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Klamath County, Oregon

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**RECORDING REQUESTED BY AND WHEN  
RECORDED MAIL TO:**

Davis Wright Tremaine LLP  
Attention: Anthony T. Caso  
1201 Third Avenue, Suite 2200  
Seattle, WA 98101-3045  
(206) 622-3150

**LINE OF CREDIT INSTRUMENT**

The maximum principal amount to be advanced pursuant to the loan agreement or promissory note secured by this Security Instrument is Three Million Twelve Thousand Three Hundred Fifty-Four and No/100 Dollars (\$3,012,354.00). The maturity date of the loan agreement or promissory note secured by this Security Instrument, exclusive of any option to renew or extend such maturity date, is June 21, 2014 (with options to extend such maturity date to as late as December 21, 2034).

The maximum principal amount to be advanced pursuant to the loan agreement or promissory note secured by this Security Instrument may be exceeded by advances to complete construction pursuant to ORS 86.155(2)(c).

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

THIS DEED OF TRUST, SECURITY AGREEMENT, ASSIGNMENT OF LEASES AND RENTS AND FIXTURE FILING (this "Security Instrument"), is made as of December 21, 2012, among NORTHWEST HIGH VALLEY ESTATES LLC, an Idaho limited liability company, the address of which is c/o Northwest Real Estate Capital Corp., 210 West Mallard Drive, Suite A, Boise, Idaho, 83706, as grantor ("Borrower"); First American Title Insurance Company, the address of which is 9465 West Emerald Street, Suite 260, Boise, Idaho, 83704, and its successors in trust and assigns, as trustee ("Trustee"); and JPMORGAN CHASE BANK, N.A. at its offices at 201 North Central Avenue, 14th Floor, Mail Code AZ1-1328, Phoenix, Arizona, 84004, Attention: Commercial Real Estate Loan Administration ("Lender").

Capitalized terms used, but not defined, in this Security Instrument have the meanings given to such terms in the Loan Agreement (as defined in Section 3.1.2 below).

**1. GRANTING CLAUSE.** Borrower, in consideration of the acceptance by Trustee of the trust hereunder, and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and in order to secure the obligations described in Section 3 below, grants, bargains, sells, assigns and conveys to Trustee and its successors in trust and assigns, forever, in trust, with power of sale, all of Borrower's estate, right, title, interest, claim and demand in and to the property in the County of Klamath, state of Oregon, with a street address of 1333 Avalon Street, Klamath Falls, Oregon, 97603 (which address is provided for reference only and shall in no way limit the description of the real and personal property otherwise described in this Section 1), described as follows, whether now existing or hereafter acquired (all of the property described in all parts of this Section 1 and all additional property, if any, described in Section 2 is called the "Property"):

**1.1 Land and Appurtenances.** The land described on Exhibit A hereto and all tenements, hereditaments, rights-of-way, easements, appendages and appurtenances thereto belonging or in any way appertaining, including without limitation all of the right, title and interest of Borrower in and to any avenues, streets, ways, alleys, vaults, strips or gores of land adjoining that property, all rights to water, water stock, drains, drainage and air rights relating to that property, and all claims or demands of Borrower either in law or in equity in possession or expectancy of, in and to that property; and

**1.2 Improvements and Fixtures.** All buildings, structures and other improvements now or hereafter erected on the property described in 1.1 above, and all facilities, fixtures, machinery, apparatus, installations, goods, equipment, inventory, furniture, building materials and supplies and other properties of whatsoever nature, now or hereafter located in or used or procured for use in connection with that property, it being the intention of the parties that all property of the character described above that is now owned or hereafter acquired by Borrower and that is affixed or attached to, stored upon or used in connection with the property described in 1.1 above shall be, remain or become a portion of that property and shall be covered by and subject to the lien of this Security Instrument, together with all contracts, agreements, permits, plans, specifications, drawings, surveys, engineering reports and other work products relating to the construction of the existing or any future improvements on the Property, any and all rights of Borrower in, to or under any architect's contracts or construction contracts relating to the construction of the existing or any future improvements on the Property, and any performance and/or payment bonds issued in connection therewith, together with all trademarks, trade names, copyrights, computer software and other intellectual property used by Borrower in connection with the Property; and

**1.3 Enforcement and Collection.** Any and all rights of Borrower without limitation to make claim for, collect, receive and receipt for any and all rents, income, revenues, issues, earnest money, deposits, refunds (including but not limited to refunds from taxing authorities, utilities and insurers), royalties, and profits, including mineral, oil and gas rights and profits, insurance proceeds of any kind (whether or not Lender requires such insurance and whether or not Lender is named as an additional insured or loss payee of such insurance), condemnation awards and other moneys, payable or receivable from or on account of any of the Property, including interest thereon, or to enforce all other provisions of any other agreement (including those described in Section 1.2 above) affecting or relating to any of the Property, to bring any suit in equity, action at law or other proceeding for the collection of such moneys or for the specific or other enforcement of any such agreement, award or judgment, in the name of Borrower or otherwise, and to do any and all things that Borrower is or may be or become entitled to do with respect thereto, provided, however, that no obligation of Borrower under the provisions of any such agreements, awards or judgments shall be impaired or diminished by virtue hereof, nor shall any such obligation be imposed upon Trustee or Lender; and

**1.4 Accounts and Income.** Any and all rights of Borrower in any and all accounts, rights to payment, contract rights, chattel paper, documents, instruments, licenses, contracts, agreements and general intangibles relating to any of the Property, including, without limitation, income and profits derived from the operation of any business on the Property or attributable to services that occur or are provided on the Property or generated from the use and operation of the Property; and

**1.5 Leases.** All of Borrower's rights as landlord in and to all existing and future leases and tenancies, whether written or oral and whether for a definite term or month to month or otherwise, now or hereafter demising all or any portion of the property described in 1.1 and 1.2 above, including all renewals and extensions thereof and all rents, deposits and other amounts received or receivable thereunder (in accepting this Security Instrument neither Lender nor Trustee assumes any liability for the performance of any such lease); and

**1.6 Books and Records.** All books and records of Borrower relating to the foregoing in any form.

## **2. SECURITY AGREEMENT AND ASSIGNMENT OF LEASES AND RENTS.**

**2.1 Security Agreement.** To the extent any of the property described in Section 1 is personal property, Borrower, as debtor, grants to Lender, as secured party, a security interest therein together with a security interest in all other personal property of Borrower of whatsoever nature that is located on or used or to be used in connection with any of the property described in Section 1, and any products or proceeds of any thereof, pursuant

to the Uniform Commercial Code of the State of Oregon (the "UCC"), on the terms and conditions contained herein. Lender hereby assigns such security interest to Trustee, in trust, for the benefit of Lender to be dealt with as a portion of the "Property" except as otherwise specified herein. Borrower hereby authorizes Lender to file any financing statement, fixture filing or similar filing to perfect the security interests granted in this Security Instrument without Borrower's signature.

## **2.2 Assignment of Leases and Rents.**

(a) **Absolute Assignment.** Borrower hereby absolutely and unconditionally grants, transfers, conveys, sells, sets over and assigns to Lender all of Borrower's right, title and interest now existing and hereafter arising in and to the leases, subleases, concessions, licenses, franchises, occupancy agreements, tenancies, subtenancies and other agreements, either oral or written, now existing and hereafter arising which affect the Property, Borrower's interest therein or any improvements located thereon, together with any and all security deposits, guaranties of the lessees' or tenants' obligations (including any and all security therefor) and other security under any such leases, subleases, concessions, licenses, franchises, occupancy agreements, tenancies, subtenancies and other agreements (all of the foregoing, and any and all extensions, modifications and renewals thereof, shall be referred to, collectively, as the "Leases"), and hereby gives to and confers upon Lender the right to collect all the income, rents, issues, profits, royalties and proceeds from the Leases and any business conducted on the Property and any and all prepaid rent and security deposits thereunder (collectively, the "Rents"). This Security Instrument is intended by Lender and Borrower to create and shall be construed to create an absolute assignment to Lender of all of Borrower's right, title and interest in and to the Leases and the Rents and shall not be deemed merely to create a security interest therein for the payment of any indebtedness or the performance of any obligations under the Loan Documents (as defined below). Borrower irrevocably appoints Lender its true and lawful attorney at the option of Lender at any time to demand, receive and enforce payment, to give receipts, releases and satisfactions and to sue, either in the name of Borrower or in the name of Lender, for all such Rents and apply the same to the obligations secured by this Security Instrument.

