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2011-002485

Klamath County, Oregon



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02/24/2011 11:47:09 AM

Fee: \$72.00

**Grantor's Name & Address:**

Northwest High Valley Estates LLC, an Idaho Limited Liability Company  
210 W Mallard Dr. Suite A  
Boise, ID 83706

**Beneficiary's Name & Address:**

High Valley Estates Co., a joint venture  
c/o William H. Fowler  
Attorney at Law  
P.O. Box 1746  
Medford, OR 97501

**After Recording Return to:**

William H. Fowler  
Attorney at Law  
P.O. Box 1746  
Medford, OR 97501

**TRUST DEED**

THIS TRUST DEED, made effective this   /   day of February, 2011, between Northwest High Valley Estates LLC, an Idaho Limited Liability Company, as Grantor, Lawyers Title Company, as Trustee, and High Valley Estates Co., a joint venture, as Beneficiary.

**WITNESSETH:**

Grantor irrevocably grants, bargains, sells and conveys to trustee in trust, with power of sale, the property in Klamath County, Oregon, described as:

A portion of Tract 31, ENTERPRISE TRACTS, in the County of Klamath, State of Oregon, more particularly described as follows:

Commencing at the Northeast corner of Lot 37 ENTERPRISE TRACTS, thence South 00° 15' 30" East, along the centerline of Avalon Street, 355.75 feet; thence South 56° 38' 10" East, 36.03 feet to a point on the East boundary of said street for the true point of beginning; thence South 56° 38' 10" East 108.5 feet; thence South 73° 31' 10" East, 41.51 feet; thence North 79° 52' East, 103.20 feet; thence North 70° 29' 20" East, 154.58 feet; thence North 89° 25' 40" East, 82.78 feet; thence North 1° 24' 20" West, 31.01 feet; thence North 89° 25' 40" East 50.00 feet; thence North 134.58 feet to a point on the Southwesterly boundary of the U.S.R.S. "A" Canal; thence along said canal boundary North 81° 17' West 23.93 feet; thence 94.98 feet along the arc of a curve right (which arc has a radius of 433.10 feet and a long chord of North 78° 00' 07" West 94.79 feet; thence South 00° 15' 30" East 59.01 feet; thence South 89° 44' 30" West 395.00 feet to a point on the East boundary of Avalon Street; thence along said boundary South 00° 15' 30" East, 132.87 feet to the true point of beginning.

LAWYERS TITLE INS. CORP. 328 000/601  
Commercial Services

72pm

TOGETHER WITH a perpetual, non-exclusive easement for roadway purposes only, subject to the terms and provisions thereof as described in the Easement Agreement, by and between, RDN Limited Partnership, Joe P. Jarvis, Ruth Jarvis and Applegate Development Corporation, recorded May 21, 2003 in Volume M03, page 34428, Microfilm Records of Klamath County, Oregon.

Map No. 3809-034CD-00500, Tax Code No. 001, APN 444399  
Street Address: 1333 Avalon St., Klamath Falls, Oregon 97603

together with all and singular tenements, hereditaments and appurtenances and all other rights thereunto belonging or in anywise now or hereafter appertaining, and the rents, issues and profits thereof and all fixtures now or hereafter attached to or used in connection with the property.

FOR THE PURPOSE OF SECURING PERFORMANCE of each agreement of Grantor herein contained and payment of the sum of ONE MILLION ONE HUNDRED THOUSAND AND NO/100 (\$1,100,000.00) DOLLARS, with interest thereon according to the terms of a promissory note of even date herewith, payable to Beneficiary or order and made by Grantor and Northwest Real estate Capital Corp., an Idaho non-profit corporation, jointly and severally. All principal and interest accrued thereon, if not sooner paid, is due and payable February 1, 2014, the maturity date of the debt secured by this instrument.

Should the Grantor either agree to, attempt to, or actually sell, convey, or assign all (or any part) of the property or all (or any part) of Grantor's interest in it without first obtaining the written consent or approval of the Beneficiary, which consent may be withheld in its absolute discretion, then, at the Beneficiary's option, all obligations secured by this instrument, irrespective of the maturity dates expressed therein, or herein, shall become immediately due and payable.

