

NTC 93986-SH

2012-007317

Klamath County, Oregon



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07/03/2012 11:20:58 AM

Fee: \$77.00

AFTER RECORDING MAIL TO:

William Widmer  
Fairplay Funding NW, LLC.  
d/b/a Fairplay Funding  
5260 Carillon Point  
Kirkland, WA 98033

#### FUTURE ADVANCE PROVISIONS

Grantor(s): Dennis L. and Angie C. Hayes  
Grantee(s): Fairplay Funding NW, LLC. d/b/a Fairplay Funding  
Abbreviated Legal Description: NICHOLS BLOCK 56 LOT 5 POR  
Assessor's Tax Parcel Number(s): R-3809-029DC-12400-000  
Grantor(s) Address: 357 NE Orchard Lane, Prineville, OR 97754

#### DEED OF TRUST

THIS DEED OF TRUST is made this July 09, 2012, by and among Dennis L. and Angie C. Hayes, GRANTOR(S), whose street address is 357 NE Orchard Lane, Prineville, OR 97754, Stewart Title, TRUSTEE, whose street address is 2020 SW Fourth Avenue, Suite 190, Portland, OR 97201, and Fairplay Funding NW, LLC., a WA limited liability company, d/b/a Fairplay Funding, BENEFICIARY, whose street address is 5260 Carillon Point, Kirkland, WA 98033.

WITNESSETH: Grantor(s) hereby bargain(s), sell(s), and convey(s) to Trustee in trust, with power of sale, the following described real property in Klamath County, OR:

LEGAL DESCRIPTION: The Northwesterly 1/2 of Lot 5 in Block 56 of NICHOLS ADDITION to the City of Klamath Falls, according to the official plat thereof on file in the office of the County Clerk of Klamath County, Oregon. .

Commonly known as:  
533 N 9th Street  
Klamath Falls, OR 97601

which real property is not used principally for agricultural or farming purposes, together with all the tenements, hereditaments, and appurtenances now or hereafter belonging or in any way appertaining, to the foregoing described real property (collectively, "Real Property").

DEED OF TRUST

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TOGETHER WITH all of Grantor's right, title and interest in and to all goods, building and other materials, supplies, work in process, equipment, machinery, fixtures, furniture, furnishings, signs and other personal property, wherever situated, which are or are to be incorporated into, used in connection with, or appropriated for use on the Real Property together with all inventory, accounts, cash receipts, deposit accounts, accounts receivable, contract rights, licenses, agreements, general intangibles, chattel paper, instruments, documents, notes, drafts, letters of credit, insurance policies, insurance and condemnation awards and proceeds, leases, any other rights to the payment of money, trade names, trademarks and service marks arising from or related to the ownership, management, leasing or operation of the Real Property or any business now or hereafter conducted thereon by Grantor; all applications, plans, surveys, studies, reports and similar materials or agreements in Grantor's possession that are related to the Real Property or its development; all permits consents, approvals, licenses, authorizations and other rights granted by, given by or obtained from, any governmental entity with respect to the Real Property; all deposits or other security now or hereafter made with or given to utility companies by Grantor with respect to the Real Property; all advance payments of insurance premiums made by Grantor with respect to the Real Property; all reserves, deferred payments, deposits, accounts, refunds, cost savings and payments of any kind related to the Real Property or any portion thereof; together with all replacements and proceeds of, and additions and accessions to, any of the foregoing; together with all books, records and files relating to any of the foregoing.

The Real Property and all other property described above are sometimes hereinafter referred to collectively as the "Collateral."

To the extent any element or portions of the Collateral constitutes personal property, Grantor, as debtor, grants to Beneficiary, as secured party, a security interest therein and any products or proceeds thereof, pursuant to the Uniform Commercial Code of Washington (the "UCC") on the terms and conditions contained herein except that where any provision of this Deed of Trust is in conflict with the UCC, the UCC shall control. Beneficiary hereby assigns such security interest to Trustee, in trust, for the benefit of Beneficiary to be dealt with as a portion of the Collateral pursuant to this Deed of Trust except as otherwise specified herein. At the request of Beneficiary, Grantor shall execute and deliver for filing UCC-1 financing statements and such other documents as Beneficiary may reasonably require to perfect its security interest.

As to all of the above described personal property which is or which hereafter becomes a "fixture" under applicable law, this Deed of Trust constitutes a fixture filing under RCW 62A.9-313 and 62A.9-402(b), as amended or recodified from time to time.

