COUNCIL AGENDA

Monday, May 23, 2022
at 6:00 pm

City of Ellensburg
WASHINGTON

Special Meeting

The Ellensburg City Council Special meeting will be available to livestream on YouTube at ECTV Ellensburg. Members of the public may attend the City Council Special Meeting either in person in the City Council Chambers, 501 N Anderson Street, Ellensburg, WA 98926 or by registering to attend remotely via video conference.

To attend the city council meeting virtually register here:
https://us02web.zoom.us/webinar/register/WN_3q6464LhRwuHjbNzengI3Q

AMERICANS WITH DISABILITIES ACT

The City of Ellensburg strives to make our services, programs, and activities readily accessible and usable by individuals with disabilities. Reasonable accommodations will be made upon request. Please furnish the ADA Coordinator with your request in sufficient time for the City to provide a reasonable accommodation. A Request for Accommodation form may be obtained on the first floor of City Hall or by calling the City of Ellensburg ADA Coordinator at (509) 962-7222 or email ADAcoordinator@ci.ellensburg.wa.us.

COUNCIL SPECIAL MEETING
GUIDELINES FOR PUBLIC PARTICIPATION

This City Council special meeting will be livestreamed on YouTube at ECTV Ellensburg. You may also attend virtually following the registration instructions under "Procedure for Remote Participation During Meeting," below. Once you register, you will be sent a meeting invite with a Zoom link for the meeting.

City Council will accept comments in person or via remote testimony as set forth below:

SUBMISSION OF WRITTEN COMMENTS IN ADVANCE OF MEETING

Submit written comments by mail to the City Clerk, Ellensburg City Hall, 501 N. Anderson St., Ellensburg, WA 98926, or via email to: cityclerk@ci.ellensburg.wa.us. Comments received by May 23, 2022 at 4 p.m. will be compiled, sent to the City Council and entered into the record.

PROCEDURE FOR REMOTE PARTICIPATION DURING MEETING

Advance registration is required to provide public comment via remote meeting attendance.

Anyone wishing to speak on items under the Agenda must register prior to May 23, 2022 at 6 p.m.
Register for the meeting at:
https://us02web.zoom.us/webinar/register/WN_3q6464LhRwuHjbNzengI3Q

1. Once registered, you will receive an email with the meeting link and phone number (for those who wish to call into the meeting).
2. Join the meeting early, as you may need to download the app in advance to participate. Once you've joined the meeting, your camera and microphone will be muted until you are recognized by the Mayor to speak.
3. The Mayor will identify when the Public Comment section begins and ask if anyone wishes to speak on the matter.
4. Any interested person may provide comments. If you wish to speak, you must:
   a) Raise your "virtual hand" in the corner of Zoom application on the computer screen or press *9 on your phone. Raising your hand signals the moderator that you wish to speak.
   b) Wait to be called upon by the Mayor using your name, e-mail, or phone number used to log in to the teleconference.
5. Please state your name, address, and whether you are representing only yourself or others.
6. Each speaker's comments are to be limited to 3 MINUTES

CITY OF ELLENSBURG
COUNCIL AGENDA
Council Chambers
501 N Anderson St.
Ellensburg, WA 98926
Monday, May 23, 2022
6:00 PM - Special Meeting

Pledge of Allegiance

1. **Call to Order and Roll Call**

2. **New Business**

   2.A Affordable Housing Agreement with HopeSource for purchase of Nites Inn property
   Ellensburg - HopeSource - Affordable Housing Agreement
   Attachment No. 5 - Ellensburg - Hope Source - City Note
   Attachment No. 6 - Ellensburg - HopeSource - Covenant
   Attachment No. 7 - Ellensburg - HopeSource - Deed of Trust

3. **Adjournment**

CITY COUNCIL AGENDA REPORT

City Council Meeting Date:	May 23, 2022
Item Title/Agenda Subject:	Affordable Housing Agreement with HopeSource for purchase of Nites Inn property
Submitted by:	Terry Weiner City Attorney Department
Recommended Action or Motion:	Authorize the City Manager to execute the Affordable Housing Agreement with HopeSource, and associated documents required for escrow closing, as presented or in substantially similar form, in the amount of $750,000.
Background/Summary:	In November 2017, City voters approved a one tenth of one percent increase in City sales tax for housing and related services consistent with RCW 82.14.530. The purpose of this local funding source is to support housing and related services in the City. Consistent with state law, housing created with these funds is required to serve households earning 60% or less of Area Median Income (AMI) and fall within specific population groups as described in RCW 82.14.530, including senior citizens, among others. On March 15, 2022 the City received an application from HopeSource requesting $750,000 in affordable housing sales tax funds, to acquire 4.8 acres at 1200 South Ruby Street, which also includes a vacant hotel. The proposal for this property is to rehabilitate 16 units in an existing building with future plans to develop up to 40 dwelling units on the vacant property, providing affordable housing opportunities the for low-income households meeting the eligibility and income requirements of RCW 82.14.530. HopeSource has also obtained a commitment of $750,000 from Kittitas County. The total purchase price for the property, including the hotel, is $1.5 million.
Previous Council Action:	In June of 2019, City Council provided direction to the Affordable Housing Commission and appointed the Commission to administer the revenue generated by the housing sales tax. The HopeSource application being presented to Council in this packet was part of an open

application process through the Affordable Housing Commission.

On April 18, 2022, Council approved the recommendation of the Affordable Housing Commission as presented and sent a subsequent
award letter to HopeSource initiating contract negotiations.

Analysis: The City received a City Sales Tax Funding for Affordable Housing application from HopeSource dated March 15, 2022. Per the guidance of Council and the open application process the Affordable Housing Commission reviewed the application at a special meeting on March 16, 2022, and at its regular meeting on April 6, 2022. Consistent with RCW 82.14.530, funding will be allocated to projects that create new affordable housing in Ellensburg. Eligible uses of funds includes costs associated with property acquisition, construction, and rehabilitation for projects that will serve target population groups earning 60% or less of the Area Median Income. The HopeSource application indicated the ability to rehabilitate 16 dwelling units in an existing building providing rental units to families who make less than 60% AMI, and future development up to 40 housing units to families that make less than 60% AMI on the vacant four acres.

The time to complete the project is estimated to take two years as detailed in the application. The applicant demonstrated they are able to meet the requirements of the affordable housing sales tax funds under RCW 82.14.530, and will help the city to address the identified housing needs in the community. The Affordable Housing Agreement includes various maintenance and property management requirements, and provides that the units meet the affordability requirements for a minimum of 50 years.

Financial Impact: There is adequate balance in the Affordable Housing Fund for this project. City Council authorized the additional expenditure authority at its April 18, 2022 meeting and it was then included as part of the Supplemental Budget Ordinance 4886, adopted by Council on May 16.

Attachments:
Ellensburg - HopeSource - Affordable Housing Agreement

Attachment No. 5 - Ellensburg - Hope Source - City Note

Attachment No. 6 - Ellensburg - HopeSource - Covenant
Attachment No. 7 - Ellensburg - HopeSource - Deed of Trust

AFFORDABLE HOUSING AGREEMENT

by and between

CITY OF ELLENSBURG

and

HOPESOURCE

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ATTACHMENTS

AFFORDABLE HOUSING AGREEMENT

THIS AFFORDABLE HOUSING AGREEMENT (the "Agreement"), dated, for identification purposes only, as of May ___, 2022 (the "Effective Date") is entered into by and between the **CITY OF ELLENSBURG**, a municipal corporation ("City"), **HOPESOURCE**, a Washington nonprofit corporation (the "Developer").

R E C I T A L S

A. City is a municipal corporation which, as part of its governmental operations, seeks to add to the community's supply of affordable housing units that are actively managed, which constitutes a public use and purpose and an essential governmental function for which public moneys may be spent, and other aid given and a proper public purpose, necessary in the public interest.

B. In November 2017, City voters approved a one tenth of one percent City sales tax for housing and related services consistent with RCW 82.14.530. The purpose of this local funding source is to support housing and related services in the City. Consistent with Washington State law, housing created with these funds is required to serve households earning 60% or less of Area Median Income ("AMI") and fall within specific population groups as described in RCW 82.14.530(2)(b).

C. Developer intends to purchase that certain real property consisting of approximately 4.48 gross acres of land and structure located at 1200 South Ruby Street (the "Site") within the corporate limits of the City of Ellensburg pursuant to that certain Real Property Purchase and Sale Agreement dated March 1, 2022 by and between Star Hospitality, LLC, as seller ("Seller") and Developer, as buyer (as may be amended, the "PSA"). The Site is legally described on Attachment 1.

D. Developer will develop the Site with a unit multifamily development consisting of at least sixteen (16) units ("Project") providing permanent housing to persons and families of limited income, as more particularly provided herein, with all of the dwelling units on the Site to be restricted to occupancy by low-income residents.

E. Developer has requested assistance from City in the form of contribution of moneys the City has obtained upon application of sales taxes under the authority of RCW 82.14.530.

F. By this Agreement, and subject to the terms and conditions herein, City desires to aid in the implementation of the Project as more fully described herein. The permitted income levels of the tenants of each Housing Unit and the permissible rents price to be charged for occupancy of each Housing Unit are set forth in detail in this Agreement and the Covenant, in order to ensure compliance with the requirements this Agreement and other applicable federal and state laws and regulations.

G. Initially capitalized terms used in these Recitals are defined in these Recitals and in Section 1.1.

H. The Project is in the vital and best interest of City and the health, safety and welfare of the residents of the City, and in accord with the public purposes and provisions of applicable federal, state and local laws and requirements.

NOW, THEREFORE, for and in consideration of the mutual promises, covenants, and conditions herein contained, the parties hereto agree as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 Defined Terms. As used in this Agreement (and in all other Project Documents, unless otherwise defined), the following capitalized terms shall have the following meanings:

"**Affiliate**" means any person or entity directly or indirectly, through one or more intermediaries, controlling, controlled by or under common control with Developer which, if Developer is a partnership or limited liability company, shall include each of the constituent partners or members, respectively thereof. The term "control" as used in the immediately preceding sentence, means, with respect to a person that is a corporation, the right to the exercise, directly or indirectly, of at least 50% of the voting rights attributable to the shares of the controlled corporation and, with respect to a person that is not a corporation, the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of the controlled person.