To protect the security of the trust deed, Grantor agrees:

1. To protect, preserve and maintain the property in good condition and repair; not to remove or demolish any building or improvement thereon; not to commit or permit any waste of the property.
2. To complete or restore promptly and in good and habitable condition any building or improvement which may be constructed, damaged or destroyed thereon, and pay when due all costs incurred therefor.
3. To comply in all material respects with all laws, ordinances, regulations, covenants, conditions and restrictions affecting the property; if the Beneficiary so requests, to join in executing such financing statements pursuant to the Uniform Commercial Code as the Beneficiary may require and to pay for filing same in the proper public office or offices, as well as the cost of all lien searches made by filing officers or searching agencies as may be deemed desirable by the Beneficiary in order to protect its collateral under this trust deed.
4. To obtain and maintain during the term of the Note, at Grantor's expense, such insurance coverage (including, without limitation, type, minimum coverage amount, maximum deductible and acceptable exclusions) for Grantor and the property as Beneficiary deems reasonably necessary.

(a) To provide and continuously maintain insurance on the buildings and improvements now or hereafter erected on the property against loss or damage by fire and such other hazards as the beneficiary may from time to time require, in an amount not less than full insurable value, written in companies acceptable to the Beneficiary, with loss payable to the latter; all policies of insurance shall be delivered to the Beneficiary as soon as insured; if the Grantor shall fail for any reason to procure any such insurance and to deliver the policies to the Beneficiary at least fifteen days prior to the expiration of any policy of insurance now or hereafter placed on the buildings, the Beneficiary may procure the same at Grantor's expense. The amount collected under any fire or other insurance policy shall be escrowed and applied by Grantor to the repair and replacement of the property.

(b) To obtain commercial general liability insurance coverage covering bodily injury or death and property damage, including all legal liability to the extent insurable and all court costs, legal fees and expenses arising out of or connected with, possession, use, leasing, operation maintenance or condition of the property in such amounts as are generally considered commercially reasonable but in no event for a combined single limit of less than ONE MILLION AND NO TENTHS DOLLARS (\$1,000,000.00) per occurrence. The policy must name Beneficiary as an additional insured. The insurance coverage must provide for claims to be made on an occurrence basis.

(c) To provide Beneficiary with evidence of any required insurance upon request of Beneficiary, but without request, at least annually or upon change of coverage. Evidence of such insurance shall be in a form reasonably satisfactory to Beneficiary.

5. To keep the property free from construction liens and to pay all taxes, assessments and other charges that may be levied or assessed upon or against the property before any part of such taxes, assessments and other charges become past due and promptly deliver receipts therefor to beneficiary; should the grantor fail to make payment of any taxes, assessments, insurance premiums, liens or other charges payable by grantor, either by direct payment or by providing beneficiary with funds with which to make such payment, beneficiary may, at its option, make payment thereof, and the amount so paid, with interest at the rate set forth in the note secured hereby, together with the obligations described in paragraphs 6 and 7 of this trust deed, shall be added to and become a part of the debt secured by this trust deed, without waiver of any rights arising from breach of any of the covenants hereof and for such payments, with interest as aforesaid, the property hereinbefore described, as well as the grantor, shall be bound to the same extent that they are with interest as aforesaid, the property hereinbefore described, as well as the grant, shall be bound to the same extent that they are bound for the payment of the obligation herein described, and all such payments shall be immediately due and payable without notice, and the nonpayment thereof shall, at the option of the beneficiary, render all sums secured by this trust deed immediately due and payable and constitute a breach of this trust deed.

6. To pay all costs, fees, and expenses of this trust, including the cost of title search, as well as the other costs and expenses of the trustee incurred in connection with or in enforcing this obligation and trustee's and attorney's fees actually incurred.

7. To appear in and defend any action or proceeding purporting to affect the security rights or powers of the Beneficiary or Trustee; and in any suit, action or proceeding in which the Beneficiary or Trustee may appear, including any suit for the foreclosure of this deed or any suit or action related to this instrument, including but not limited to its validity and/or enforceability, to pay all reasonable costs and expenses, including evidence of title and the Beneficiary's or Trustee's attorney fees; the amount of attorney fees mentioned in this paragraph 7 in all cases shall be fixed by the trial court and in the event of

an appeal from any judgment or decree of the trial court, Grantor further agrees to pay such sum at the appellate court shall adjudge reasonable as the Beneficiary's or Trustee's reasonable attorney fees on such appeal.

It is mutually agreed that:

8. In the event that any portion or all of the property shall be taken under the right of eminent domain or condemnation, Grantor shall have the right, as permitted by applicable laws, rules and regulations, if it so elects, to apply all or any portion of the monies payable to the payment of any amounts due under the Note or to use such monies to repair or replace the property affected by the eminent domain or condemnation.