**THIS DEED IS FOR THE PURPOSE OF SECURING THE FOLLOWING:**

(a) Payment of the sum of EIGHT THOUSAND NINE HUNDRED EIGHTY-FIVE DOLLARS AND ZERO CENTS (\$8,985.00), with interest thereon, according to the terms of that certain promissory note of even date herewith, payable to Beneficiary and made by Grantor (the "Note," which shall also include all renewals, modifications or extensions thereof).

(b) Payment of any further sums advanced or loaned by Beneficiary to Grantor, or any of its successors or assigns, if (1) the Note or other writing evidencing the future advance or loan

specifically states that it is secured by this Deed of Trust or (2) the advance, including costs and expenses incurred by Beneficiary, is made pursuant to this Deed of Trust or any other documents executed by Grantor evidencing, securing or relating to the Note and/or the Collateral, whether executed prior to, contemporaneously with or subsequent to this Deed of Trust (this Deed of Trust, the Note, The Environmental and Hazardous Substances Indemnity Agreement and such other documents, including any construction or other loan agreement, are hereafter collectively referred to as the "Loan Documents") together with interest thereon at the rate set forth in the Note unless otherwise specified in the Loan Documents or agreed to in writing.

(c) Performance of each agreement, term and condition set forth or incorporated by reference in the Loan Documents unless performance of such agreement, term or condition is specifically provided to not be secured by this Deed of Trust.

Notwithstanding the foregoing and the covenants hereafter set forth, it is expressly agreed and acknowledged that none of the covenants, representations, or other obligations of Grantor set forth in this Deed of Trust are intended by Grantor and Beneficiary to secure or be the substantial equivalent of obligations of Grantor arising under any the Hazardous Substance Indemnity or other environmental indemnity agreement or provision, including without limitation any agreement or provision pertaining to hazardous or toxic wastes or substances, and any reference hereafter to the Loan Documents shall not include any such environmental indemnity agreement or provision included therein.

**REPRESENTATIONS AND WARRANTIES:** Grantor(s) represents and warrants as follows:

1. Grantor has full power and authority to grant the Collateral to Trustee and warrants the Collateral to be free and clear of all liens, charges, and other encumbrances except for matters of record on the date hereof.
2. None of the Collateral is used principally or at all for agricultural or farming purposes.
3. The Collateral is free from damage and no matter has come to Grantor's attention (including, but not limited to, knowledge of any construction defects or nonconforming work) that would materially impair the value of the Real Property as security.
4. The Note secured by this Deed of Trust is primarily for commercial, industrial or business purposes and is not primarily for personal, family or household purposes.

**COVENANTS:** Grantor(s) covenant(s) and agree(s) as follows:

1. To keep the Collateral in good condition and repair; to permit no waste of the Collateral; to complete any building, structure, or improvement being built or about to be built on the Collateral; to restore promptly any building, structure, or improvement on the Collateral which may be damaged or destroyed; and to comply with all laws, ordinances, regulations, covenants, conditions, and restrictions affecting the Collateral.

2. To pay before delinquent all lawful taxes and assessments upon the Collateral; to keep the Collateral free and clear of all other charges, liens, or encumbrances impairing the security of this Deed of Trust;
3. To keep all buildings now or hereafter erected on the Collateral continuously insured against loss by fire or other hazards in an amount not less than the total debt secured by this Deed of Trust. All policies shall be held by the Beneficiary, and be in such companies as the Beneficiary may approve and have loss payable first to the Beneficiary, as its interest may appear, and then to the Grantor(s). The amount collected under any insurance policy may be applied upon any indebtedness secured by this Deed of Trust in such order as the Beneficiary shall determine. Such application by the Beneficiary shall not cause discontinuance of any proceedings to foreclose this Deed of Trust. In the event of foreclosure, all rights of the Grantor(s) in insurance policies then in force shall pass to the purchaser at the foreclosure sale.
4. To defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee, and to pay all costs and expenses, including cost of title search and attorney's fees in a reasonable amount, in any such action or proceeding, and in any suit brought by Beneficiary to foreclose this Deed of Trust.
5. To pay all costs, fees, and expenses in connection with this Deed of Trust, including the expenses of the Trustee incurred in enforcing the obligation secured by this Deed of Trust and Trustee's and attorney's fees actually incurred, as provided by statute.
6. That, in the event Grantor(s) fails to pay when due any taxes, assessments, insurance premiums, liens, encumbrances, or other charges against the Collateral, Beneficiary may pay the same, and the amount so paid, with interest at the rate set forth in the note secured by this Deed of Trust, shall be added to and become a part of the debt secured in this Deed of Trust.
7. The Collateral may not be sold (by conveyance, contract to sell or otherwise), assigned, transferred or encumbered without the Beneficiary's consent; upon breach of this provision, in addition to any other remedies provided in the Note or Loan Documents, Beneficiary may declare all sums due under the Note and this Deed of Trust immediately due and payable, unless prohibited by applicable law.
8. In the event any portion of the Collateral is taken or damaged in an eminent domain proceeding, the entire amount of the award or such portion as may be necessary to fully satisfy the obligation secured by this Deed of Trust shall be paid to Beneficiary to be applied to said obligation.
9. By accepting payment of any sum secured by this Deed of Trust after its due date, Beneficiary does not waive its right to require prompt payment when due of all other sums so secured or to declare default for failure to so pay.
10. The Trustee shall reconvey all or any part of the Collateral covered by this Deed of Trust to the person entitled thereto, on written request of the Grantor(s) and the Beneficiary, or upon satisfaction of the obligation secured and written request for reconveyance made by the Beneficiary or the person entitled thereto.