"**Affordability Period**" means the duration of the affordable housing requirements that are required by this Agreement and set forth in the Covenant. The Affordability Period shall continue until the later to occur of (i) the fifty-first (51^{st}) anniversary of the Effective Date, or (ii) the fiftieth (50^{th}) anniversary of the date the of Completion of Construction.

"**Affordable Rent**" means the maximum amount of monthly Rent to be charged by Developer and paid by the Low Income Households occupying the Housing Units at the Project, which shall be determined and calculated in accordance with the Covenant.

"**Area Median Income**" or "**AMI**" means the Area Median Income for Kittitas County, Washington, as published annually, effective July 1, by the U.S. Department of Housing and Urban Development – HOME Income Limits.

"**Building Permit**" means the building permit(s) issued by City and required for the Improvements.

"Capital Replacement Reserve" means a separate reserve fund account to be established and maintained by Developer as more particularly set forth herein. The non-availability of funds in the Capital Replacement Reserve does not in any manner relieve Developer of the obligation to undertake necessary capital repairs and improvements and to continue to maintain the Site and all common areas and common improvements in the manner prescribed herein. To the extent the Senior Lender requires Developer to maintain a reserve fund or account for any or all of the same purposes as the Capital Replacement Reserve, City will allow Developer to credit any funds actually reserved for any or all of the same purposes pursuant to the requirements of the Senior Lender against Developer's obligation to make deposits into the Capital Replacement Reserve.

"**City**" means the City of Ellensburg, a Washington municipal corporation.

"**City Code**" means the municipal code of City as amended from time to time.

"**City Council"** means the governing board of the City.

"**City Deed of Trust**" means a deed of trust security the City Grant and other obligations of Developer hereunder substantially in the form of Attachment 7 hereto.

"**City Grant**" means a recoverable grant provided to Developer in the original amount of the City Grant Amount.

"**City Grant Amount**" means the sum of Seven Hundred Fifty Thousand and No/100 Dollars ($750,000.00).

"**City Manager**" means the City Manager of City and the authorized designee(s) of the City Manager. Whenever the consent, approval or other action of the "City Manager" is required herein such consent may be provided by the City Manager or the authorized designee(s).

"**City Note**" means the promissory note, substantially in the form of Attachment 5 hereto, which evidences the City Grant. The City Note shall be in the original amount of the City Grant Amount.

"**Completion of Construction**" means the latter of final acceptance of the Project or issuance of the final certificate of occupancy for the Project.

"**Conditions Precedent**" means the conditions precedent to the disbursement of any portion of the City Grant as set forth in Section 4.

"**County**" means the County of Kittitas, Washington.

"**County Grant**" means the grant to be made to Developer pursuant to the County Grant Agreement in the amount of not less than the County Grant Amount.

"**County Grant Agreement**" means that certain unrecorded agreement between the County and Developer entitled homeless Housing Program Grant Agreement with an effective date of May 3, 2022. A copy of the county Grant Agreement is on file with the County as a public record.

"**County Grant Amount**" means Seven Hundred Fifty Thousand and No/100 Dollars ($750,000.00).

"**County Recorder**" means the County Auditor or other official charged with recording of documents pertaining to title to land in the County.

"**Covenant**" means the Affordable Housing Covenant substantially in the form of Attachment 6 hereto.

"**Developer**" means HopeSource, a Washington nonprofit corporation, as defined in the first paragraph hereof.

"**Environmental Claim**" means (i) any judicial or administrative enforcement actions, proceedings, claims, orders (including consent orders and decrees), directives, notices (including notices of inspection, notices of abatement, notices of noncompliance or violation and notices to comply), requests for information or investigation instituted or threatened by any governmental authority pursuant to any Governmental Requirement; or, (ii) any suits, arbitrations, legal proceedings, actions or claims instituted, made or threatened that relate to any damage, contribution, cost recovery, compensation, loss or injury resulting from the release or threatened release (whether sudden or non-sudden or accidental or non-accidental) of, or exposure to, any Hazardous Materials, or the violation or alleged violation of any Governmental Requirement, or the general, manufacture, use, storage, transportation, treatment, or disposal of Hazardous Materials.

"**Environmental Laws**" as used in this Agreement means all laws, ordinances and regulations relating to Hazardous Materials, including, without limitation: the Clean Air Act, as amended, 42 U.S.C. Section 7401, et seq.; the Federal Water Pollution Control Act, as amended, 33 U.S.C. Section 1251, et seq.; the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. Section 6901, et seq.; the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (including the Superfund Amendments and Reauthorization Act of 1986), 42 U.S.C. Section 9601, et seq.; the Toxic Substances Control Act, as amended, 15 U.S.C. Section 2601, et seq.; the Occupational Safety and Health Act, as amended, 29 U.S.C. Section 651, et seq., the Emergency Planning and Community Right to Know Act of 1986, 42 U.S.C. Section 11001, et seq.; the Mine Safety and Health Act of 1977, as amended, 30 U.S.C. Section 801, et seq.; the Safe Drinking Water Act, as amended, 42 U.S.C. Section 300f, et seq.; all comparable state and local laws, laws of other jurisdictions or orders and regulations; and all laws, ordinances, statutes, codes, rules, regulations, orders and decrees of the United States, the state, the county, the city, or any other political subdivision in which the Site is located, and of any other political subdivision, agency or instrumentality exercising jurisdiction over City, Developer, or the Site.

"**Environmental Report**" means reports, if any, prepared by third parties hired by Developer that describe soils and subsurface conditions of the Site.

"**Escrow**" means, unless the context requires otherwise, the escrow established for distribution of the City Grant Amount to Developer and the recording of the City Deed of Trust and the Covenant.

"**Escrow Holder**" means the holder of the Escrow, as designated by City.

"**Event of Default**" has the meaning set forth in Section 7.1.

"**Fair Housing Laws**" means the Fair Housing Act of 1968 as amended from time to time (42 U.S. Code Sections 3601-3619 and 3631), and State laws pertaining to housing including without limitation the Washington Law Against Discrimination, Chapter 49.60 RCW.

"**Financing Plan**" means a plan which accounts for all sources necessary for the construction of the Improvements; such Financing Plan is to be subject to review and approval by the City Manager.

"**Governmental Requirements**" means all laws, ordinances, statutes, codes, rules, regulations, orders, and decrees of the United States, the state, the County, City, or any other political subdivision in which the Site is located, and of any other political subdivision, agency, or instrumentality exercising jurisdiction over Developer or the Project. The Governmental Requirements shall be deemed to require, without limitation, the payment of fees charged by governmental agencies having jurisdiction over the development of the Site.

"**Hazardous Material"** or "**Hazardous Materials**" means: (a) any substance, material, or waste which is or becomes regulated by any local governmental authority, the State of Washington, or the United States Government, including, but not limited to, any material or substance which is (i) defined as a "hazardous waste," "dangerous wastes", "hazardous substances", "hazardous household substances", "acutely hazardous waste," "restricted hazardous waste," or "extremely hazardous waste" under RCW Title 70, Chapter 70.105, (ii) petroleum, (iii) asbestos and/or asbestos containing materials; (iv) lead-based paint or any lead based or lead products; (v) polychlorinated biphenyls, (vi) designated as a "hazardous substance" pursuant to Section 311 of the Clean Water Act (33 U.S.C. Section 1317), (x) defined as a "hazardous waste" pursuant to Section 1004 of the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et seq. (42 U.S.C. Section 6903), (vii) Methyl-tertiary Butyl Ether; (xii) defined as "hazardous substances" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. Section 9601 et seq. (42 U.S.C. Section 9601); (viii) any other substance, whether in the form of a solid, liquid, gas or any other form whatsoever, which by any "Environmental Laws" (as defined above) either requires special handling in its use, transportation, generation, collection, storage, handling, treatment or disposal, or is defined as "hazardous" or harmful to the environment; and/or (ix) lead based paint pursuant to and defined in the Lead-Based Paint Poisoning Prevention Act, Title X of the 1992 Housing and Community Development Act, 42 U.S.C. §4800, et seq., specifically §§4821–4846, and the implementing regulations thereto. Notwithstanding the foregoing, "Hazardous Materials" shall not include such products in quantities as are customarily used in the construction, maintenance, rehabilitation, management, operation and residence of residential developments or associated buildings and grounds, or typically used in residential activities in a manner typical of other comparable residential developments, or substances commonly ingested by a significant population living within the Project, including without limitation alcohol, aspirin, tobacco and saccharine.

"**Hazardous Materials Contamination**" means the contamination (whether presently existing or hereafter occurring) of the improvements, facilities, soil, groundwater, air or other elements on, in or of the Site by Hazardous Materials, or the contamination of the buildings, facilities, soil, groundwater, air or other elements on, in or of any other property as a result of Hazardous Materials at any time (whether before or after the Effective Date) emanating from the Site.

"**Housing Unit**" or "**Housing Units**" means the sixteen (16) individual dwelling units at the Site to be constructed, leased, managed, and operated by Developer as long term affordable housing and in implementation of the Project.

"**Improvements**" means all of the improvements required to be made under this Agreement and all other Project Documents.

"**Indemnitees**" means City and its elected officials, officers, employees, attorneys, contractors, elective and appointive boards and commissions, representatives, agents, and volunteers.

"**Legal Description of the Site**" means Attachment 1.

"**Low-Income Household**" means those households earning not greater than sixty percent (60%) of Kittitas County Area Median Income, adjusted for household size, which is to be determined consistent with RCW 82.14.530 and any regulations promulgated thereunder.

"Material Adverse Change" means any event any occurrence of which is reasonably likely to have a material adverse effect on Developer's ability to fulfill its obligations under any Transaction Document, including without limitation:

(a) a voluntary or involuntary bankruptcy of Developer (which is not dismissed within ninety (90) calendar days of institution);

(b) a court order placing Developer under receivership;

(c) a sale of all or substantially all of the assets held by Developer, except any such sale made in accordance with the terms of this Agreement;

(d) subject to any applicable cure periods, the continued violation of Developer or other failure of Developer to comply at all times with any applicable law, statute, ordinance, code, rule, regulation, judgment, order, ruling, condition or other requirement of a statutory, regulatory, administrative, judicial or quasi-judicial nature or any other legal or governmental requirement of whatever kind or nature related to the Project, which violation is likely to have a material adverse effect on the ability of Developer to perform its duties and obligations under any Transaction Document; and/or

(e) Developer incurs one or more liabilities, contingent or otherwise, or pending or threatened litigation or any asserted claim or unasserted claim known to Developer exists against Developer with respect to the Project, which would have a material adverse effect on its ability to perform its duties and obligations under any Transaction Document.