(b) **Revocable License to Collect.** Notwithstanding the foregoing assignment of Rents, so long as no Event of Default (as defined below) remains uncured, Borrower shall have a revocable license, to collect all Rents, and to retain the same. Upon any Event of Default, Borrower's license to collect and retain Rents shall terminate automatically and without the necessity for any notice.

(c) **Collection and Application of Rents by Lender.** While any Event of Default remains uncured: (i) Lender may at any time, without notice, in person, by agent or by court-appointed receiver, and without regard to the adequacy of any security for the obligations secured by this Security Instrument, enter upon any portion of the Property

and/or, with or without taking possession thereof, in its own name sue for or otherwise collect Rents (including past due amounts); and (ii) without demand by Lender therefor, Borrower shall promptly deliver to Lender all prepaid rents, deposits relating to Leases or Rents, and all other Rents then held by or thereafter collected by Borrower, whether prior to or during the continuance of any Event of Default. Any Rents collected by or delivered to Lender may be applied by Lender against the obligations secured by this Security Instrument, less all expenses, including attorneys' fees and disbursements, in such order as Lender shall determine in its sole and absolute discretion. No application of Rents against any obligation secured by this Security Instrument or other action taken by Lender under this Section 2.2 shall be deemed or construed to cure or waive any Event of Default, or to invalidate any other action taken in response to such Event of Default, or to make Lender a mortgagee-in-possession of the Property.

(d) **Direction to Tenants.** Borrower hereby irrevocably authorizes and directs the tenants under all Leases to pay all amounts owing to Borrower thereunder to Lender following receipt of any written notice from Lender that states that an Event of Default remains uncured and that all such amounts are to be paid to Lender. Borrower further authorizes and directs all such tenants to pay all such amounts to Lender without any right or obligation to inquire as to the validity of Lender's notice and regardless of the fact that Borrower has notified any such tenants that Lender's notice is invalid or has directed any such tenants not to pay such amounts to Lender.

**3. OBLIGATIONS SECURED.** This Security Instrument is given for the purpose of securing:

**3.1 Performance and Payment.**

**3.1.1** The payment of Three Million Twelve Thousand Three Hundred Fifty-Four and No/100 Dollars (\$3,012,354.00) with interest thereon and all other amounts payable according to the terms of two promissory notes of even date herewith in that amount, made by Borrower as maker in favor of Lender as payee, having a maturity date of June 21, 2014 (with options to extend such maturity date to as late as December 21, 2034), and any and all extensions, renewals, modifications and replacements thereof, whether the same be in greater or lesser amounts. The first such note is that certain Fixed Rate Note in the principal amount of \$977,000 (the "Fixed Rate Note") and the second note is that certain Variable Rate Note in the principal amount of \$3,012,354 (the "Variable Rate Note" and together with the Fixed Rate Note, individually and collectively, the "Note").

**3.1.2** The payment and performance of all other obligations contained in this Security Instrument and in the other Loan Documents (as defined in Section 3.3 below), including but not limited to that certain construction and permanent loan agreement of even date herewith between Borrower and Lender (the "Loan Agreement"), which Loan

Agreement provides for the construction of certain Improvements (as defined in the Loan Agreement) on the Property.

**3.1.3** The payment and performance of any and all obligations, contingent or otherwise, whether now existing or hereafter arising, of Borrower to Lender arising under or in connection with any Swap Agreement. "Swap Agreement" means any agreement with respect to any swap, forward, future or derivative transaction or option or similar agreement involving, or settled by reference to, one or more rates, currencies, commodities, equity or debt instruments or securities, or economic, financial or pricing indices or measures of economic, financial or pricing risk or value or any similar transaction or any combination of these transactions.

**3.2 Future Advances.** The repayment of any and all sums advanced or expenditures made by Lender subsequent to the execution of this Security Instrument for the construction of the Improvements or the maintenance or preservation of the Property, or advanced or expended by Lender for any other purpose pursuant to any provision of the Loan Agreement, this Security Instrument or the other Loan Documents, together with interest thereon at the highest rate borne by the Note. Borrower intends that all such advances, whenever made and whether or not Lender is obligated to make the same, shall be secured by this Security Instrument and shall be a lien on the Property having priority as of the date this Security Instrument is recorded.

**3.3 Other Amounts.** All other obligations and amounts now or hereafter owing by Borrower to Lender under this Security Instrument, the Loan Agreement, the Note or any other document, instrument or agreement evidencing, securing or otherwise relating to the loan evidenced by the Note and any and all extensions, renewals, modifications or replacements of any thereof (collectively, the "Loan Documents"); provided, however, that this Security Instrument does not and shall not in any event be deemed to, secure the obligations owing to Lender under: (a) any environmental indemnity agreement (the "Indemnity Agreement") executed in connection with such loan (or any obligations that are the substantial equivalent thereof); or (b) any guaranty of such loan.

**4. WARRANTIES AND COVENANTS OF BORROWER.** Borrower warrants, covenants, and agrees:

**4.1 Warranties.**

(a) Borrower has full power and authority to grant the Property to Trustee and warrants the Property to be free and clear of all liens, charges, and other monetary encumbrances except those appearing in the title insurance policy accepted by Lender in connection with this Security Instrument.

(b) The Property is free from damage and no matter has come to Borrower's attention (including, but not limited to, knowledge of any construction defects or nonconforming work) that would materially impair the value of the Property as security.

(c) The loan evidenced by the Note and secured by this Security Instrument is primarily for commercial, industrial or business purposes and is not primarily for personal, family or household purposes.

**4.2 Preservation of Lien.** Borrower will preserve and protect the priority of this Security Instrument as a first monetary lien on the Property subject only to such other matters of record as are shown as exceptions in the title insurance policy accepted by Lender in connection with the recording of this Security Instrument or as are expressly provided for in the priority and subordination agreement entered into by Lender and recorded concurrently herewith. If Borrower fails to do so, Lender may take any and all actions necessary or appropriate to do so and all sums expended by Lender in so doing shall be treated as part of the obligations secured by this Security Instrument, shall be paid by Borrower upon demand by Lender and shall bear interest at the highest rate borne by any of the obligations secured by this Security Instrument.

**4.3 Repair and Maintenance of Property.** Borrower will keep the Property in good condition and repair, which duty shall include but is not limited to cleaning, painting, landscaping, repairing, and refurbishing of the Property; will complete and, following completion of the Improvements, not remove or demolish, alter, or make additions to any building or other improvement that is part of the Property, or construct any new structure on the Property, without the express written consent of Lender; will underpin and support when necessary any such building or other improvement and protect and preserve the same; will complete or restore promptly and in good and workmanlike manner any such building or other improvement that may be damaged or destroyed and pay when due all claims for labor performed and materials furnished therefor; will not commit, suffer, or permit any act upon the Property in violation of law; and will do all other acts that from the character or use of the Property may be reasonably necessary for the continued operation of the Property in a safe and legal manner, the specific enumerations herein not excluding the general.

**4.4 Insurance.** Borrower shall provide and maintain insurance as required by the Loan Agreement and this Security Instrument.

**4.4.1 Insurance Coverage.** Borrower will provide and maintain, as further security for the faithful performance of the obligations secured by this Security Instrument, such property, liability, rental income interruption, flood and other insurance coverage as required under the terms of the Loan Agreement. All such insurance must be

acceptable to Lender in all respects including but not limited to the amount of coverage, policy forms, endorsements, identity of insurance companies and amount of deductibles.