11. Upon default by Grantor(s) in the payment of any indebtedness secured by this Deed of Trust or in the performance of any agreement contained in this Deed of Trust, all sums secured by this Deed of Trust shall immediately become due and payable at the option of the Beneficiary. In such event and upon written request of Beneficiary, Trustee shall sell the trust property, in accordance with the Deed of Trust Act of the State of Washington.

12. Trustee shall deliver to the purchaser at the sale its deed, without warranty, which shall convey to the purchaser all right, title and interest in the real and personal property which Grantor(s) had or had the power to convey at the time of the execution of this Deed of Trust, and such as Grantor(s) may have acquired thereafter. Trustee's deed shall recite the facts showing that the sale was conducted in compliance with all the requirements of law and of this Deed of Trust, which recital shall be prima facie evidence of such compliance and conclusive evidence thereof in favor of bona fide purchaser and encumbrancers for value.

13. The power of sale conferred by this Deed of Trust and by the Deed of Trust Act of the State of Washington is not an exclusive remedy; Beneficiary may cause this Deed of Trust to be foreclosed as a mortgage.

14. In the event of the absence, death, incapacity, disability, or resignation of Trustee, or at the discretion of the Beneficiary, Beneficiary may appoint in writing a successor trustee, and upon the recording of such appointment in the mortgage records of the county in which this Deed of Trust is recorded, the successor trustee shall be vested with all powers of the original trustee. The trustee is not obligated to notify any party hereto of pending sale under any other Deed of Trust or of an action or proceeding in which Grantor(s), Trustee, or Beneficiary shall be a party.

15. This Deed of Trust applies to, inures to the benefit of, and is binding not only on the parties hereto, but on his/her/their heirs, devisees, legatees, administrators, executors, and assigns. The term Beneficiary shall mean the holder and owner of the note secured hereby, whether or not named as Beneficiary herein.

16. This Deed of Trust shall be deemed a security agreement, as defined in the Uniform Commercial Code as adopted and amended by the State of Washington. The remedies for any violation of the covenants, terms and conditions of the agreements contained herein shall be as prescribed (i) herein, or (ii) by general law, or (iii) by the specific statutory consequences now or hereafter enacted, and specified in the Uniform Commercial Code as enacted by the State of Washington, all at Beneficiary's sole election. Grantor and Beneficiary agree that the filing of any financing statement in the records normally having to do with personal property shall not be construed as impairing the hereby stated intention of the parties that everything used in connection with the construction, management, maintenance and production of income from the Collateral together with all other rights and property described herein and comprising the secured property shall at all times and for all purposes in all proceedings, both legal and equitable, be regarded as part of the Collateral, whether physically attached or specifically identified or not.