"**Outside Closing Date**" means May 31, 2022

"**Outside Completion Date**" means June 1, 2024.

"**Parties**" means City and Developer.

"**Project**" is defined in Recital D above.

"**Project Documents**" means the following documents evidencing the City Grant required as consideration for City to make the City Grant: (i) this Agreement, (ii) the City Note;(iii) the City Deed of Trust; (iv) the Covenant; (v) the Request for Notice of Default; and (vi) any other agreement, document, or instrument that City may reasonably require Developer to execute in connection with the execution of this Agreement or the provision of the City Grant to Developer or otherwise, from time to time, to effectuate the purposes of and to implement this Agreement.

"**RCW**" means the Revised Code of Washington.

"**Relocation**" or "**Relocation Laws"** shall mean all applicable federal and state relocation laws and regulations, including without limitation, (i) the relocation obligations provided under Chapter 8.26 of the Revised Code of Washington and any implementing regulations thereto as prescribed from time to time by the State of Washington, and (ii) any other applicable federal, state or local enactment, regulation or practice providing for relocation assistance, benefits, or compensation for moving and for prope1ty interests, and (iii) any federal law or regulation prohibiting payment of relocation benefits or assistance to persons ineligible for relocation benefits or assistance. Developer shall be solely responsible for payment of all costs, expenses, and payments required to be made and/or incurred pursuant to any and all applicable Relocation Laws; City shall not incur any costs or expenses as a result of the application of the Relocation Laws to the Project or this Agreement.

"**Rent**" means the total of monthly payments by tenants of a Housing Unit for use and occupancy for the Housing Unit and facilities associated therewith, including a reasonable allowance for utilities for an adequate level of service.

"Request for Notice of Default" means a request for notice of default to be recorded against the Site in connection with the Escrow, substantially in the form of <u>Attachment No. 4</u> hereto.

"**Site**" is defined in the Recitals to this Agreement.

"**Subcontractor**" and "**Subcontractors**" means, individually and collectively, one or more subcontractors hired by Developer's Contractor for the Improvements to perform and complete, or to engage and supervise others to perform and complete, the construction of the Improvements. Each of the Subcontractors shall be selected after competitive bidding, and City shall have every reasonable right and opportunity to observe and review all material stages of such competitive bidding process, including a right to review the invitation to bidders, each bid package, each responsive bid form, each submitted bid package and the right to be present when each bid is opened by Developer and/or the Contractor. Developer shall submit to City information regarding the entity serving as the Subcontractor for any portion of the construction of the Improvements, including compliance with plans approved by City and the obtaining by Developer of all required licenses, certifications, insurance, etc., as reasonably requested by the City Manager.

"**Target Completion Date**" means June 30, 2023.

"**Title Company**" means AmeriTitle or another title insurer designated by City.

"**Transaction Documents**" means all Project Documents and any and all financing documents in connection with the Senior Loan or other financing sources for the Project.

"**WAC**" means the State of Washington Administrative Code as amended from time to time.

1.2 **<u>Singular and Plural Terms</u>**. Any defined term used in the plural in this Agreement or any Project Document shall refer to all members of the relevant class and any defined term used in the singular shall refer to any number of the members of the relevant class.

1.3 **<u>References and Other Terms</u>**. Any reference to this Agreement or any Project Document shall include such document both as originally executed and as it may from time to time be modified. References herein to Articles, Sections and Exhibits shall be construed as references to this Agreement unless a different document is named. References to subparagraphs shall be construed as references to the same Section in which the reference appears. The term "document" is used in its broadest sense and encompasses agreements, certificates, opinions, consents, instruments and other written material of every kind. The terms "including" and "include" mean "including (include) without limitation."

1.4 **<u>Exhibits Incorporated</u>**. All attachments and exhibits to this Agreement, as now existing and as the same may from time to time be modified, are incorporated herein by this reference.

2. FINANCING

2.1 **<u>Recoverable Grant</u>**. City hereby commits and agrees, subject to the terms and provisions of this Agreement, to provide Developer with the City Grant, and Developer hereby agrees to accept the City Grant from City, in an amount not to exceed the City Grant Amount, all subject to the terms and conditions set forth in this Agreement, and subject further to the terms and conditions set forth within the Project Documents, including the "City Note," the "City Deed of Trust," and the "Covenant." The City Grant shall be evidenced by the City Note and secured by the City Deed of Trust, which shall be recorded against the Site with the Count Recorder in a position junior and subordinate to Senior Loan; it is not contemplated that a deed of trust will be recorded for the benefit of the County in relation to the County Grant, but if such a deed of trust is recorded, it shall be junior to the City Deed of Trust.

2.2 Terms of the City Grant. All funds provided by the City for this Project under this Agreement shall be in the form of a recoverable grant to the Developer. The secured grant shall be evidenced by the City Note. No repayment of the principal or interest on the City Note will be required so long as the Developer complies with the terms of this Agreement and other Project Documents and their related covenants throughout the Affordability Period.

2.3 Security for the City Grant. The City Grant shall be secured by the City Deed of Trust, which instrument shall be recorded against the Site with the County Recorder.

2.4 Disbursement of City Grant Proceeds. The City shall disburse the proceeds of the City Grant to the Escrow Holder with instructions to Escrow Holder on the payment of such funds to the Seller in connection with Developer's acquisition of the Site under the PSA. Disbursement of the City Grant proceeds shall also be subject to the prior satisfaction of those conditions described in Section 4.

2.5 Consent Required for Assignment and Assumption. Except for Transfers permitted pursuant to Section 5.3 below, the City Note shall not be assignable or assumable by any successor or assignee of Developer without the prior written consent of City, which consent may be withheld in the sole and absolute discretion of City Manager.

3. CONDITION OF PROPERTY; SCOPE OF DEVELOPMENT

3.1 Developer Representations to City re Existing Condition of the Site. Developer represents, to and for the benefit of City, to the best of Developer' s knowledge, that except as set forth in the Environmental Report as heretofore delivered to City, it is not aware of and it has not received any notice or communication from any governmental agency having jurisdiction over the Site, City, or any other person or entity, notifying it of the presence of Hazardous Materials or Hazardous Materials Contamination in, on, or under the Site, or any portion thereof, or the violation of any Environmental Laws. Developer represents that any inspection reports with respect to the Site, environmental audits, reports and studies which concern the Site, or inspection reports from applicable regulatory authorities with respect to the Site, which Developer has received, have been delivered to City. Except as set forth in the Environmental Report, to the best of Developer's knowledge, there are no circumstances, conditions or events that may, now or with the passage of time, give rise to any Environmental Claim against or affecting the Site. As and when obtained or received by Developer from the current owner or from any other person or entity, true and correct copies of internal inspection reports with respect to the Site, environmental audits, reports and studies which concern the Site, and inspection reports from applicable regulatory authorities with respect to the Site, if any, shall be promptly delivered to City.

Developer acknowledges that Developer located and selected the Site without any assistance from (or involvement by) City. Developer has independently conducted all necessary and appropriate due diligence and determined that the condition of the Site and all improvements located thereon are suitable for the development and operation of the Project; and all such due diligence and Developer's investigations of the condition of the Site were conducted independently and not in consultation with City's officers, employees, agents or consultants. City's reasonable approval of the environmental condition of the Site is a Condition Precedent, as set forth in Section 4.

3.2 Environmental Condition Prior to City Grant Disbursement. Developer shall evidence to City that it is prepared to take the steps necessary to undertake and complete, upon the recording of the City Deed of Trust, any necessary and recommended remediation of Hazardous Materials in full conformity with all Environmental Laws.

3.3 Duty to Prevent Hazardous Material Contamination. After disbursement of all or any portion of the City Grant to or on behalf of Developer, Developer shall, at its sole cost and expense, promptly take: (i) all actions required by any federal, state or local governmental City or political subdivision or any Governmental Requirements with respect to the Site pursuant to this Agreement; (ii) all actions necessary to prepare the soil on the Site for the development required hereunder; and (iii) all actions necessary to make full use of the Site for the development and operation of affordable housing pursuant to this Agreement, which actions, requirements or necessity arise from the presence upon, about or beneath the Site of any Hazardous Materials regardless of when such Hazardous Materials were introduced to the Site and regardless of who is responsible for introducing such Hazardous Materials to the Site. Developer shall take all actions necessary to promptly restore the Site to an environmentally sound condition for uses contemplated by this Agreement consistent with the standard of remediation required under applicable Governmental Requirements. Developer shall take all reasonably necessary precautions to prevent the release of any Hazardous Materials into the environment, in, on, under, or about the Site. Such precautions shall include compliance with all Governmental Requirements with respect to Hazardous Materials. In addition, Developer shall install and utilize such equipment and implement and adhere to such procedures as are consistent with applicable Environmental Laws and then-prevailing industry standards as respects the disclosure, storage, use, abatement, removal and disposal of Hazardous Materials. The obligations under this section shall survive Completion of Construction.

3.4 Environmental Indemnification. Developer shall save, protect, pay for, defend (with counsel acceptable to City), indemnify and hold harmless the Indemnitees from and against any and all liabilities, suits, actions, claims, demands, penalties, damages (including, without limitation, penalties, fines and monetary sanctions), losses, costs or expenses (including, without limitation. consultants' fees, investigation and laboratory fees, attorneys' fees and remedial and response costs) (for purposes of Section 3, *et seq.,* the foregoing shall be collectively referred to as "Liabilities") which may now or in the future be incurred or suffered by the Indemnitees by reason of, resulting from, in connection with, or arising in any manner whatsoever as a direct or indirect result of (i) the ownership of the Site or operation of all or any part of the Site, (ii) any act or omission on the part of Developer, or its agents, employees, representatives, agents, contractors, occupants, or invitees, (iii) the presence on, under, or about, or the escape, seepage, leakage, spillage, discharge, emission or release from the Site of any Hazardous Materials or Hazardous Materials Contamination in violation of Environmental Laws, (iv) the environmental condition of the Site, and (v) any Liabilities incurred under any Environmental Laws relating to Hazardous Materials. Developer's obligations hereunder shall survive this Agreement and Completion of Construction, and shall be a covenant running with the land in perpetuity, binding on all successors and assigns of Developer’s interest in either this Agreement or any part of the Site. Developer may assign its obligations hereunder to an approved or permitted successor or assignee of Developer’s interest in this Agreement or the Site and Developer 's obligations hereunder shall automatically transfer to a transferee that acquires title to the Site as a result of an Involuntary Transfer, for those events or conditions related to the requirements in this Section 3.4 that may occur subsequent to Developer's conveyance to such successor or assign, provided that Developer shall remain liable for all of its obligations hereunder to the extent related to events occurring prior to such assignment. Notwithstanding the foregoing, Developer shall not have any obligation to indemnify, defend or hold harmless the Indemnitees to the extent the Liabilities have arisen as a result of the negligence or willful misconduct of any of the Indemnitees or from acts or omissions of any parties acquiring ownership of the Property as a result of foreclosure or deed in lieu of foreclosure. At the request of Developer, City shall cooperate with and assist Developer in its defense of any such claim, action, suit, proceeding, loss, cost, damage, liability, deficiency, fine, penalty, punitive damage, or expense; provided that City shall not be obligated to incur any expense in connection with such cooperation or assistance.