**4.4.2 Endorsement in Favor of Lender.** All policies of insurance on the Property, whether or not required by the terms of this Security Instrument (including but not limited to earthquake/earth movement insurance), shall name Lender as mortgagee and loss payee pursuant to a mortgage endorsement on a form acceptable to Lender.

**4.4.3 Changes in Insurance Requirements.** Lender may change its insurance requirements from time to time throughout the term of the obligations secured by this Security Instrument by giving written notice of such changes to Borrower. Without limiting the generality of the foregoing, Borrower shall from time to time obtain such additional coverages or make such increases in the amounts of existing coverage as may be required by written notice from Lender. Lender reserves the right, in its reasonable discretion, to increase the amount of the required coverages, require insurance against additional risks, or withdraw approval of any insurance company at any time.

**4.4.4 Control of Proceeds.** Lender shall have the right to control or direct the proceeds of all policies of insurance on the Property, whether or not required by the terms of this Security Instrument, as provided in Section 4.4.5 below, and all proceeds of all such policies are hereby assigned to Lender as security for the obligations secured by this Security Instrument. Borrower shall be responsible for all uninsured losses and deductibles.

**4.4.5 Damage and Destruction.** Prior to Substantial Completion (as defined in the Loan Agreement), paragraph 19(c) of the Loan Agreement will govern the use and application of Insurance Proceeds (as defined below). Thereafter, the provisions of this Section 4.4.6 shall govern such matters. Whenever this Section 4.4.5 requires Lender's approval of any matter, such approval shall not unreasonably be withheld, conditioned or delayed.

(a) **Borrower's Obligations.** In the event of any damage to or loss or destruction of the Property (a "Casualty"): (i) if it could reasonably be expected to cost more than \$100,000 to repair the Casualty, Borrower shall give prompt written notice of the Casualty to Lender and to Borrower's insurer, and shall make a claim under each insurance policy providing coverage therefor; (ii) Borrower shall take such actions as are necessary or appropriate to preserve and protect the Property; (iii) if the aggregate proceeds of any and all insurance policies insuring the Property, whether or not required by this Security Instrument, that are payable as a result of the Casualty (collectively, the "Insurance Proceeds") could reasonably be expected to exceed \$100,000, or if a Default exists, Borrower shall take such actions as are necessary or appropriate to ensure that all Insurance Proceeds are paid to Lender forthwith to be held by Lender until applied to the obligations secured hereby or disbursed in accordance with this Section 4.4.5; and (iv) unless otherwise instructed by



Lender, regardless of whether the Insurance Proceeds, if any, are sufficient for the purpose, Borrower shall promptly commence and diligently pursue to completion in a good, workmanlike and lien-free manner the restoration, replacement and rebuilding of the Property as nearly as possible to its value, condition and character immediately prior to the Casualty (collectively, the "Restoration"). If the Restoration will cost more than \$25,000 to repair, Borrower shall submit the proposed plans and specifications for the Restoration, and all construction contracts, architect's contracts, other contracts in connection with the Restoration, and such other documents as Lender may reasonably request to Lender for its review and approval. Borrower shall not begin the Restoration unless and until Lender gives its written approval of such plans, specifications, contracts and other documents, with such revisions as Lender may reasonably require. Notwithstanding the foregoing, Lender shall not be responsible for the sufficiency, completeness, quality or legality of any such plans, specifications, contracts or other documents. Borrower shall pay, within fifteen days after demand by Lender, all costs reasonably incurred by Lender in connection with the adjustment, collection and disbursement of Insurance Proceeds pursuant to this Security Instrument or otherwise in connection with the Casualty or the Restoration.

(b) **Lender's Rights.** Lender shall have the right and power to receive and control all Insurance Proceeds required to be paid to it pursuant to subsection (a)(iii) above. Borrower hereby authorizes and empowers Lender, in its own name or as attorney-in-fact for Borrower (which power is coupled with an interest and is irrevocable so long as this Security Instrument remains of record), to make proof of loss, to settle, adjust and compromise any claim under insurance policies on the Property, to appear in and prosecute any action arising from such insurance policies, to collect and receive Insurance Proceeds, and to deduct therefrom Lender's expenses incurred in the adjustment, collection and disbursement of such Insurance Proceeds or otherwise in connection with the Casualty or the Restoration. Each insurance company concerned is hereby irrevocably authorized and directed to make payment of all Insurance Proceeds directly to Lender. Notwithstanding anything to the contrary, neither Trustee nor Lender shall be responsible for any such insurance, the collection of any Insurance Proceeds, or the insolvency of any insurer.

(c) **Application of Proceeds.** If, at any time while Lender holds any Insurance Proceeds, an Event of Default exists or Lender determines in its reasonable discretion that the security for the obligations secured hereby is impaired, Lender shall have the option, in its sole discretion, to apply the Insurance Proceeds to the obligations secured hereby in such order as Lender may determine (or to hold such proceeds for future application to those obligations). Without limiting the generality of the foregoing, Lender's security will be deemed to be impaired if: (i) an Event of Default exists; (ii) Borrower fails to satisfy any condition precedent to disbursement of Insurance Proceeds to pay the cost of the Restoration within a reasonable time; or (iii) Lender determines in its reasonable discretion that it could reasonably be expected that (A) Borrower will not have sufficient funds to complete the Restoration and timely pay all expenses of the Property and all payments due under the Note

and the other Loan Documents through the completion of the Restoration and any leaseup period thereafter, (B) the rental income from the Property (including proceeds of rental interruption insurance) will be insufficient to timely pay all expenses of the Property and payments due under the Note and the other Loan Documents on an ongoing basis after completion of the Restoration, or (C) the Restoration cannot be completed prior to the maturity date of the Note and within one year after the date of the Casualty.

(d) **Disbursement of Proceeds.** If Lender is not entitled, or does not elect, to apply the Insurance Proceeds to the obligations secured hereby, Lender (or at Lender's election, a disbursing or escrow agent selected by Lender and whose fees shall be paid by Borrower) shall disburse the Insurance Proceeds for the Restoration from time to time as the Restoration progresses, but only after satisfaction, at Borrower's expense, of such conditions precedent to such disbursements as Lender may reasonably require including but not limited to the following: (i) Borrower shall have delivered to Lender evidence reasonably satisfactory to Lender of the estimated cost of the Restoration; (ii) Lender shall have approved the plans, specifications and contracts for the Restoration as required by Section 4.4.5(a); (iii) Borrower shall have delivered to Lender funds in addition to the Insurance Proceeds in an amount sufficient in Lender's reasonable judgment to complete and fully pay for the Restoration; (iv) Borrower shall have delivered to Lender such building permits, other permits, architect's certificates, waivers of lien, contractor's sworn statements, title insurance endorsements, plats of survey and other evidence of cost, payment and performance as Lender may reasonably require and approve; and (v) if required by Lender, Borrower shall have entered into an agreement providing in greater detail for the Restoration, the disbursement of Insurance Proceeds and related matters. No payment made prior to the final completion of the Restoration shall exceed ninety-five percent (95%) of the value of the work performed and materials incorporated into the Property from time to time, as such value is determined by Lender in its reasonable judgment. Disbursements may, at Lender's election, be made on a percentage of completion basis or on such other basis as is acceptable to Lender. Disbursements shall be subject to Borrower's delivery of such lien waivers as Lender may require, and otherwise on terms and subject to conditions acceptable to Lender. From time to time after commencement of the Restoration, if so requested by Lender, Borrower shall deposit with Lender funds in excess of the Insurance Proceeds which, together with the Insurance Proceeds and all funds previously deposited with Lender in connection with the Restoration, must at all times be at least sufficient in the reasonable judgment of Lender to pay the entire unpaid cost of the Restoration. Funds so deposited by Borrower may at Lender's option be disbursed prior to the disbursement of Insurance Proceeds. Lender may retain a construction consultant to inspect the Restoration and related matters on Lender's behalf and to advise Lender with respect thereto and Borrower shall pay the cost thereof; provided that neither Borrower nor any other person or entity other than Lender shall have any right to rely on any inspection or advice of such consultant. Such consultant shall not be the agent of Lender and shall not have the power to bind Lender in any way. Any surplus Insurance Proceeds or other funds held by Lender pursuant to this Section 4.4.5 that may

remain after payment of all costs of the Restoration shall be paid to Borrower (or to such other person or entity as Lender reasonably determines is entitled thereto) so long as no Default then exists. No interest shall be allowed to Borrower on account of any Insurance Proceeds or other funds held by Lender pursuant to this Section 4.4.5, except that Lender will deposit such amounts into a blocked interest-bearing account with Lender over which Lender has sole possession, authority and control, in which Lender has a perfected first-priority security interest to secure the obligations secured by this Security Instrument, and otherwise on terms and conditions satisfactory to Lender in its sole discretion. Notwithstanding the above, if an Event of Default exists prior to full disbursement of the Insurance Proceeds and any other funds held by Lender pursuant to this Section 4.4.5, any undisbursed portion thereof may, at Lender's option, be applied against the obligations secured by this Security Instrument, whether or not then due, in such order and manner as Lender shall select.