9. At any time and from time to time upon written request of Beneficiary, payment of its fees and presentation of this deed and the note for endorsement (in case of full reconveyances, for cancellation), without affecting the liability of any person for the payment of the indebtedness, Trustee may (a) consent to the making of any map or plat of the property; (b) join in granting any easement or creating any restriction thereon; (c) join in any subordination or other agreement affecting this deed or the lien or charge thereof; (d) reconvey, without warranty, all or any part of the property. The grantee in any reconveyance may be described as the "person or persons legally entitled thereto," and the recitals therein of any matters or facts shall be conclusive proof of the truthfulness thereof. Trustee's fees for any of the services mentioned in this paragraph shall be not less than \$5.

10. Upon any default by Grantor hereunder, Beneficiary may at any time without notice, either in person, by agent or by a receiver to be appointed by a court, and without regard to the adequacy of any security for the indebtedness hereby secured, enter upon and take possession of the property or any part thereof, in its own name sue or otherwise collect the rents, issues and profits, including those past due and unpaid, and apply 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.

11. The entering upon and taking possession of the property the collection of such rents, issues and profits, or the proceeds of fire and other insurance policies or compensation or awards for any taking or damage of the property, and the application or release thereof as aforesaid, shall not cure or waive any default nor notice of default hereunder or invalidate any act done pursuant to such notice.

12. Upon a default by Grantor in payment of any indebtedness secured hereby or in Grantor's performance of any agreement hereunder, time being of the essence with respect to such payment and/or performance, the Beneficiary may declare all sums secured hereby immediately due and payable. In such an event the Beneficiary may elect to proceed to foreclose the trust deed in equity as a mortgage or direct the Trustee to foreclose this trust deed by advertisement and sale, or may direct the Trustee to pursue any other right or remedy, either at law or in equity, which the Beneficiary may have. In the event the Beneficiary elects to foreclose by advertisement and sale, the Beneficiary or the Trustee shall execute and cause to be recorded a written notice of default and election to sell the property to satisfy the obligation secured hereby whereupon the Trustee shall fix the time and place of sale, give notice thereof as then required by law and proceed to foreclose this trust deed in the manner provided in ORS 86.735 to 86.795.

13. After the Trustee has commenced foreclosure by advertisement and sale, and at any time prior to 5 days before the date the Trustee conducts the sale, the Grantor or any other person so privileged by ORS 86.753, may cure the default or defaults. If the default consists of a failure to pay, when due,

sums secured by the trust deed, the default may be cured by paying the entire amount due at the time of the cure other than such portion as would not then be due had no default occurred. Any other default that is capable of being cured by tendering the performance required under the obligation or trust deed. In any case, in addition to curing the default or defaults, the person effecting the cure shall pay to the beneficiary all costs and expenses actually incurred in enforcing the obligation of the trust deed together with trustee's and attorneys fees not exceeding the amounts provided by law.

14. Otherwise, the sale shall be held on the date and at the time and place designated in the notice of sale or the time to which the sale may be postponed as provided by law. The Trustee may sell the property either in one parcel or in separate parcels and shall sell the parcel or parcels at auction to the highest bidder for cash, payable at the time of sale. Trustee shall deliver to the purchaser its deed in form as required by law conveying the property so sold, but without any covenant or warranty, express or implied. The recitals in the deed of any matters of fact shall be conclusive proof of the truthfulness thereof. Any person, excluding the trustee, but including the grantor and beneficiary, may purchase at the sale.

15. When the Trustee sells pursuant to the powers provided herein, the Trustee shall apply the proceeds of sale to payment of (1) the expenses of sale, including the compensation of the trustee and a reasonable charge by trustee's attorney, (2) to the obligation secured by the trust deed, (3) to all persons having recorded liens subsequent to the interest of the trustee in the trust deed as their interests may appear in the order of their priority, and (4) the surplus, if any, to the Grantor or to any successor in interest entitled to such surplus.

16. In the event that Grantor may wish to assign any interest in the property and Beneficiary may, in its sole and absolute discretion, agree to said assignment, it may also reasonably request of Grantor that Grantor satisfy all of the conditions set out in this paragraph 16. Grantor agrees to supply reasonable requests relating to Beneficiary's evaluation of the transfer of the property including, without limitation, information regarding the proposed transferee's ownership structure, financial condition and experience. Grantor acknowledges that Beneficiary may impose conditions on the approval of the transfer including, without limitation, (i) no default, or an event which with the giving of notice or lapse of time or both, could become an event of default, has occurred and is continuing, (ii) approval of the proposed transferee's ownership structure, financial condition and management experience, (iii) adding guarantors, and (iv) assumption in writing (acceptable to Beneficiary in its sole discretion) by the transferee and any guarantor (which guarantor must be acceptable to Beneficiary in its sole discretion) of all obligations of the transferor under the Note and Trust Deed and the execution and delivery of such other documents as may be required by Beneficiary.