3.5 Release of City by Developer. Developer hereby waives, releases and discharges forever City and its employees, officers, agents and representatives, from all present and future claims, demands, suits, legal and administrative proceedings and from all liability for damages, losses, costs, liabilities, fees and expenses, present and future, arising out of or in any way connected with Developer's ownership, improvement and/or disposition of the Site, any Hazardous Materials on the Site, or the existence of Hazardous Materials Contamination in any state on the Site, however they came to be located there.

3.6 Environmental Inquiries. Developer shall notify City, and provide to City a copy or copies, of the following environmental permits, disclosures, applications, entitlements or inquiries relating to the Site: notices of violation, notices to comply, citations, inquiries, clean up or abatement orders, cease and desist orders, reports filed pursuant to self-reporting requirements and reports filed or applications made pursuant to any Governmental Requirement relating to Hazardous Materials and underground tanks, and Developer shall report to City, as soon as possible after each incident, all material information relating to or arising from such incident, including but not limited to, the following: (a) All required reports of releases of Hazardous Materials, including notices of any release of Hazardous Materials as required by any Governmental Requirement; (b) All notices of suspension of any permits; (c) All notices of violation from Federal, State or local environmental authorities; (d) All orders under the State Hazardous Waste Control Act and the State Hazardous Substance Account Act and corresponding federal statutes, concerning investigation, compliance schedules, clean up, or other remedial actions; (e) All corrective action orders, cease and desist orders, and clean up and abatement orders; (f) Any notices of violation from OSHA or WISHA concerning employees' exposure to Hazardous Materials; (g) All complaints and other pleadings filed against Developer and/or

City relating to Developer's storage, use, transportation, handling or disposal of Hazardous Materials on the Site; and (h) Any and all other notices, citations, inquiries, orders, filings or any other reports containing information which would have a material adverse effect on the City Grant, the Site or City's liability or obligations.

In the event of a release of any Hazardous Materials into the environment, Developer shall, as soon as possible after the release, furnish to City a copy of any and all reports relating thereto and copies of all correspondence with governmental agencies relating to the release. Upon request of City, Developer shall furnish to City a copy or copies of any and all other environmental entitlements or inquiries relating to or affecting the Site including, but not limited to, all permit applications, permits and reports including, without limitation, those reports and other matters which may be characterized as confidential.

3.7 **Scope of Development**. Developer shall develop the Improvements which shall generally consist of not fewer than sixteen (16) dwelling units. Developer shall complete all off-site improvements required by City as condition(s) of approval included in the land use entitlement for the Project at no cost to City. Developer will use commercially reasonable efforts to achieve Completion of Construction on or before the Target Completion Date.

4. GRANT DISBURSEMENT; CONDITIONS PRECEDENT.

Disbursement of the City Grant Amount is subject to the fulfillment by Developer or waiver by City of each and all of the Conditions Precedent described in this Section 4, which are solely for the benefit of City, and any of which may be waived by the City Manager in his or her discretion. City will disburse the City Grant Amount in one disbursement at Closing.

4.1 **Outside Closing Date**. The close of Escrow ("Closing") for Developer's acquisition of fee title to the Site, the recording of the City Deed of Trust, Request for Notice of Default, and Covenant and, the disbursement of proceeds of the City Grant shall have occurred on or before the Outside Closing Date.

4.2 **Project Documents.** Not later than one (1) day prior to the date set for the Closing Developer shall have executed and delivered to the Escrow Holder, in recordable form where required, each of the Project Documents required hereunder in connection with the City Grant, the County Grant, and the acquisition of the Site.

4.3 **Evidence of Financing**. Developer shall have provided written proof reasonably acceptable to City that Developer shall provide evidence of equity contributions in an amount which together with the proceeds of the City Grant, the County Grant, and any additional affordable housing subsidies and loans, is sufficient to finance the Project. In addition, Developer shall have certified in writing to City that the City Grant, together with the Senior Loan, the County Grant, and other affordable housing subsidies and required equity contributions, are together projected to be sufficient to pay for the acquisition of the Site and construction of the Improvements through completion of the Project. In addition as a part of the evidence of financing, evidence of due formation and good standing shall have been filed with the Washington Secretary of State a copy shall be provided to City.

4.4 **Insurance**. City shall have received evidence that all of the insurance policies, certificates, and endorsements required by this Agreement have been duly obtained and such insurance policies, certificates and endorsements are and remain in full force and effect.

4.5 **Title Insurance**. City shall have received (or Title Company shall be ready to issue) a 2006 ALTA lender's policy of title insurance excluding any survey or arbitration exceptions, reasonably satisfactory to City Manager relating to the City Deed of Trust ("City Policy"). The City Policy shall have a liability limit of not less than the City Grant Amount and shall insure City's interest under the City Deed of Trust as a valid lien or charge upon the Site with the priority required by this Agreement. The City Policy shall include mechanics' lien coverage and such other endorsements as City may reasonably require, the City Policy shall contain only such exceptions from coverage as shall have been approved in writing by City Manager. Under the City Policy, the City Deed of Trust shall be but junior to the deed of trust securing payment of the Senior Loan. It is not contemplated that the County will record a deed of trust with respect to the County Loan, but it such a deed of trust is recorded, it shall be junior to the City Deed of Trust.

4.6 **Escrow Expenses**. Developer shall have paid, or caused the payment of, all costs, fees, and expenses of the Escrow (other than City's deposit of the City Grant proceeds), including all costs or fees in connection with the recording of the City Deed of Trust, Request for Notice of Default, and Covenant, Escrow fees, title insurance costs, documentary transfer taxes, or recording fees.

4.7 **Corporate Resolution**. Developer shall deliver to City certified copies of Developer Resolutions of the Developer entity 's respective boards of directors specifically authorizing (or ratifying) the execution of this Agreement, the City Note, the City Deed of Trust, the Covenant, and all implementing Project Documents and identifying the individual(s) with authority to enter into non-material implementation agreements and/or amendments to this Agreement and make ongoing decisions relating to the acquisition of the Site, construction, and operation of the Project.

4.8 **Representations and Warranties**. The representations and warranties of Developer contained in this Agreement shall be correct in all material respects as of Closing.

4.9 **No Default**. No Event of Default by Developer shall have occurred, and no event shall have occurred which, with the giving of notice or the passage of time or both, would constitute an Event of Default by Developer.

All Conditions Precedent set forth in Section 4, *et seq.,* to the disbursement of proceeds of the City Grant and close of the Escrow for the recording of the City Deed of Trust, or to City's obligations hereunder, are for City's benefit only and the City Manager may waive all or any part of such rights by written notice to Developer. If City Manager shall, within the applicable periods set forth herein, disapprove of any of the items which are subject to City's approval (and such items are not cured by Developer within applicable time frames), or if any of the conditions set forth in this Agreement are not met within the times called for, City may thereafter terminate this Agreement without any further liability on the part of City by giving written notice of termination to Developer. Escrow Holder shall thereupon, without further consent from Developer, return to each party the documents and funds deposited by them as to the Site.

5. REPRESENTATIONS AND WARRANTIES OF THE PARTIES

5.1 **City Representations**. City represents and warrants to Developer as follows:

5.1.1 The execution, performance and delivery of this Agreement by City has been fully authorized by all requisite actions on the part of the City.

5.1.2 To the best of City’s knowledge, City’s execution, delivery and performance of its obligations under this Agreement will not constitute a default or a breach under any contract, agreement, or order to which City is a party or by which it is bound.

5.1.3 City is not the subject of a bankruptcy proceeding.

Until the Closing, City shall, upon learning of any fact or condition which would cause any of the warranties and representations in this Section 5.1 not to be true, immediately give written notice of such fact or condition to Developer.

5.2 **Developer Representations**. As a material inducement to City to enter into this Agreement, Developer represents and warrants to City that:

5.2.1 **Formation, Qualification and Compliance**. Developer (a) is a Washington nonprofit corporation, validly existing and in good standing under the laws of the State of Washington; (b) has all requisite authority to conduct its business and own, purchase, improve and lease its properties. Developer is in compliance in all material respects with all laws applicable to its business and has obtained all approvals, licenses, exemptions and other authorizations from, and has accomplished all filings, registrations and qualifications with any governmental City that are necessary for the transaction of its business; (c) There are no tenants or other persons who have a lawful interest in the Site; (d) Developer has and will in the future duly authorize, execute and deliver this Agreement and any and all other agreements and documents required to be executed and delivered by Developer in order to carry out, give effect to, and consummate the transactions contemplated by this Agreement; (e) Developer does not have any material contingent obligations or any material contractual agreements which could materially adversely affect the ability of Developer to carry out its obligations hereunder; (f) There are no material pending or, so far as is known to Developer, threatened, legal proceedings to which Developer is or may be made a party or to which any of its property is or may become subject, which have not been fully disclosed by Developer to City in this Agreement which could materially adversely affect the ability of Developer to carry out its obligations hereunder; (g) There is no action or proceeding pending or, to Developer's best knowledge, threatened, looking toward the dissolution or liquidation of Developer and there is no action or proceeding pending or, to Developer's best knowledge, threatened by or against Developer which could affect the validity and enforceability of the terms of this Agreement, or materially and adversely affect the ability of Developer to carry out its obligations hereunder; (h) Developer has disclosed to City all information, records, and studies obtained or received by Developer as to the Site concerning Hazardous Materials that are or have been stored, handled, disposed of, or released on the Site; and (i) upon Closing, Developer will have fee title to the Site. Each of the foregoing items (a) to (i), inclusive, shall be deemed to be an ongoing representation and warranty. Developer shall advise City in writing if there is any change pertaining to any matters set forth or referenced in the foregoing items (a) to (i), inclusive.