(e) **Effect on the Indebtedness.** Any reduction in the obligations secured hereby resulting from the application of Insurance Proceeds or other funds pursuant to this subsection 4.4 shall be deemed to take effect only on the date of such application; provided that, if any Insurance Proceeds are received after the Property is sold in connection with a judicial or nonjudicial foreclosure of this Security Instrument, or is transferred by deed in lieu of such foreclosure, notwithstanding any limitation on Borrower's liability contained herein or in the Note, the purchaser at such sale (or the grantee under such deed) shall have the right to receive and retain all such Insurance Proceeds and all unearned premiums for all insurance on the Property. No application of Insurance Proceeds or other funds to the obligations secured hereby shall result in any adjustment in the amount or due dates of installments due under the Note. No application of Insurance Proceeds to the obligations secured hereby shall, by itself, cure or waive any Default or any notice of default under this Security Instrument or invalidate any act done pursuant to such notice or result in the waiver of any collateral securing the Note.

**4.5 Oregon Insurance Warning.** Unless Borrower provides Lender with evidence of insurance coverage as required in this Section 4.5, Lender may purchase insurance at Borrower's expense to protect Lender's interest. If the Property becomes damaged, the insurance coverage Lender purchases may not pay any claim Borrower makes or any claim made against Borrower. Borrower may later cancel this insurance coverage by providing evidence that Borrower has obtained proper insurance coverage elsewhere. Borrower is responsible for the cost of any insurance purchased by Lender. The cost of this insurance may be added to the balance of the loan secured by this Security Instrument and will bear interest at the then-applicable rate of interest borne by the Note. The effective date of insurance coverage may be the date Borrower's prior insurance coverage lapsed or the date Borrower failed to provide proof of insurance coverage to Lender. The insurance coverage Lender purchases may be considerably more expensive than insurance coverage Borrower can obtain on its own and will provide no liability insurance coverage.

**4.6 Right of Inspection.** Borrower shall permit Lender or its agents or independent contractors (including, but not limited to, appraisers, environmental consultants and construction consultants), at all reasonable times and upon reasonable notice, to enter upon and inspect the Property.

**4.7 Compliance with Laws, Etc.; Preservation of Licenses.** Borrower shall comply in all material respects with (a) all laws, statutes, ordinances, rules, regulations, licenses, permits, approvals, orders, judgments and other requirements of governmental authorities relating to the Property or Borrower's use thereof, and (b) all easements, licenses and agreements relating to the Property or Borrower's use thereof. Borrower shall observe and comply with all requirements necessary to the continued existence and validity of all rights, licenses, permits, privileges, franchises and concessions relating to any existing or presently contemplated use of the Property, including but not limited to any zoning variances, special exceptions and nonconforming use permits.

**4.8 Further Assurances.** Borrower will, at its expense, from time to time execute and deliver any and all such instruments of further assurance and other instruments and do any and all such acts, or cause the same to be done, as Trustee or Lender deems necessary or advisable to grant the Property to Trustee or to carry out more effectively the purposes of this Security Instrument.

**4.9 Legal Actions.** Borrower will appear in and defend any action or proceeding before any court or administrative body purporting to affect the security hereof or the rights or powers of Lender or Trustee; and will pay all costs and expenses, including cost of evidence of title, title insurance premiums and any fees of attorneys, appraisers, environmental inspectors and others, incurred by Lender or Trustee, in a reasonable sum, in any such action or proceeding in which Lender or Trustee may appear, in any suit brought by Lender or Trustee to foreclose this Security Instrument and in any nonjudicial foreclosure under this Security Instrument.

**4.10 Taxes, Assessments and Other Liens.** Borrower will pay prior to delinquency all taxes, assessments, encumbrances, charges, and liens with interest, on the Property or any part thereof, including but not limited to any tax on or measured by rents of the Property, the Note, this Security Instrument, or any obligation or part thereof secured hereby, unless Borrower is contesting such items in good faith and in accordance with the terms of Section 20(b)(ix) of the Loan Agreement.

**4.11 Expenses.** Borrower will pay all costs, fees and expenses reasonably incurred by Lender or Trustee in connection with this Security Instrument.

**4.12 Repayment of Expenditures.** Borrower will pay within fifteen business days after written demand all amounts secured by this Security Instrument, other than principal of and interest on the Note, with interest from date of expenditure at the rate of

interest borne by the Note and the repayment thereof shall be secured by this Security Instrument.

**4.13 Financial and Operating Information.** Borrower shall furnish to Lender financial and operating information as required by the Loan Agreement.

**4.14 Sale, Transfer, or Encumbrance of Property or Interests in Borrower.**

(a) Pursuant to the Loan Agreement, certain Transfers (as defined in Section 4.14(b) below) are prohibited including but not limited to any of the following that are not Permitted Transfers: (i) Transfer all or any part of the Project or any interest in the Project; (ii) Transfer of Control in the Borrower; (iii) Transfer of Control in any entity which, directly or indirectly through one or more intermediate entities, Controls the Borrower; (iv) a Transfer of all or any part of a Key Principal ownership interest in the Borrower, or in any other entity which owns, directly or indirectly through one or more intermediate entities, an ownership interest in the Borrower (other than a Transfer of an aggregate beneficial ownership interest in the Borrower of forty-nine percent (49%) or less of such Key Principal's original ownership interest in the Borrower and which does not otherwise result in a Transfer of the Key Principal's Control in such intermediate entities or in the Borrower); (v) if the Key Principal is an entity (A) Transfer of Control in the Key Principal or (B) Transfer of Control in any entity which owns, directly or indirectly through one or more intermediate entities, a Controlling interest in the Key Principal; (vi) if the Borrower or a Key Principal is a trust, the termination or revocation of such trust (unless the trust is terminated as a result of a death of an individual trustor, in which event the Lender must be notified and such Borrower or Key Principal must be replaced with an individual or entity acceptable to the Lender, in accordance with the provisions of the Loan Agreement, within ninety (90) days of such death); (vii) the merger, dissolution, liquidation or consolidation of (A) the Borrower, (B) any Key Principal that is a legal entity, or (C) any legal entity that Controls the Borrower or any Key Principal that is an entity; (viii) a conversion of the Borrower from one type of legal entity into another type of legal entity (including the conversion of a general partnership interest into a limited partnership interest and the conversion of a limited partnership into a limited liability company), whether or not there is a Transfer, if such conversion results in a change in the assets, liabilities, legal rights or obligations of the Borrower (or of a Key Principal or Managing Member of the Borrower, as applicable) by operation of law or otherwise; and (ix) Transfer the economic benefits or right to cash flows attributable to the ownership interest in the Borrower and/or, if a Key Principal is an entity, a Key Principal, separate from the Transfer or the underlying ownership interest, unless the Transfer of the underlying ownership interest would otherwise not be prohibited by this Agreement.