17. As further security for the payment of all indebtedness and performance of all obligations secured hereby, Grantor irrevocably and absolutely assigns to Beneficiary, the rents, issues, profits and

proceeds of contracts of the Collateral, together with all future leases, profits and contracts, and any and all extensions, renewals and replacements hereof. However, as long as no default shall exist in any obligation secured hereby, Grantor may collect assigned rents and profits as the same shall fall due. All rents or profits receivable from or in respect to the Collateral which Grantor shall be permitted to collect hereunder shall be received by it in trust to pay the usual and reasonable operating expenses of, and the taxes upon, the Collateral and the payment of all sums secured hereby. Upon the occurrence of any default in payment of any indebtedness or performance of any obligation secured hereby, all rights of the Grantor to collect and receive rents and profits shall wholly and immediately terminate without notice, and Beneficiary shall thereafter have the absolute right to all such rents and profits. In addition to, and not in limitation of the foregoing, Beneficiary shall have the right to petition the Court of appropriate jurisdiction for the appointment of a Receiver of the rents, issues and profits of the Collateral and shall have in addition to the rights and powers customarily given to and exercised by such receiver, the right to enter upon and take possession of the Collateral and manage the same with all rights and options in regard thereto available to Grantor. Grantor expressly waives the posting of bond by such receiver, and waives any challenge to a proposed receiver based on affiliation with Beneficiary.

18. In the event of the death, incapacity, disability or resignation of Trustee, Beneficiary may appoint in writing a successor trustee, and upon the recording of such appointment in the mortgage records of the county in which this Deed of Trust is recorded, the successor trustee shall be vested with all powers of the original trustee. The 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, Trustee or Beneficiary shall be a party unless such action or proceeding is brought by the Trustee.

19. *[USE ONLY IF BORROWER IS A NON-NATURAL PERSON]*. Grantor will not cause or permit any change of more than 50% of the beneficial ownership or voting interest in Grantor, or agree to do any of the foregoing, without first repaying the Note in full.

**ORAL AGREEMENTS OR ORAL COMMITMENTS TO LOAN MONEY, EXTEND CREDIT, OR TO FORBEAR FROM ENFORCING REPAYMENT OF A DEBT ARE NOT ENFORCEABLE UNDER WASHINGTON LAW.**

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

**GRANTOR:**

Dennis L. Hayes  
[sign name]

Angie C Hayes  
[sign name]

Dennis L. Hayes  
[print name]

Angie C Hayes  
[print name]

\_\_\_\_\_  
[title]

\_\_\_\_\_  
[title]

06/28/12  
[date]

6/28/12  
[date]

STATE OF Oregon }  
COUNTY OF Clatsop }-ss

On this 28 day of June, 2012, before me, the undersigned, a Notary Public in and for the State of OR, duly commissioned and sworn personally appeared Dennis L. Hayes & Angie C Hayes known to me to be the 11/1 (Title) of N/A (Company Name), that executed the foregoing instrument, and acknowledged the said instrument to be his/her free and voluntary act and deed, for the purposes therein mentioned.

I certify that I know or have satisfactory evidence that the person appearing before me and making this acknowledgment is the person whose true signature appears on this document.

WITNESS my hand and official seal hereto affixed the day and year in the certificate above written.

SEE ATTACHED  
INDIVIDUAL  
ACKNOWLEDGEMENT  
6-28-12

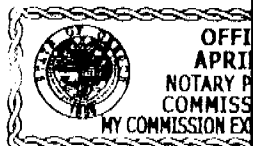
April F. Hensley  
Signature

April F Hensley  
Print Name

NOTARY PUBLIC in and for the State of OR

residing at Prineville, OR

My commission expires 9-25-2014

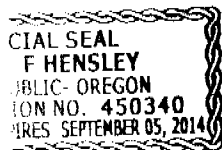
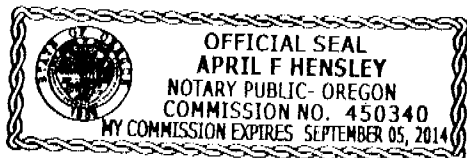


State of Oregon  
County of Crook

On this 28 day of June, 2012, personally appeared before me the above named Dennis L. Hayes and Angie C. Hayes, and acknowledged the foregoing instrument to be their voluntary act and deed.

WITNESS My hand and official seal.

April F. Hensley  
Notary Public for Oregon  
My Commission expires: 9-5-2014





REQUEST FOR FULL RECONVEYANCE

*Do not record. To be used only when note has been paid.*

TO: TRUSTEE

The undersigned is the legal owner and holder of the note and all other indebtedness secured by the within Deed of Trust. Said Note, together with all other indebtedness secured by said Deed of Trust, has been fully paid and satisfied; and you are hereby requested and directed, on payment to you of any sums owing to you under the terms of said Deed of Trust, to cancel said note above mentioned, and all other evidences of indebtedness secured by said Deed of Trust delivered to you herewith, together with the said Deed of Trust, and to reconvey, without warranty, to the parties designated by the terms of said Deed of Trust, all the estate now held by you thereunder.

Dated: \_\_\_\_\_

\_\_\_\_\_