5.2.2 **Execution and Performance of Project Documents**. Developer has all requisite authority to execute and perform its obligations under the Project Documents. The execution and delivery by Developer of, and the performance by Developer of its obligations under, each Project Document has been authorized by all necessary action and do not and will not violate any provision of, or require any consent or approval not heretofore obtained under, any articles of incorporation, by-laws or other governing document applicable to Developer.

5.3 Covenant Not to Transfer Except in Conformity. Developer shall not sell or otherwise transfer or convey all or any part of the Site, or any interest therein (including Developer's interests in this Agreement), unless Developer has first obtained the prior written consent of the City Manager, which consent may be withheld in the City Manager's sole and absolute discretion. Any sale, lease, transfer or conveyance without such consent shall, at City's option, be void. In connection with the foregoing consent requirement, Developer acknowledges that City relied upon Developer's particular expertise in entering into this Agreement and continues to rely on such expertise to ensure the satisfactory completion of all of the Improvements, and the marketing and renting of the Housing Units to Low-Income Households at Affordable Rent to afford the community a substantial long-term, quality affordable housing resource. Notwithstanding the foregoing, consent from the City Manager shall not be required for the leasing of Housing Units to Low-Income Households in compliance with this Agreement.

6. AFFORDABLE HOUSING COVENANT; MAINTENANCE, PROPERTY MANAGEMENT, DEVELOPER COVENENTS, AND OPERATION OF THE PROJECT.

The operation of the Project, including without limitation, repair and maintenance, income qualifications of tenants, rent, maintenance, monitoring, and reporting, shall be accomplished by Developer in conformity with the Covenant, as more particularly set forth therein. The provisions of the Covenant shall constitute portions of this Agreement as effectively as if set out at length herein.

6.1 Nondiscrimination. Developer by and for itself and any successors in interest covenants that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, physical or mental disability or medical condition, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Site, nor shall Developer itself or any person claiming under or through it establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the Site. The foregoing covenants shall run with the land.

Developer hereby covenants, by and for itself, its successors and assigns, and shall require all contractors and subcontractors providing work or services related to the Site to covenant, to comply with the following laws relating to nondiscrimination and equal opportunity: The Fair Housing Act (42 U.S.C. 3601-19) and implementing regulations at 24 CFR part 100 et seq.; Executive Order 11063, as amended by Executive Order 12259 (3 CFR, 1959-1963 Comp., p. 652 and 3 CFR, 1980 Comp., p. 307) (Equal Opportunity in Housing Programs) and implementing regulations at 24 CFR part 107; title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d-2000d-4) (Nondiscrimination in Federally Assisted Programs) and implementing regulations at 24 CFR part 1; the Age Discrimination Act of 1975 (42 U.S.C. 6101-6107) and implementing regulations at 24 CFR part 146; Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at part 8 of this title; title II of the Americans with Disabilities Act, 42 U.S.C. 12101 et seq.; 24 CFR part 8; Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) and implementing regulations at 24 CFR part 135; Executive Order 11246, as amended by Executive Orders 11375, 11478, 12086, and 12107 (3 CFR, 1964-1965 Comp., p. 339; 3 CFR, 1966-1970 Comp., p. 684; 3 CFR, 1966-1970 Comp., p. 803; 3 CFR, 1978 Comp., p. 230; and 3 CFR, 1978 Comp., p. 264, respectively) (Equal Employment Opportunity Programs) and implementing regulations at 41 CFR chapter 60; Executive Order 11625, as amended by Executive Order 12007 (3 CFR, 1971-1975 Comp., p. 616 and 3 CFR, 1977 Comp., p. 139) (Minority Business Enterprises); Executive Order 12432 (3 CFR, 1983 Comp., p. 198) (Minority Business Enterprise Development); and Executive Order 12138, as amended by Executive Order 12608 (3 CFR, 1977 Comp., p. 393 and 3 CFR, 1987 Comp., p. 245) (Women's Business Enterprise).

Developer further covenants, by and for itself, its successors and assigns, and shall require all contractors and subcontractors providing work or services related to the Site to covenant, not to inquire about the sexual orientation or gender identity of an applicant for, or occupant of, the Project or any Housing Unit at the Site, for the purpose of determining eligibility for occupancy of such Housing Units or otherwise making such Housing Units available. This prohibition on inquiries regarding sexual orientation or gender identity does not prohibit any individual from voluntarily self-identifying sexual orientation or gender identity. Further, determinations of eligibility for occupancy of Housing Units at the Project shall be made in accordance with the eligibility requirements provided for such program by HUD, and such Housing Units shall be made available without regard to actual or perceived sexual orientation, gender identity, or marital status.

The covenants established in this section shall, without regard to technical classification and designation, be binding for the benefit and in favor of City and its successors and assigns, and shall remain in effect in perpetuity.

6.2 **Taxes and Assessments**. Developer shall be responsible to and shall pay, prior to delinquency, all of the following (collectively, the "Impositions"): (a) all general and special real property taxes and assessments imposed on the Site; and (b) all other taxes and assessments and charges of every kind that are assessed upon the Site and that create or may create a lien upon the Site (or upon any personal property or fixtures used in connection with the Site), including nongovernmental levies and assessments pursuant to applicable covenants, conditions or restrictions. If permitted by law, Developer may pay any Imposition in installments (together with any accrued interest).

6.2.1 **Right to Contest**. Developer shall not be required to pay any Imposition so long as (a) the validity of such Imposition is being actively contested in good faith and by appropriate proceedings, and (b) either (i) Developer has demonstrated to City's reasonable satisfaction that leaving such Imposition unpaid pending the outcome of such proceedings could not result in conveyance of any parcel in satisfaction of such Imposition or otherwise impair City's interests under the Project Documents, or (ii) Developer has furnished City with a bond or other security satisfactory to City in an amount not less than 120% of the applicable claim (including interest and penalties).

6.2.2 **Evidence of Payment.** Upon demand by the City Manager from time to time, Developer shall deliver to the City Manager within thirty (30) calendar days following the due date of any Imposition, evidence of payment of said Imposition reason ably satisfactory to the City Manager, unless Developer is contesting the imposition in conformity with Section 6.2.1. In addition, up on demand by City from time to time, Developer shall furnish to City a tax reporting service for the Site of a type and duration, and with a company, reasonably satisfactory to City.

6.3 **Compliance with Laws**. Developer shall carry out the design, construction and operation of the Improvements in conformity with all applicable laws, including all applicable state labor standards and federal prevailing wage laws, City zoning and development standards, building, plumbing, mechanical and electrical codes, and all other provisions of the City Code, and the Fair Housing Act, 42 U.S.C. Section 3601 et seq. (and 24 C.F.R. Part 100), and the Americans With Disabilities Act, 42 U.S.C. Section 12101, et seq., and the Fair Housing Act of 1968 as amended from time to time (42 U.S. Code Sections 3601-3619 and 3631), and State laws pertaining to housing including without limitation the Washington Law Against Discrimination, Chapter 49.60 RCW.

6.4 Property Management.

6.4.1 **Property Manager.** Developer shall cause the Project, and all appurtenances thereto that are a part of the Project, to be managed in a prudent and business-like manner, consistent with property management standards for other comparable high quality, well-managed rental housing projects in Kittitas County, Washington. Developer shall contract with a property management company or property manager to operate and maintain the Project in accordance with the terms of this Section 6.4 ("Property Manager"); provided, however, the selection and hiring of the Property Manager (and each successor or assignee Property Manager) is and shall be subject to prior written approval of City Manager in his or her sole and reasonable discretion. The Property Manager shall not be an Affiliate of Developer without the prior written consent of the City Manager, which consent shall not be unreasonably withheld, delayed or conditioned. Developer shall conduct due diligence and background evaluation of any potential outside property manager or property management company to evaluate experience, references, credit worthiness, and related qualifications as a property manager. Any proposed property manager shall have prior experience with rental housing projects and properties comparable to the Project and the references and credit record of such manager/company shall be investigated (or caused to be investigated) by Developer prior to submitting the name and qualifications of such proposed prope1ty manager to the City Manager for review and approval. A complete and true copy of the results of such background evaluation shall be provided to the City Manager. Approval of a Property Manager by City Manager shall not be unreasonably delayed but shall be in his or her sole and reasonable discretion, and City Manager shall use good faith efforts to respond as promptly as practicable in order to facilitate effective and ongoing management of the Project. Furthermore, the identity and retention of any approved Property Manager shall not be changed without the prior written approval of the City Manager, which approval shall not be unreasonably withheld or delayed, but shall be in his or her sole and reasonable discretion. The selection by Developer of any new Property Manager also shall be subject to the foregoing requirements.

6.4.2 **Management Plan**. Developer shall prepare and submit to the City Manager for review and approval a management plan which includes a detailed plan and strategy for long term operation, maintenance, repair, security, and marketing of the Project, method of selection of tenants, rules and regulations for tenants, and other rental and operational policies for the Project ("Management Plan"). City Manager approval of the Management Plan shall not be unreasonably withheld or delayed. Subsequent to approval of the Management Plan by the City Manager the ongoing management and operation of the Project shall be in compliance with the approved Management Plan. Developer and Property Manager may from time to time submit to the City Manager proposed amendments to the Management Plan, which are also subject to the prior written approval of the City Manager, which approval shall not be unreasonably withheld or delayed.

6.4.2.1 **Gross Mismanagement**. In the event of "Gross Mismanagement" (as that term is defined below) of the Project or any part of the Project, City Manager shall have and retain the authority to direct and require any condition(s), acts, or inactions of Gross Mismanagement to cease and/or be corrected immediately, and further to direct and require the immediate removal of the Property Manager, and replacement with a new qualified and approved Property Manager, if such condition(s) is/are not ceased and/or corrected after expiration of thirty (30) calendar days from the date of written notice from City Manager. If Developer or Property Manager has commenced to cure such Gross Mismanagement condition(s) on or before the 20th day from the date of written notice (with evidence of such submitted to the City Manager), but has failed to complete such cure by the 30th day, then Developer or Property Manager shall have an additional ten (10) calendar days to complete the cure of such Gross Mismanagement condition(s). In no event shall any condition of Gross Mismanagement continue uncured for a period exceeding forty-five (45) calendar days from date of the initial written notice of such condition(s). If such condition(s) do persist beyond such period City Manager shall have the sole and absolute right to immediately and without further notice to Developer (or to Property Manager or any other person/entity) replace the Property Manager with a new property manager of the City Manager's selection at the sole cost and expense of Developer. If Developer takes steps to select a new Property Manager that selection is subject to the requirements set forth above for selection of a Property Manager.