(b) The term "Transfer" as used in this Deed of Trust shall mean (a) a sale, assignment, transfer or other disposition (whether voluntary, involuntary, or by

operation of law), (b) the grant, creation, or attachment of a Lien, encumbrance or security interest (whether voluntary, involuntary, or by operation of law), (c) the issuance or other creation of a direct or indirect ownership interest, (d) the withdrawal, retirement, removal or involuntary resignation of any owner or manager of a legal entity, or (e) the merger, dissolution, liquidation or consolidation of a legal entity. The term "Transfer" shall not mean or include (i) the conveyance of the Project at a judicial or non-judicial foreclosure sale under the Deed of Trust or (ii) the Project becoming part of a bankruptcy estate by operation of law under the United States Bankruptcy Code.

**4.15 [Intentionally Omitted].**

**4.16 Information for Participants, Etc.** Borrower agrees to furnish such information and confirmation as may be required from time to time by Lender on request of potential loan participants and assignees and agrees to make adjustments in this Security Instrument, the Note, and the other documents evidencing or securing the loan secured hereby to accommodate such participant's or assignee's requirements, provided that such requirements do not vary the economic terms of the loan secured hereby or would be material and adverse to the financing of the Project or completion of construction of the Improvements. Borrower hereby authorizes Lender to disclose to potential participants and assignees any information in Lender's possession with respect to Borrower and the loan secured hereby.

**4.17 Tax and Insurance Impounds.**

(a) **Impounds.** In addition to the payments required by the Note, Borrower agrees to pay Lender, at Lender's request, such sums as Lender may from time to time estimate will be required to pay, at least one month before delinquency, the next due taxes, assessments, insurance premiums, and similar charges affecting the Property, less all sums already paid therefor divided by the number of months to elapse before one month prior to the date when such taxes, assessments and premiums will become delinquent, such sums to be held by Lender without interest or other income to Borrower to pay such taxes, assessments and premiums. Should this estimate as to taxes, assessments and premiums prove insufficient, Borrower upon demand agrees to pay Lender such additional sums as may be required to pay them before delinquent.

(b) **Application.** If the total of the payments described in subsection (a) of this Section (collectively, the "Impounds") in any one year shall exceed the amounts actually paid by Lender for taxes, assessments and premiums, such excess may be credited by Lender on subsequent payments under this section. At any time after the occurrence and during the continuance of an Event of Default and at or prior to the trustee's sale or sheriff's sale, Lender may apply any balance of funds it may hold pursuant to this Section to any amount secured by this Security Instrument and in such order as Lender may

elect. If Lender does not so apply such funds at or prior to the trustee's sale or sheriff's sale, the purchaser at such sale shall be entitled to all such funds. If Lender acquires the Property in lieu of realizing on this Security Instrument, the balance of funds it holds shall become the property of Lender. Any transfer in fee of all or a part of the Property shall automatically transfer to the grantee all or a proportionate part of Borrower's rights and interest in the fund accumulated hereunder.

(c) **Tax Reporting Service.** Lender may, but need not, contract with a tax reporting service covering the Property. Borrower agrees that Lender may rely on the information furnished by such tax service and agrees to pay the cost of that service within 30 days after receipt of a billing for it.

**4.18 Leases, Security Deposits, Etc.** Borrower shall not receive or collect any rents from any present or future tenant of the Property or any part thereof in advance in excess of one month's rent or collect a security deposit in excess of two months' rent. Borrower shall promptly deposit and maintain all security deposits and other deposits received by Borrower from tenants in a segregated trust account in a federally insured institution. Borrower shall perform its obligations under the Leases in all material respects.

**4.19 Condominium and Cooperative Provisions.** If the Property is not subject to a recorded condominium or cooperative regime on the date of this Security Instrument, Borrower will not subject the Property or any portion thereof to such a regime without the written consent of Lender, which consent may be granted or denied in Lender's sole discretion and, if granted, may be subject to such requirements as Lender may impose including but not limited to Borrower providing Lender with such title insurance endorsements and other documents as Lender may require. If the Property is subject to a condominium regime on the date of this Security Instrument: (a) Borrower represents and warrants that none of the condominium units and no portion of the common elements in the Property have been sold, conveyed or encumbered or are subject to any agreement to convey or encumber; (b) Borrower shall not in any way sell, convey or encumber or enter into a contract or agreement to sell, convey or encumber any condominium unit or any of the common elements of the Property unless expressly agreed to in writing by Lender; (c) Borrower shall operate the Property solely as a rental property; and (d) the Property granted, conveyed and assigned to Lender hereunder includes all rights, easements, rights of way, reservations and powers of Borrower, as owner, declarant or otherwise, under any applicable condominium act or statute and under any and all condominium declarations, survey maps and plans, association articles and bylaws and documents similar to any of the foregoing.

**4.20 Use of Property; Zoning Changes.** Unless required by applicable law, Borrower shall not: (a) except for any change in use approved by Lender in writing, allow changes in the use for which all or any part of the Property is being used at the time this

Security Instrument is executed; (b) convert any individual dwelling unit or common area in the Property to primarily commercial use; or (c) initiate or acquiesce in a change in the zoning classification of the Property.

**4.21 Construction Mortgage.** This Security Instrument shall constitute a "construction mortgage" as that term is used in Section 9-334 and Section 2A-309 of the UCC.

**4.22 Affordable Housing Programs.** Borrower shall maintain occupancy of the Property as affordable housing in accordance with all regulatory agreements, covenants and other requirements of all affordable housing programs that apply to the Property (collectively, the "Affordable Housing Programs") including, but not limited to, requirements that rental units of the Property be occupied by tenants whose incomes do not exceed a specified percentage of the area median income (as published by the federal Department of Housing and Urban Development) and that rent does not exceed a specified amount. Borrower shall provide to Lender on request any and all reports made to any local, state or federal agency regarding compliance with the Affordable Housing Programs.

**4.23 Tax Credits and Abatement.** Borrower acknowledges that Lender has made no representations or warranties concerning the applicability of tax credits to the Property or the ability of Borrower or any investor in Borrower to utilize tax credits, or any other benefits that may accrue in connection with the use, development or financing of the Property, including but not limited to the low-income housing credits provided under Internal Revenue Code Section 42 (Low-Income Housing Credits) or any historic tax credits that may result from the designation of the Property as an historic landmark (collectively, "Tax Credits"), or any real estate tax abatement relating to the Property ("Abatement"). Neither Borrower nor any investor in Borrower has relied, is relying or will rely on any investigation or review Lender may have made or may make of any proposed Tax Credits or Abatement.

**4.24 Management of the Property.** Lender is making the loan secured by this Security Instrument in part in reliance on the experience and reputation of the manager of the Property identified in the Loan Agreement as an experienced manager of low-income housing apartment complexes. Borrower will provide Lender 30 days' prior written notice if Borrower intends to retain another property management company to manage the Property and will not retain such replacement property management company without obtaining the prior written consent of Lender, which will not unreasonably be withheld. Lender reserves the right (a) to review and approve the proposed property management agreement between Borrower and the new property manager and any material changes thereto, including, but not limited to, changes in the responsibilities of the property manager, and (b) to require that the replacement property management company enter into such agreements with Lender as Lender may require. Borrower will submit such requests to Lender in writing.



