SAN JOSE

By: _____
Julia H. Cooper
Director of Finance

ATTEST:

By: _____
Toni J. Taber CMC, City Clerk

Approved as to Legal Form:

Ed Moran
Assistant City Attorney

NOTARY ACKNOWLEDGMENT

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 _____ }

On _____ before me _____,
personally appeared _____
Here Insert Name and Title of the Officer
Name(s) 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

ASSIGNEE:

BANK OF THE WEST,
a California banking corporation

By: _____
Name: _____
Title: _____

NOTARY ACKNOWLEDGMENT

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 _____

On _____ before me _____,
Here Insert Name and Title of the Officer
personally appeared _____,
Name(s) 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

BORROWER:

The undersigned, being the Borrower referred to in the foregoing Assignment of Deed of Trust and Loan Documents, hereby acknowledges receipt and acceptance thereof, consent and agrees to the Assignment made therein and agrees that its obligations under the Borrower Loan Documents shall remain in full force and effect notwithstanding the assignment effected by the foregoing Assignment.

PAGE STREET, L.P.,
a California limited partnership

By: Page Street Charities LLC,
a California limited liability company,
its general partner

By: Charities Housing Development Corporation of Santa Clara County,
a California nonprofit public benefit corporation,
its sole member/manager

By: _____
Daniel Wu,
Executive Director

[Notary Acknowledgment Follows on Next Page]

NOTARY ACKNOWLEDGMENT

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 _____ }

On _____ before me _____, Here Insert Name and Title of the Officer

personally appeared _____ Name(s) 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.

Place Notary Seal Above

Signature _____ Signature of Notary Public

**SCHEDULE 1
TO
ASSIGNMENT OF DEED OF TRUST
AND LOAN DOCUMENTS**

ASSIGNEE:

Bank of the West
Attention: Lynn Kniveton
CBG Loan Administration
2527 Camino Ramon
San Ramon, California 94583
Mail Sort No. NC-B07-3E-I

ASSIGNED INSTRUMENTS:

1. Borrower Loan Agreement dated as of the date of this Agreement, by and between Assignor and Borrower, and acknowledged and agreed to by Assignee.
2. Multifamily Construction Note by Borrower, to Assignor, in the original principal amount of up to [\$_____].
3. Multifamily Construction/Permanent Note by Borrower, to Assignor, in the original principal amount of up to [\$_____].
4. Construction Leasehold Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing dated as of the date of this Agreement, executed by Borrower for the benefit of Assignor securing the principal amount of up to [\$_____], which is being recorded immediately prior hereto in the Recorder's Office of Santa Clara County, California, and encumbers the real property (and improvements thereon) that is more particularly described on **Exhibit A**.
5. UCC Financing Statement (Borrower).
6. UCC Financing Statement (Developer).
7. UCC Financing Statement (Assignment of Partnership Interest and Capital Obligations).
8. Assignment of Agreements, Permits, Licenses and Approvals with Architect's Consent and Contractor's Consent.
9. Security Agreement (Assignment of Partnership Interest and Capital Obligations).
10. Assignment of Development Fee.
11. Assignment of Rights Under Development Agreement.
12. Assignment of Rights Under Management Agreement.

13. Assignment of Rights Under Agreement to Enter into Housing Assistance Payments Contract.
14. Authorized Signatories Letter (Borrower).
15. Title Commitment and Policy.
16. All other collateral documents executed in connection with the Borrower Loan, including, without limitation, all amendments and modifications.

NOTE: All of the Assigned Instruments are unrecorded except from number 4.

DRAFT

EXHIBIT A
LEGAL DESCRIPTION

DRAFT