(a) For purposes of this Agreement, the term "Gross Mismanagement" shall mean management of the Project (or any part of this Project) in a manner which violates the terms and/or intention of this Agreement to operate a high quality, covenanted affordable rental housing complex comparable to other similar complexes in Kittitas County, Washington, and shall include, but is not limited to, any one or more of the following:

(i) Knowingly or repeatedly leasing to tenants who do not qualify as a Low-Income Household or as tenants eligible to be housed in the Project pursuant to RCW 82.14.530(2)(b) or charging more than Affordable Rent;

(ii) Knowingly allowing the tenants to exceed the prescribed occupancy levels without taking appropriate action to stop such overcrowding;

(iii) Underfunding required reserve accounts, unless funds are not reasonably available to deposit in such accounts;

(iv) Failing to timely maintain the Project in accordance with the Management Plan and the manner prescribed herein;

(v) Failing to submit timely and/or adequate annual repo1ts to City as required herein;

(vi) Fraud or embezzlement of Project funds, including without limitation funds in the reserve accounts;

(vii) Failing to reasonably cooperate with the Ellensburg Police Department or other local law enforcement agency(ies) with jurisdiction over the Project, in maintaining a crime-free environment within the Project;

(viii) Failing to reasonably cooperate with Kittitas Valley Fire and Rescue or other local public safety agency(ies) with jurisdiction over the Project, in maintaining a safe environment within the Project;

(ix) Failing to reasonably cooperate with the Ellensburg Community Development Department, including the Code Enforcement Division, or other local health and safety enforcement agency(ies) with jurisdiction over the Project, in maintaining a safe environment within the Project;

(x) Spending funds from the Capital Replacement Reserve account(s) for items that are not defined as capital costs under the standards imposed by generally accepted accounting principles (GAAP) (and/or, as applicable, generally accepted auditing principles); and

(xi) Failing to re-lease Housing Units within ninety (90) calendar days (on an annual average basis) following a notice of vacancy or termination by a tenant household and/or failing to maintain average (over the prior three (3) years) annual vacancy rates at less than ten percent (10%).

Notwithstanding the requirements of the Property Manager to correct any condition of Gross Mismanagement as described above, Developer is obligated and shall use commercially reasonable efforts to correct any defects in property management or operations at the earliest feasible time and, if necessary, to replace the Property Manager as provided above. Developer shall include advisement and provisions of the foregoing requirements and requirements of this Agreement within any contract between Developer and its Property Manager.

6.4.3 **Code Enforcement.** Developer acknowledges and agrees that City's employees and authorized agents shall have the right to conduct code compliance and/or code enforcement inspections of the Project and the individual units, both exterior and interior, at reasonable times during normal business hours and upon reasonable notice (not less than forty-eight (48) hours prior notice) to Developer and/or an individual tenant. If such notice is provided by City representative(s) to Developer, then Developer (or its Property Manager) shall immediately and directly advise tenant of such upcoming inspection and use commercially reasonable efforts to cause the area(s) and/or units on the Project to be made available and open for inspection. Developer shall include express advisement of such inspection rights within the approved lease/rental agreements for each Housing Unit in the Project in order for each and every tenant and tenant household to be aware of this inspection right.

6.4.4 **Occupancy Limits.** The maximum occupancy of the Housing Units in the Project shall not exceed more than such number of persons as is equal to two persons per bedroom, plus one. Thus, for the one (1) bedroom Housing Units, the maximum occupancy shall not exceed three (3) persons. For the two (2) bedroom Housing Units, the maximum occupancy shall not exceed five (5) persons.

6.5 Capital Reserve Requirements. Developer shall annually set aside and fund the Capital Replacement Reserve amounts defined and required under this Agreement (Four Hundred Dollars ($400.00) per year for each Housing Unit, increased annually by 3%) or shall cause the Property Manager to do so. The amount in the Capital Replacement Reserve will not be required to be greater than Twenty Thousand Dollars ($20,000.00). The Capital Replacement Reserve deposits shall be allocated from the gross rents received from the Site and shall be deposited into a separate interest-bearing trust account. Funds in the Capital Replacement Reserve shall be used for capital replacements to the fixtures and equipment on the Site (including common areas) that are normally capitalized under generally accepted accounting principles and shall include the following: carpet and drape replacement; appliance replacement; exterior painting, including exterior trim; hot water heater replacement; plumbing fixtures replacement, including tubs, showers, toilets, lavatories, sinks, faucets; air conditioning and heating replacement; asphalt repair and replacement, and seal coating; roofing repair and replacement; landscape tree replacement; irrigation pipe and controls replacement; gas line pipe replacement; lighting fixture replacement; elevator replacement and upgrade work; miscellaneous motors and blowers; common area furniture replacement; and common area repainting. The non-availability of funds in the Capital Replacement Reserve does not in any manner relieve Developer of the obligation to undertake necessary capital repairs and improvements and to continue to maintain the Site and all common areas and common improvements in the manner prescribed herein.

6.5.1 **Annual Accounting of Reserve.** Not less than once per year, Developer, at its expense, shall submit to City an accounting for the Capital Replacement Reserve set forth in the Annual Financial Statement, demonstrating compliance with this Section 6.5.

6.6 Operating Budget. Within twelve (12) months after commencement of construction of the Project, but in no event later than ninety (90) calendar days prior to the Completion of Construction, and not less than annually thereafter on or before October 1 of each year, Developer shall submit to City on not less than an annual basis an Operating Budget for the Project, which budget shall be subject to the written approval of City Manager or his or her designee, which approval shall not be unreasonably withheld. The City Manager's discretion in review and approval of each proposed annual Operating Budget shall include, without limitation, authority to review individual categories, line items, and accounts, such as the following: existing balance(s) in and proposed deposits to the Capital Replacement Reserve to evaluate shortfalls and/or cumulative unexpended/unencumbered deposits (provided that required annual deposits into the Capitalized Replacement Reserve are not required to exceed $400/per unit); reasonableness and conformity to prevailing market rates in the City and rates and fees for goods and services to be provided by Developer or any Affiliate. The Operating Budget shall be in form reasonably acceptable to the City Manager. City shall not unreasonably withhold, condition, or delay City's approval of the annual Operating Budget or any amendments thereto.

6.7 Monitoring and Recordkeeping. Throughout the Affordability Period, Developer shall comply with all recordkeeping and monitoring requirements as described herein. On or before April 30 in each year following the Closing, Developer shall annually complete and submit to City (a) an annual report including all information required by this Agreement and (b) a Certification of Continuing Program Compliance substantially in the form provided by City Manager. Developer agrees to maintain records in a businesslike manner, to make such records available to City upon forty-eight (48) hours' notice, and to maintain such records for the entire Affordability Period.

6.7.1 **Annual Monitoring Fee**. Concurrently with the delivery of each annual report and Certificate of Continuing Program Compliance to City, Developer shall pay an Annual Monitoring Fee to City in the amount of Two Thousand Dollars ($2,000.00), increased annually by 3%, which shall compensate City for its costs incurred to monitor Developer's compliance with the Affordable Housing Agreement and this Agreement.

6.8 Right of Entry for Inspection. Representatives of City shall be entitled to enter the Site during normal business hours, upon at least forty-eight (48) hours· notice, to monitor compliance with the Affordable Housing Agreement and this Agreement, to inspect the records of the Project with respect to the Housing Units, and to conduct an independent audit of such records. Developer agrees to reasonably cooperate with City in making the Site and records relating to the Project available for such inspection. If for any reason City is unable to obtain Developer's consent to such an inspection, Developer understands and agrees that City may obtain at Developer's expense an administrative inspection warrant or other appropriate legal order to obtain access to and search the Site. This Section 6.8 shall be in addition to and shall not limit the exercise by City of its police powers.

6.9 General Maintenance. Developer shall maintain the Site and all improvements thereon, including lighting and signage, in good condition, free of debris, waste and graffiti, and in compliance with all applicable provisions of the City Codes. Developer shall maintain in accordance with the Maintenance Standards (as hereinafter defined) the improvements and landscaping on the Site. Such Maintenance Standards shall apply to all buildings, signage, common amenities, lighting, landscaping, irrigation of landscaping, architectural elements identifying the Site and any and all other improvements on the Site and the Project. To accomplish the maintenance, Developer shall either staff or contract with and hire licensed and qualified personnel to perform the maintenance work, including the provision of labor, equipment, materials, support facilities, and any and all other items necessary to comply with the requirements of this Agreement.

Developer and its maintenance staff, contractors or subcontractors shall comply with the following standards as to the Project (collectively, "Maintenance Standards"):

6.9.1 The Site and the Project shall be maintained in conformance and in compliance with the approved final as-built plans, and reasonable maintenance standards which comply with the industry standard for comparable high quality affordable housing projects in the County, including but not limited to painting and cleaning of all exterior surfaces and other exterior facades comprising all private improvements and public improvements to the curb line. The Site shall be maintained in good condition and in accordance with the industry custom and practice generally applicable to comparable High Quality affordable housing projects in the County.

6.9.2 Landscape maintenance shall include, but not be limited to: watering/irrigation; fertilization; mowing; edging; trimming of grass; tree and shrub pruning; trimming and shaping of trees and shrubs to maintain a healthy, natural appearance and safe road conditions and visibility, and irrigation coverage; replacement. as needed, of all plant materials; control of weeds in all planters, shrubs, lawns, ground covers, or other planted areas; and staking for support of trees.

6.9.3 Clean-up maintenance shall include, but not be limited to: maintenance of all sidewalks, paths and other paved areas in clean and weed-free condition; maintenance of all such areas clear of dirt, mud, trash, debris or other matter which is unsafe or unsightly; removal or all trash, litter and other debris from improvements and landscaping prior to mowing; clearance and cleaning of all areas maintained prior to the end of the day on which the maintenance operations are performed to ensure that all cuttings, weeds, leaves and other debris are properly disposed of by maintenance workers.