## 5. DEFAULT.

**5.1 Definition.** Any of the following shall constitute an "Event of Default" as that term is used in this Security Instrument (and the term "Default" shall mean any of the following, whether or not any requirement for notice or lapse of time has been satisfied); provided, that any of Borrower's partners (if Borrower is a limited partnership) or members (if Borrower is a limited liability company) may, but are not obligated to, cure a Default and such cure shall be accepted by Lender as if made by Borrower:

(a) Any regular monthly payment under the Note is not paid so that it is received by Lender within 10 days after the date when due, or any other amount secured by this Security Instrument (including but not limited to any payment of principal or interest due on the Maturity Date, as defined in the Note) is not paid so that it is received by Lender when due;

(b) Any representation or warranty made by Borrower to or for the benefit of Lender herein or elsewhere in connection with the loan secured hereby, including but not limited to any representation in connection with the security therefor, shall prove to have been incorrect or misleading in any material respect;

(c) Borrower or any other party thereto (other than Lender) shall fail to perform its obligations under any other covenant or agreement contained in this Security Instrument, the Note, any other Loan Document or the Indemnity Agreement, which failure continues for a period of thirty (30) days after written notice of such failure by Lender to Borrower, provided that if cure of such failure is commenced and diligently pursued but is not capable of being cured with such 30-day period, such 30-day period shall be extended by 60 days; but no such notice or cure period shall apply in the case of: (i) any such failure that could, in Lender's reasonable judgment, absent immediate exercise by Lender of a right or remedy under this Security Instrument, the other Loan Documents or the Indemnity Agreement, result in harm to Lender, impairment of the Note or this Security Instrument or any other security given under any other Loan Document; (ii) any such failure that is not reasonably susceptible of being cured during such extended cure period; (iii) breach of any provision that expressly contains a shorter cure period; or (iv) any breach of Section 4.13 or Section 4.14 of this Security Instrument;

(d) Borrower or any other person or entity liable for the repayment of the indebtedness secured hereby shall become unable or admit in writing its inability to pay its debts as they become due, or file, or have filed against it, a voluntary or involuntary petition in bankruptcy, or make a general assignment for the benefit of creditors, or become the subject of any other receivership or insolvency proceeding, provided that if such petition or proceeding is not filed or acquiesced in by Borrower or the subject thereof, it shall

constitute an Event of Default only if it is not dismissed within sixty (60) days after it is filed or if prior to that time the court enters an order substantially granting the relief sought therein;

(e) A tax, charge or lien shall be placed upon or measured by the Note, this Security Instrument, or any obligation secured hereby that Borrower does not or may not legally pay in addition to the payment of all principal and interest as provided in the Note;

(f) Borrower or any other signatory thereto shall default in the performance of any covenant or agreement contained in any mortgage, deed of trust or similar security instrument encumbering the Property or any promissory note or other agreement evidencing or securing the indebtedness secured thereby, or any regulatory agreement, covenant or other agreement entered into in connection with the Affordable Housing Programs or any Swap Agreement, which default continues beyond any applicable grace or cure period; or

(g) Any Event of Default (as defined in the Loan Agreement) occurs and is continuing.

**5.2 Lender's and Trustee's Right to Perform.** After the occurrence and during the continuance of any Event of Default, Lender or Trustee, but without the obligation so to do and without notice to or demand upon Borrower and without releasing Borrower from any obligations hereunder, may: make any payments or do any acts required of Borrower hereunder in such manner and to such extent as either may deem necessary to protect the security hereof, Lender or Trustee being authorized to enter upon the Property for such purposes; commence, appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Lender or Trustee; pay, purchase, contest or compromise any encumbrance, charge or lien in accordance with the following paragraph; and in exercising any such powers, pay necessary expenses, employ counsel and pay a reasonable fee therefor. All sums so expended shall be payable on demand by Borrower, be secured hereby and bear interest at the default rate of interest specified in the Note from the date advanced or expended until repaid.

Lender or Trustee, in making any payment herein, is hereby authorized, in the place and stead of Borrower, in the case of a payment of taxes, assessments, water rates, sewer rentals and other governmental or municipal charges, fines, impositions or liens asserted against the Property, to make such payment in reliance on any bill, statement or estimate procured from the appropriate public office without inquiry into the accuracy of the bill, statement or estimate or into the validity of any tax, assessment, sale, forfeiture, tax lien or title or claim thereof; in the case of any apparent or threatened adverse claim of title, lien, statement of lien, encumbrance, deed of trust, mortgage, claim or charge Lender or Trustee, as the case may be, shall be the sole judge of the legality or validity of same; and in the case of a

payment for any other purpose herein and hereby authorized, but not enumerated in this paragraph, such payment may be made whenever, in the sole judgment and discretion of Trustee or Lender, as the case may be, such advance or advances shall seem necessary or desirable to protect the full security intended to be created by this Security Instrument, provided further, that in connection with any such advance, Lender at its option may and is hereby authorized to obtain a continuation report of title prepared by a title insurance company, the cost and expenses of which shall be repayable by Borrower without demand and shall be secured hereby.

**5.3 Remedies on Default.** Upon the occurrence of any Event of Default all sums secured hereby shall become immediately due and payable, without notice or demand, at the option of Lender and Lender may:

(a) Have a receiver appointed as a matter of right (on an *ex parte* basis without notice to Borrower to the extent permitted by applicable law) and without regard to the sufficiency of the Property or any other security for the indebtedness secured hereby and, without the necessity of posting any bond or other security. Such receiver shall take possession and control of the Property and shall collect and receive the Rents. If Lender elects to seek the appointment of a receiver for the Property, Borrower, by its execution of this Security Instrument, expressly consents to the appointment of such receiver, including the appointment of a receiver *ex parte* if permitted by applicable law. The receiver shall be entitled to receive a reasonable fee for managing the Property, which fee may be deducted from the Rents or may be paid by Lender and added to the indebtedness secured by this Security Instrument. Immediately upon appointment of a receiver, Borrower shall surrender possession of the Property to the receiver and shall deliver to the receiver all documents, records (including records on electronic or magnetic media), accounts, surveys, plans, and specifications relating to the Property and all security deposits. If the Rents are not sufficient to pay the costs of taking control of and managing the Property and collecting the Rents, any funds expended by Lender, or advanced by Lender to the receiver, for such purposes shall become an additional part of the indebtedness secured by this Security Instrument. The receiver may exclude Borrower and its representatives from the Property. Borrower acknowledges and agrees that the exercise by Lender of any of the rights conferred under this Section 5.3 shall not be construed to make Lender a mortgagee-in-possession of the Property so long as Lender has not itself entered into actual possession of the Property.

(b) Foreclose this Security Instrument as a mortgage or otherwise realize upon the Property.

(c) Cause Trustee to exercise its power of sale.

(d) Sue on the Note as permitted under applicable law.

(e) Avail itself of any other right or remedy available to it under the terms of this Security Instrument, the other Loan Documents or applicable law.

**5.4 No Waiver.** By accepting payment of any sum secured hereby after its due date, Lender does not waive its right either to require prompt payment when due of all other sums so secured or to declare an Event of Default for failure to do so.

**5.5 Waiver of Marshaling, Etc.** In connection with any trustee's sale or other foreclosure sale under this Security Instrument, Borrower hereby waives, for itself and all others claiming by, through or under Borrower, any right Borrower or such others would otherwise have to require marshaling or to require that the Property be sold in parcels or in any particular order.

**5.6 Remedies Cumulative; Subrogation.** The rights and remedies accorded by this Security Instrument shall be in addition to, and not in substitution of, any rights or remedies available under now existing or hereafter arising applicable law. All rights and remedies provided for in this Security Instrument or afforded by law or equity are distinct and cumulative and may be exercised concurrently, independently or successively. The failure on the part of Lender to promptly enforce any right hereunder shall not operate as a waiver of such right and the waiver of any Default or Event of Default shall not constitute a waiver of any subsequent or other Default or Event of Default. Lender shall be subrogated to the claims and liens of those whose claims or liens are discharged or paid with the loan proceeds hereof.