17. Trustee accepts this trust when this deed, duly executed and acknowledged, is made a public record as provided by law. Trustee is not obligated to notify any party hereto of pending sale under any other deed of trust or of any action or proceeding in which grantor, beneficiary or trustee shall be a party unless such action or proceeding is brought by trustee.

The Grantor covenants and agrees to and with the Beneficiary and the Beneficiary's successor in interest that the Grantor is lawfully seized in fee simple of the real property and has a valid, unencumbered title hereto, except as recorded in the real property records or set forth in an addendum or exhibit attached hereto, and that the Grantor will warrant and forever defend the same against all persons whomsoever.

WARNING: Unless Grantor provides beneficiary with evidence of insurance coverage as required by the contract or loan agreement between them, Beneficiary may, after written notice to Grantor, purchase insurance at Grantor's expense to protect Beneficiary's interest. This insurance may, but need not, also protect Grantor's interest. If the collateral becomes damaged, the coverage purchased by Beneficiary may not pay any claim made by or against Grantor. Grantor may later cancel the coverage by providing evidence that grantor has obtained property coverage elsewhere. Grantor is responsible for the cost of any insurance coverage purchased by Beneficiary, which cost may be added to Grantor's contract or loan balance. If it is so added, the interest rate of the underlying contract or loan will apply to it. 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 might otherwise obtain alone and may not satisfy any need for property damage coverage or any mandatory liability insurance requirements imposed by applicable law.

The Grantor warrants that the proceeds of the loan represented by the above described note and this trust deed are for business or commercial purposes.

This deed applies to, inures to the benefit of and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, personal representatives, successors and assigns. The term Beneficiary shall mean the holder and owner, including pledgee, of the promissory note secured hereby, whether or not named as a Beneficiary herein.

In construing this trust deed, it is understood that the Grantor, Trustee and/or Beneficiary may each be more than one person; that if the context so requires, the singular shall be taken to mean and include the plural; and that generally all grammatical changes shall be made, assumed and implied to make the provisions hereof apply equally to corporations, to limited liability companies and to individuals.

*[The remainder of this page has been left blank intentionally; the following page is the execution page to this Trust Deed.]*

[Execution page to Trust Deed from Northwest High Valley Estates LLC to High Valley Estates Co., a joint venture.]

IN WITNESS WHEREOF, the Grantor has executed this instrument effective the day and year first above written.

Northwest High Valley Estates LLC,  
an Idaho limited liability company

By: Community Development of Oregon III LLC  
Its: Manager

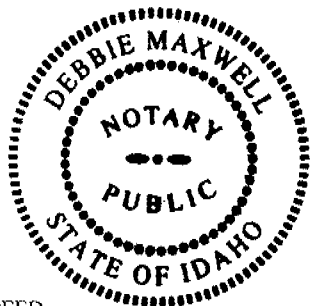
By: Northwest Real Estate Capital Corp.  
Its: Manager

By: Raquel Guglielmetti  
Raquel Guglielmetti, Executive Vice President

STATE OF IDAHO                    )  
  ) ss.  
County of Ada                    )

On this 18<sup>th</sup> day of February, 2011, before me, the undersigned, a Notary Public in and for said State, personally appeared Raquel Guglielmetti, known or identified to me to be the Executive Vice President of Northwest Real Estate Capital Corp., an Idaho corporation ("NWRECC"), which corporation is the manager of Community Development of Oregon III LLC, an Idaho limited liability company ("Community"), which Community is the manager of **NORTHWEST HIGH VALLEY ESTATES LLC**, an Idaho limited liability company (the "LLC"), or the person who executed the above instrument on behalf of said NWRECC, Community and the LLC, in each of the aforesaid capacities, and acknowledged to me that such NWRECC and Community, executed the same in each of their managerial capacities, and on behalf of and in the name of the LLC, and that such LLC executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.



Debbie Maxwell  
Notary Public for Idaho  
Residing at Canyon County  
My commission expires July 28, 2016

DO NOT LOSE OR DESTROY THIS TRUST DEED OR THE NOTE WHICH IT SECURES. BOTH MUST BE DELIVERED TO THE TRUSTEE FOR CANCELLATION BEFORE RECONVEYANCE WILL BE MADE.