City agrees to notify Developer in writing if the condition of the Site does not meet with the Maintenance Standards and to specify the deficiencies and the actions required to be taken by Developer to cure the deficiencies. Upon notification of any maintenance deficiency, Developer shall have thirty (30) calendar days within which to correct, remedy or cure the deficiency. If the written notification states the problem is urgent relating to the public health and safety, then Developer shall have forty-eight (48) hours to rectify the problem. In the event Developer does not maintain the Site in the manner set forth herein and in accordance with the Maintenance Standards. City shall have, in addition to any other rights and remedies hereunder, the right to maintain the Site, or to contract for the correction of such deficiencies, after written notice to Developer, and Developer shall be responsible for the payment of all such costs incurred by City.

6.10 Effect of Violation of this Agreement after Completion of Construction. The covenants established in this Agreement, the City Note, City Deed of Trust, and the Covenant, without regard to technical classification and designation, be binding for the benefit and in favor of City, its successors and assigns, as to those covenants which are for its benefit. The covenants contained in this Agreement shall remain in effect for the periods of time specified therein. The covenants against discrimination shall remain in effect in perpetuity.

City is deemed the beneficiary of the terms and provisions of this Agreement and of the covenants running with the land, for and in its own rights and for the purposes of protecting the interests of the community and other parties, public or private, in whose favor and for whose benefit this Agreement and the covenants running with the land have been provided. The Agreement and the covenants shall run in favor of City, without regard to whether City has been, remains or is an owner of any land or interest therein in the Site or in the Project. City shall have the right, if the Agreement or covenants are breached, to exercise all rights and remedies, and to maintain any actions or suits at law or in equity or other proper proceedings to enforce the curing of such breaches to which it or any other beneficiaries of this Agreement and covenants may be entitled.

7. DEFAULTS AND REMEDIES

7.1 Events of Default by Developer. The occurrence of any of the following, whatever the reason therefor, shall constitute an event of default by Developer (an "Event of Default"):

7.1.1 Developer fails to perform any obligation for the payment of money (other than payments of principal or interest) under any Project Document, and such failure is not cured within 10 days after Developer's receipt of written notice that such obligation was not performed when due;

7.1.2 Developer fails to perform any obligation (other than obligations described in sub-paragraph 7.1.1. above) under any Project Document, and such failure is not cured within 30 days after Developer's receipt of written notice that such obligation was not performed; provided that, if cure cannot reasonably be effected within such 30-day period, such failure shall not be an Event of Default so long as Developer (in any event, within 10 days after receipt of such notice) commences cure, and thereafter diligently (in any event within 90 days after receipt of such notice) prosecutes such cure to completion;

7.1.3 Any representation or warranty in any Project Document proves to have been incorrect in any material respect when made;

7.1.4 Construction on the Improvements ceases for 30 consecutive days for any reason (other than governmental orders, decrees or regulations, acts of God, strikes or other causes beyond Developer's control, including those described in Section 9.2);

7.1.5 Developer fails to achieve Completion of Construction on or before the Outside Completion Date;

7.1.6 Developer is enjoined or otherwise prohibited by any governmental entity from constructing and/or occupying the Improvements and such injunction or prohibition continues unstayed for 30 days or more for any reason, subject to extensions permitted under Section 9.2;

7.1.7 Developer transfers or conveys the Site (or attempts to transfer or convey the Site) in any manner that is not in conformity with this Agreement; or

7.1.8 Developer provides any certification to City Manager that contains any information that Developer knows, or should have discovered using reasonable diligence, to be false or misleading when made; or

7.1.9 Prior to the end of the Affordability Period, Developer is dissolved, liquidated or terminated, or all or substantially all of the assets of Developer are sold or otherwise transferred without the City Manager's prior written consent.

7.1.10 (i) Developer is the subject of an order for relief by a bankruptcy court, or is unable or admits its inability to pay its debts as they mature, or makes an assignment for the benefit of creditors; (ii) Developer applies for or consents to the appointment of any receiver, trustee, custodian, conservator, liquidator, rehabilitate or similar officer for it or any part of its property; (iii) any receiver, trustee, custodian, conservator, liquidator, rehabilitator or similar officer is appointed without the application or consent of Developer and the appointment continues undischarged or unstayed for 90 days; (iv) Developer institutes or consents to any bankruptcy, insolvency, reorganization, arrangement, readjustment of debt, dissolution, custodianship, conservatorship, liquidation, rehabilitation or similar proceeding relating to it or any part of its property; or any similar proceeding is instituted without the consent of Developer and continues undismissed or unstayed for 90 days; or (v) any judgment, writ, warrant of attachment or execution, or similar process is issued or levied against any property of Developer is not released, vacated or fully bonded within 90 days after its issue or levy.

7.2 **Remedies Upon Default**. In addition to the rights of the City pursuant to Section 7.4.2 below, upon the occurrence of any Event of Default, City may, at its option and in its sole and absolute discretion, do any or all of the following:

7.2.1 In its own right or by a court-appointed receiver, take possession of the Site, enter into contracts for and otherwise proceed with the completion of the Improvements on the Site (or portions thereof) by expenditure of its own funds;

7.2.2 Exercise any of its rights under the Project Documents and any rights provided by law, including the right to foreclose on any security and exercise any other rights with respect to any security, all in such order and manner as City elects in its sole and absolute discretion; and

7.2.3 Seek and obtain an order for specific performance.

7.3 **Cumulative Remedies; No Waiver**. City's rights and remedies under the Project Documents are cumulative and in addition to all rights and remedies provided by law from time to time. The exercise by City of any right or remedy shall not constitute a cure or waiver of any default, nor invalidate any notice of default or any act done pursuant to any such notice, nor prejudice City in the exercise of any other right or remedy. No waiver of any default shall be implied from any omission by City to take action on account of such default if such default persists or is repeated. No waiver of any default shall affect any default other than the default expressly waived, and any such waiver shall be operative only for the time and to the extent stated. No waiver of any provision of any Project Document shall be construed as a waiver of any subsequent breach of the same provision. City's consent to or approval of any act by Developer requiring further consent or approval shall not be deemed to waive or render unnecessary City's consent to or approval of any subsequent act. City's acceptance of the late performance of any obligation shall not constitute a waiver by City of the right to require prompt performance of all further obligations; City's acceptance of any performance following the sending or filing of any notice of default shall not constitute a waiver of City's right to proceed with the exercise of its remedies for any unfulfilled obligations; and City's acceptance of any partial performance shall not constitute a waiver by City of any rights relating to the unfulfilled portion of the applicable obligation.

7.4 **Termination.**

7.4.1 **Termination by City**. This Agreement may be terminated, at the option of City, 30 days after written notice thereof is delivered to Developer by the City, under the following circumstances:

(a) Developer (or any successor in interest) assigns or attempts to assign, encumber, transfer, or convey the Agreement or any rights therein or in the Site (or any portion thereof) in violation of this Agreement; or

(b) one or more of the City Conditions Precedent is not satisfied; or

(c) in the event of any default of Developer which has not been cured; or

(d) Developer fails to perform any other obligation for the payment of money (other than payments of principal or interest) under any Project Document, and such failure is not cured within 10 days after Developer's receipt of written notice that such obligation was not performed when due; or

(e) Developer fails to perform any obligation (other than obligations described in Section 7.1.1 above) under any Project Document, and such failure is not cured within 30 days after Developer's receipt of written notice that such obligation was not performed; provided that, if cure cannot reasonably be effected within such 30 day period, such failure shall not be an Event of Default so long as Developer (in any event, within 10 days after receipt of such notice) commences cure, and thereafter diligently (in any event within 90 days after receipt of such notice) prosecutes such cure to completion; or

(f) Any representation or warranty by Developer in any Project Document proves to have been incorrect in any material respect when made; or

(g) Work on the Improvements ceases for 30 consecutive days for any reason (other than governmental orders, decrees or regulations, acts of God, strikes or other causes beyond Developer's control as described in Section 9.2); or

(h) Developer is enjoined or otherwise prohibited by any governmental entity from constructing and/or occupying the Improvements and such injunction or prohibition continues unstayed for 30 days or more for any reason, subject to extensions allowed under Section 9.2; or

(i) Developer transfers or conveys the Site (or attempts to transfer or convey the Site) in any manner that is not in conformity with this Agreement; or

(j) Developer provides any certification to City Manager that Developer knows to be false or misleading when made; or

(k) Developer is dissolved, liquidated or terminated, or all or substantially all of the assets of Developer are sold or otherwise transferred without the City Manager's prior written consent; or

(l) Developer is the subject of an order for relief by a bankruptcy court, or is unable or admits its inability to pay its debts as they mature, or makes an assignment for the benefit of creditors; or Developer applies for or consents to the appointment of any receiver, trustee, custodian, conservator, liquidator, rehabilitate or similar officer for it or any part of its property; or any receiver, trustee, custodian, conservator, liquidator, rehabilitator or similar officer is appointed without the application or consent of Developer and the appointment continues undischarged or unstayed for 90 days; or Developer institutes or consents to any bankruptcy, insolvency, reorganization, arrangement, readjustment of debt, dissolution, custodianship, conservatorship, liquidation, rehabilitation or similar proceeding relating to it or any part of its property; or any similar proceeding is instituted without the consent of Developer and continues undismissed or unstayed for 90 days; or any judgment, writ, warrant of attachment or execution, or similar process is issued or levied against any property of Developer is not released, vacated or fully bonded within 90 days after its issue or levy; or

(m) There is a change in the ownership of Developer or the Site contrary to the provisions of Section 5.3 hereof; or

(n) Developer does not submit certificates of insurance, construction plans, drawings and related documents as required by this Agreement, in the manner and by the dates respectively provided in this Agreement therefor and such default or failure shall not be cured within 30 days after the date of written demand therefor by City; or

(o) Developer is otherwise in default under this Agreement and has not cured or commenced to cure such default within the time period set forth in Section 7.1 herein (or has not diligently prosecuted such cure to completion).

From the date of the Notice of termination of this Agreement by City to Developer, this Agreement shall be deemed terminated and neither party shall have any further rights against the other under this Agreement, excepting that Developer shall immediately quitclaim to City all right, title and interest of Developer in the Site (including without limitation fee title and any beneficial interests under deeds of trust, promissory notes, and agreements in respect to the Site). The setting forth of events as grounds for termination shall not limit the ability of City to seek remedies in the event this Agreement has not been terminated. The termination of this Agreement shall not limit the rights of City to enforce the Covenant or the City Deed of Trust.