**6. CONDEMNATION, ETC.** Any and all awards of damages, whether paid as a result of judgment or prior settlement, in connection with any condemnation or other taking of any portion of the Property for public or private use, or for injury to any portion of the Property ("Awards"), are hereby assigned and shall be paid to Lender which may apply or disburse such Awards in the same manner, on the same terms, subject to the same conditions, to the same extent, and with the same effect as provided in Section 4.4.5 above for disposition of Insurance Proceeds. Without limiting the generality of the foregoing, if the taking results in a loss of the Property to an extent that, in the reasonable opinion of Lender, renders or is likely to render the Property not economically viable or if, in Lender's reasonable judgment, Lender's security is otherwise impaired, Lender may apply the Awards to reduce the unpaid obligations secured hereby in such order as Lender may determine, and without any adjustment in the amount or due dates of installments due under the Note. If so applied, any Awards in excess of the unpaid balance of the Note and other sums due to Lender shall be paid to Borrower or Borrower's assignee. Lender shall in no case be obligated to see to the proper application of any amount paid over to Borrower. Such application or release shall not cure or waive any Default or notice of default hereunder or invalidate any act done pursuant to such notice. Should the Property or any part or appurtenance thereof or right or interest therein be taken or threatened to be taken by reason of any public or private improvement,

condemnation proceeding (including change of grade), or in any other manner, Lender may, at its option, commence, appear in and prosecute, in its own name, any action or proceeding, or make any reasonable compromise or settlement in connection with such taking or damage, and obtain all Awards or other relief therefor, and Borrower agrees to pay Lender's costs and reasonable attorneys' fees incurred in connection therewith. Lender shall have no obligation to take any action in connection with any actual or threatened condemnation or other proceeding.

## **7. TRUSTEE.**

**7.1 General Powers and Duties of Trustee.** At any time or from time to time, without liability therefor and without notice and without affecting the liability of any person for the payment of the indebtedness secured hereby, upon written request of Lender, payment of its own fees and presentation of this Security Instrument and the Note for endorsement (in case of full reconveyance, for cancellation or retention), 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 Security Instrument or the lien or charge thereof; or (d) reconvey, without warranty, all or any part of the Property.

**7.2 Reconveyance.** Upon written request of Lender stating that all sums secured hereby have been paid, and upon surrender of this Security Instrument and the Note to Trustee for cancellation and retention and upon payment of its fees, Trustee shall reconvey, without warranty, the Property then held hereunder. The recitals in any reconveyance executed under this Security Instrument of any matters of fact shall be conclusive proof of the truthfulness thereof. The grantee in such reconveyance may be described as "the person or persons legally entitled thereto."

**7.3 Powers and Duties on Default.** Upon written request therefor by Lender specifying the nature of the Event of Default, or the nature of the several Events of Default, and the amount or amounts due and owing, Trustee shall execute a written notice of default and of its election to cause the Property to be sold to satisfy the obligation secured hereby, and shall cause such notice to be recorded and otherwise given according to law. Notice of sale having been given as then required by law and not less than the time then required by law having elapsed after recordation of such notice of breach, Trustee, without demand on Borrower, shall sell the Property at the time and place of sale specified in the notice, as provided by statute, either as a whole or in separate parcels and in such order as it may determine, at public auction to the highest and best bidder for cash in lawful money of the United States, payable at time of sale. Borrower agrees that such a sale (or a sheriff's sale pursuant to judicial foreclosure) of all the Property as real estate constitutes a commercially reasonable disposition thereof, but that with respect to all or any part of the Property which may be personal property Trustee shall have and exercise, at Lender's sole election, all the rights and remedies of a secured

party under the UCC. Whenever notice of such a sale is permitted or required hereunder or under the UCC, ten (10) days shall be deemed reasonable. Trustee may postpone sale of all or any portion of the Property, and from time to time thereafter may postpone such sale, as provided by statute. Trustee shall deliver to the purchaser its deed conveying the Property so sold, but without any covenant or warranty, express or implied. The recital in such deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person other than Trustee, including Borrower or Lender, may purchase at such sale. After deducting all costs, fees and expenses of Trustee and of this trust, including the cost of evidence of title search and title insurance and reasonable counsel fees in connection with sale, Trustee shall apply the proceeds of sale to payment of all sums secured hereby in such order as Lender may determine and the remainder, if any, to Borrower or otherwise paid or applied as permitted by applicable law.

**7.4 Reassignment of Security Interest.** At the request of Lender, Trustee shall reassign to Lender the security interest created hereby and after such reassignment Lender shall have the right, upon the occurrence or continuance of any Event of Default, to realize upon the personal property subject to this Security Instrument, independent of any action of Trustee, pursuant to the UCC.

**7.5 Acceptance of Trust.** Trustee accepts this trust when this Security Instrument, duly executed and acknowledged, is made a public record as provided by law. Trustee is not obligated to notify any party hereto except Lender of pending sale under any other deed of trust or of any action or proceeding in which Borrower, Lender or Trustee shall be a party unless brought by Trustee.

**7.6 Reliance.** Trustee, upon presentation to it of an affidavit signed by Lender setting forth facts showing an Event of Default, is authorized to accept as true and conclusive all facts and statements therein, and to act thereon hereunder.

**7.7 Replacement of Trustee.** Lender may, from time to time, as provided by statute, appoint another trustee in place and stead of Trustee herein named, and thereupon Trustee herein named shall be discharged and the trustee so appointed shall be substituted as Trustee hereunder, with the same effect as if originally named Trustee herein.

## **8. NOTICES.**

**8.1 Trustee.** Any notice or demand upon Trustee may be given or made at the address set forth above for Trustee.

**8.2 Borrower and Lender.** Any notice to or demand upon Borrower (including any notice of Default or notice of sale) or notice to or demand upon Lender shall be deemed to have been sufficiently made for all purposes when deposited in the United States mails, postage prepaid, registered or certified, return receipt requested, addressed as follows: to Borrower at the following address:

If to Borrower, at the following address:

Northwest High Valley Estates LLC  
c/o Northwest Real Estate Capital Corp.  
210 West Mallard Drive, Suite A  
Boise, ID 83706

with a required copy to:

Danielle Quade  
Hawley Troxell Ennis & Hawley, LLP  
877 Main Street, Suite 1000  
Boise, ID 83702

If to Lender, at the following address:

JPMorgan Chase Bank, N.A.  
201 North Central Avenue, 14<sup>th</sup> Floor  
Phoenix, AZ 84004  
Mail Code AZ1-1328  
Attention: Commercial Real Estate Loan Administration

or to such other address as any recipient may have directed for itself by notice in accordance herewith.

In addition, so long as Tax Credit Investor or any Affiliate of Tax Credit Investor, remains a partner or member in Borrower, Lender shall provide a copy of any notice of Default hereunder that is sent to Borrower to:

PNC Real Estate Capital Credit  
121 SW Morrison Street, Suite 1300  
Portland, OR 97204  
Attention: Fund Manager-High Valley

or to such other address as Investor Member may by notice specify to Lender; provided, however, that no failure to give such notice shall in any way (a) impair the effectiveness of any notice given to Borrower or any other party, (b) impair Lender's rights and remedies under the Loan Documents (other than to delay the exercise of such rights until such notice is given and any applicable grace or cure period has elapsed), or (c) give rise to a right to recover damages from Lender.

**8.3 Waiver of Notice.** The giving of notice may be waived in writing by the person or persons entitled to receive such notice, either before or after the time established for the giving of such notice.

**9. MODIFICATIONS, ETC.** Each person or entity now or hereafter owning any interest in the Property agrees, by executing this Security Instrument or taking the Property subject to it, that Lender may in its sole discretion and without notice to or consent of any such person or entity: (i) extend the time for payment of the obligations secured hereby; (ii) discharge or release any one or more parties from their liability for such obligations in whole or in part; (iii) delay any action to collect on such obligations or to realize on any collateral therefor; (iv) release or fail to perfect any security for such obligations; (v) consent to one or more transfers of the Property, in whole or in part, on any terms; (vi) waive or release any of holder's rights under any of the Loan Documents; (vii) agree to an increase in the amount of such obligations or to any other modification of such obligations or of the Loan Documents; or (viii) proceed against such person or entity before, at the same time as, or after it proceeds against any other person or entity liable for such obligations.

**10. SUCCESSORS AND ASSIGNS.** All provisions herein contained shall be binding upon and inure to the benefit of the respective successors and assigns of the parties.

**11. GOVERNING LAW; SEVERABILITY.** This Security Instrument shall be governed by the law of the state of Oregon. In the event that any provision or clause of this Security Instrument or the Note conflicts with applicable law, the conflict shall not affect other provisions of this Security Instrument or the Note that can be given effect without the conflicting provision and to this end the provisions of this Security Instrument and the Note are declared to be severable.

**12. BORROWER'S RIGHT TO POSSESSION.** Borrower may be and remain in possession of the Property for so long as no Event of Default exists and Borrower may, while it is entitled to possession of the Property, use the same.

**13. MAXIMUM INTEREST.** No provision of this Security Instrument or of the Note shall require the payment or permit the collection of interest in excess of the maximum permitted by law. If any excess of interest in such respect is herein or in the Note provided for, neither Borrower nor its successors or assigns shall be obligated to pay that portion of such interest that is in excess of the maximum permitted by law, and the right to demand the payment of any such excess shall be and is hereby waived and this Section 13 shall control any provision of this Security Instrument or the Note that is inconsistent herewith.

**14. ATTORNEYS' FEES AND LEGAL EXPENSES.** Subject to any rights of other parties to recover attorneys' fees and/or other amounts as prevailing parties under Oregon Revised Statutes 20.096, in the event of any Default under this Security Instrument, or



in the event that any dispute arises relating to the interpretation, enforcement or performance of any obligation secured by this Security Instrument, Lender shall be entitled to collect from Borrower on demand all fees and expenses incurred in connection therewith, including but not limited to reasonable fees of attorneys, accountants, appraisers, environmental inspectors, consultants, expert witnesses, arbitrators, mediators and court reporters. Without limiting the generality of the foregoing, Borrower shall pay all such costs and expenses incurred in connection with: (a) arbitration or other alternative dispute resolution proceedings, trial court actions and appeals; (b) bankruptcy or other insolvency proceedings of Borrower, any guarantor or other party liable for any of the obligations secured by this Security Instrument or any party having any interest in any security for any of those obligations; (c) judicial or nonjudicial foreclosure on, or appointment of a receiver for, any of the Property; (d) post-judgment collection proceedings; (e) all claims, counterclaims, cross-claims and defenses asserted in any of the foregoing whether or not they arise out of or are related to this Security Instrument; (f) all preparation for any of the foregoing; and (g) all settlement negotiations with respect to any of the foregoing.

**15. PREPAYMENT PROVISIONS.** If at any time after an Event of Default and acceleration of the indebtedness secured hereby there shall be a tender of payment of the amount necessary to satisfy such indebtedness by or on behalf of Borrower, its successors or assigns, the same shall be deemed to be a voluntary prepayment such that the sum required to satisfy such indebtedness in full shall include, to the extent permitted by law, the additional payment required under the prepayment privilege as stated in the Note.

**16. TIME IS OF THE ESSENCE.** Time is of the essence under this Security Instrument and in the performance of every term, covenant and obligation contained herein.

**17. FIXTURE FILING.** This Security Instrument constitutes a financing statement, filed as a fixture filing in the real estate records of the county of the state in which the real property described in Exhibit A is located, with respect to any and all fixtures included within the list of improvements and fixtures described in Section 1.2 of this Security Instrument and to any goods or other personal property that are now or hereafter will become a part of the Property as fixtures.

**18. MISCELLANEOUS.**

**18.1** Whenever the context so requires the singular number includes the plural herein, and the impersonal includes the personal.

**18.2** The headings to the various sections have been inserted for convenient reference only and shall not modify, define, limit or expand the express provisions of this Security Instrument.

18.3 This Security Instrument, the Note and the other Loan Documents constitute the final expression of the entire agreement of the parties with respect to the transactions set forth therein. No party is relying upon any oral agreement or other understanding not expressly set forth in the Loan Documents. The Loan Documents may not be amended or modified except by means of a written document executed by the party sought to be charged with such amendment or modification.

18.4 No creditor of any party to this Security Instrument and no other person or entity shall be a third party beneficiary of this Security Instrument or any other Loan Document. Without limiting the generality of the preceding sentence, (a) any arrangement (a "Servicing Arrangement") between Lender and any servicer of the loan secured hereby for loss sharing or interim advancement of funds shall constitute a contractual obligation of such servicer that is independent of the obligation of Borrower for the payment of the indebtedness secured hereby, (b) Borrower shall not be a third party beneficiary of any Servicing Arrangement, and (c) no payment by a servicer under any Servicing Arrangement will reduce the amount of the indebtedness secured hereby.

18.5 This Security Instrument is a trust deed pursuant to Oregon Revised Statutes ("ORS") § 86.705, *et seq.*

**19. WAIVER OF JURY TRIAL. EACH OF BORROWER AND LENDER (FOR ITSELF AND ITS SUCCESSORS, ASSIGNS AND PARTICIPANTS) WAIVES ITS RIGHT TO A TRIAL BY JURY OF ANY CLAIM OR CAUSE OF ACTION BASED UPON, ARISING OUT OF OR RELATED TO THIS SECURITY INSTRUMENT, THE OTHER LOAN DOCUMENTS OR THE TRANSACTIONS PROVIDED FOR HEREIN OR THEREIN, IN ANY LEGAL ACTION OR PROCEEDING OF ANY TYPE BROUGHT BY ANY PARTY TO ANY OF THE FOREGOING AGAINST ANY OTHER SUCH PARTY, WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE. ANY SUCH CLAIM OR CAUSE OF ACTION SHALL BE TRIED BY A COURT SITTING WITHOUT A JURY.**

**UNDER OREGON LAW, MOST AGREEMENTS, PROMISES, AND COMMITMENTS MADE BY LENDER CONCERNING LOANS AND OTHER CREDIT EXTENSIONS THAT ARE NOT FOR PERSONAL, FAMILY, OR HOUSEHOLD PURPOSES OR SECURED SOLELY BY THE BORROWER'S RESIDENCE MUST BE IN WRITING, EXPRESS CONSIDERATION, AND BE SIGNED BY LENDER TO BE ENFORCEABLE.**

**BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD**

INQUIRE ABOUT THE PERSONS RIGHTS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010. THIS INSTRUMENT DOES NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92.010 OR 215.010 TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL, TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES, AS DEFINED IN ORS 30.930, AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010.

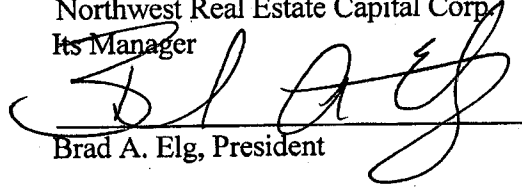
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DATED as of the day and year first above written.

NORTHWEST HIGH VALLEY ESTATES LLC

By: Community Development of Oregon IV LLC  
Its Managing Member

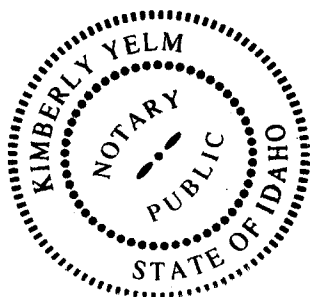
By: Northwest Real Estate Capital Corp.  
Its Manager

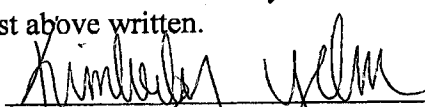
By:   
Brad A. Elg, President

STATE OF IDAHO )  
) ss.  
County of Ada )

On this 20 day of December, 2012, before me, the undersigned, a Notary Public in and for said State, personally appeared Brad A. Elg, known or identified to me to be the President of Northwest Real Estate Capital Corp., an Idaho corporation, which corporation is the Manager of Community Development of Oregon IV LLC, an Idaho nonprofit limited liability company, which limited liability company is the Managing Member 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 entities, in each of the aforesaid 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.



  
Notary Public for Idaho  
Residing at Meridian, ID  
My commission expires 01/15/2013

Signature Page to Deed of Trust

## EXHIBIT A

### Legal Description

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 108.05 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.

Together with Easement Agreement which recorded May 21, 2003 in Volume M03 Page 34428, records of Klamath County, Oregon

EXHIBIT A