8. INSURANCE AND INDEMNFICATION.

8.1 Insurance Requirements. Developer shall secure from a company or companies licensed to conduct insurance business in the State of Washington, pay for, and maintain in full force and effect from and after the Closing, and continuing for the entire Affordability Period, insurance for the Project as required herein, issued by an "A: VI " or better rated insurance carrier as rated by A.M. Best Company. Developer shall furnish ce1tificates of insurance and endorsements to City not fewer than fifteen (15) calendar days prior to the Closing and shall furnish complete copies of such policy or policies upon request by City. For purposes of this Section 8.1, including without limitation Section 8.1.1, so long as coverage conforming with the provisions hereof are maintained by the general contractor, including without limitation the required endorsements and at least in the amounts prescribed hereunder, such provision by the general contractor shall be treated as having been provided by Developer for purposes of compliance herewith.

8.1.1 **Minimum Coverage/Endorsements**. Notwithstanding any inconsistent statement in the policy or any subsequent endorsement attached hereto, the protection afforded by these policies shall be written on an occurrence basis in which City and its elected and appointed officials, officers, employees, agents and representatives (together, "Additional Insureds") are named as additional insureds on all coverage, except for Workers' Compensation coverage, but including Employers Liability coverage, and shall:

8.1.1.1 Name the Additional Insureds (from above) as additional insureds on a Commercial General Liability ("CGL") policy;

8.1.1.2 Include an endorsement to the CGL policy naming the Additional Insureds as additional insureds, and said endorsement shall be delivered to City Manager prior to and as a Condition Precedent to the Closing (and maintained as required herein); provided, however, that an individual endorsement specifically naming the Additional Insureds shall not be required if Developer provides documentation which, in the sole discretion of City, demonstrates that the Additional Insureds are otherwise automatically covered under some sort of blanket policy language that clearly establishes the Additional Insureds' status as additional insureds under the policy, without the need for a separate endorsement in favor of the Additional Insureds;

8.1.1.3 Provide a broad form commercial general liability insurance in the amount of Two Million Dollars ($2,000,000.00) per occurrence, which will be considered equivalent to the required minimum limits, and such insurance shall (i) be written on an occurrence form, (ii) be written with a primary policy form with limits of not less than One Million ($1,000,000.00) per occurrence; (iii) be written with one or more excess layers to bring the total of primary and excess coverage limits to not less than Two Million Dollars ($2,000,000.00) per occurrence, (iv) not be written with a deductible greater than Twenty Thousand Dollars ($20,000.00) per occurrence (without prior written approval by City, which approval shall be granted or denied in City's sole and absolute discretion), (v) not be written with a self- insured retention (without prior written approval by City, which approval shall be granted or denied in City's sole and absolute discretion), and (vi) contain a waiver of subrogation in favor of City. Such insurance shall include independent contractor coverage and shall cove r the acts, errors, omissions, or works of any of Developer's subcontractors and any other person(s) acting on behalf of Developer (but only for professionals or trades that typically secure errors and omissions insurance coverage for similar work), as respects any liability that may occur to Developer and/or any Additional Insureds from such acts, errors, omissions or work;

8.1.1.4 Provide primary Automobile Liability insurance for owned, non-owned, and hired vehicles, as applicable to, or for any use related to, the Project, in an amount not less than One Million Dollars ($1,000,000.00) combined single limit, with excess insurance c overage to bring the total amount of Automobile Liability insurance coverage to an amount not less than Two Million Dollars ($2,000,000.00) per accident for bodily injury and property damage;

8.1.1.5 Bear an endorsement or shall have attached a rider providing that City shall be notified not less than thirty (30) calendar days before any expiration, cancellation, nonrenewal, reduction in coverage, increase in deductible, or other material modification of such policy or policies, and shall be notified not less than ten (10) calendar days after any event of nonpayment of premium (collectively, "Cancellation Notice"), provided, however, that an individual endorsement specifically naming City shall not be required if Developer provides documentation which, in the sole discretion of City, demonstrate s that City will automatically receive such Cancellation Notice under some sort of blanket policy language, without the need for a separate endorsement in favor of City; and

8.1.1.6 Developer shall also file with City the following signed certification:

> "I am aware of, and will comply with, Title 51 RCW, requiring every employer to be insured against liability of Workers' Compensation or to undertake self-insurance before commencing any of the work."

Developer shall comply with Title 51 RCW and in connection therewith shall secure, pay for and maintain in full force and effect from and after the Closing of Escrow, and continuing for the entire Affordability Period, complete Workers' Compensation insurance with Employers Liability limits not less than One Million Dollars ($1,000,000.00) per occurrence, and shall furnish a Certificate of Insurance to City before the commencement of construction. Every Workers' Compensation insurance policy shall bear an endorsement or shall have attached a rider providing that, in the event of expiration, proposed cancellation, or reduction in coverage of such policy for any reason whatsoever, City shall be notified, giving Developer a sufficient time to comply with applicable law, but in no event less than thirty (30) calendar days before such expiration, cancellation, or reduction in c overage is effective or ten (10) calendar days in the event of nonpayment of premium.

8.1.1.7 All Additional Insureds shall not be responsible for any claims in law or equity occasioned by the failure of Developer to comply with this Section 8.1.1. City shall have the right, but not the obligation, to pay a premium on behalf of Developer.

8.1.2 **Property Insurance.** Commencing upon the Closing and continuing until the later of (i) the expiration or earlier termination of the Affordability Period or (ii) the date Developer vacates the Site, Developer shall secure, maintain, and pay for the following all-risk Property Insurance for the Project and the Site; provided, however, in the case of Builder' s Risk insurance where Developer is not the general contractor, Developer may cause the required Builder’s Risk insurance to be secured, maintained, and paid for by the general contractor:

8.1.2.1 Prior to the start of construction and continuing until the Completion of Construction (the latter of final acceptance of the Project or issuance of the final certificate of occupancy for the Project): all-risk Builder's Risk (course of construction) insurance coverage but excluding the perils of earthquake (land movement) and flood, in an amount equal to the full cost of the hard construction costs of the Project. Such insurance shall be written on an all risk form, and shall cover, at a minimum: all work, materials, and equipment to be incorporated into the Project; the Project during construction; the completed Project until such time as it is accepted by City; and storage and transportation risks; and such coverage shall not be terminated until permanent Property Insurance is in place, as required in Section 8.1.2.1. Such insurance shall protect/insure the interests of Developer/owner and the General Contractor, and other contractor(s), and all subcontractors, as each of their interests may appear. If such insurance includes an exclusion for "design error," such exclusion shall only be for the object or portion which failed. Such insurance shall include an insurer's waiver of subrogation in favor of each protected/insured party thereunder and City, and City. City shall each be named as an additional loss payee, as its interests may appear, with a Lenders Loss Payable endorsement, which shall be delivered to City prior to the start of construction.

8.1.2.2 Commencing with the completion of construction and continuing until the later of (i) the expiration or earlier termination of the Affordability Period or (ii) the date Developer vacates the Site: (a) all-risk physical damage insurance coverage ("Property Insurance"), on an all-risk basis, covering all insurable structures and equipment, including coverage for building code changes, but excluding the perils of earthquake (land movement) and flood, in an amount not less than 100% of the replacement cost of the total values at risk, which shall be adjusted for increased costs of construction and replacement on an annual basis, to protect against loss of, damage to, or destruction of the Project; such insurance shall not contain a coinsurance clause; (b) business interruption an d extra expense insurance to protect Developer and all addition al loss payees covering loss of revenues and/or extra expense incurred by reason of the total or partial suspension or delay of, or interruption in, the operation of the Project, or any portion thereof, caused by loss or damage to or destruction of any part of the insurable real property structures or equipment as a result of the perils insured against under such Property Insurance, covering a period of suspension, delay or interruption of at least eighteen (18) calendar months, in an amount not less than the amount required to cover such business interruption and/or extra expense loss during any such period; such insurance shall not contain a deductible in an amount in excess of a thirty (30) day period; and (c) as applicable, boiler and machinery insurance in the aggregate amount of the full replacement value of the equipment typically covered by such insurance. On the coverage required under this subparagraph 8.1.2.2, City shall each be named as an additional loss payee, as its interests may appear, with a Lenders Loss Payable endorsement whenever possible, and if not attainable for Additional Insured other than City, then a loss payable endorsement may be utilized, which shall be delivered to City at the completion of construction and prior to the expiration of the Builders Risk insurance coverage required herein.

Developer acknowledges and agrees that the insurance requirements contained herein are the minimum requirements of the City and that if the County or any other lender requires that Developer maintain higher amounts and/or additional insurance coverage, Developer shall comply with such insurance requirements.

8.2 **Obligation to Repair and Restore Damage Due to Casualty**. If the Improvements shall be totally or partially destroyed or rendered wholly or partly uninhabitable by fire or other casualty required to be insured against by Developer, Developer shall promptly proceed to obtain insurance proceeds and take all steps necessary to begin reconstruction and, immediately upon receipt of insurance proceeds, to promptly and diligently commence the repair or replacement of the Improvements to substantially the same condition as the Improvements are required to be constructed pursuant to this Agreement, whether or not the insurance proceeds are sufficient to cover the actual cost of repair, replacement, or restoration, and Developer shall complete the same as soon as possible thereafter so that the Improvements can be occupied as an affordable housing project in accordance with this Agreement. In no event shall the repair, replacement, or restoration period exceed 12 months from the date Developer obtains insurance proceeds unless the City Manager, in his sole and absolute discretion, approves a longer period of time. City shall cooperate with Developer, at no expense to City, in obtaining any governmental permits required for the repair, replacement, or restoration. If, however, the then-existing laws of any other governmental agencies with jurisdiction over the Site do not permit the repair, replacement, or restoration or the cost of such repair, replacement of restoration exceeds such insurance proceeds, Developer may elect not to repair, replace, or restore the Improvements by giving notice to City (in which event Developer will be entitled to all insurance proceeds) or Developer may reconstruct such other improvements on the Site as are consistent with applicable land use regulations and approved by City and the other governmental City or agencies with jurisdiction, and City may pursue remedies of its choosing under this Agreement, including without limitation termination. If the Improvements are completely destroyed or substantially damaged by a casualty for which Developer is not required to (and has not) insured against, or if insurance proceeds are insufficient to rebuild, and subject to the rights of the Senior Lender or any replacement Senior Lender, then Developer shall not be required to repair, replace, or restore such improvements and may elect not to do so by providing City with written notice of election not to repair, replace, or restore within ninety (90) calendar days after such substantial damage or destruction. In such event, Developer shall concurrently repay the full outstanding balance of the City Grant to City and this Agreement shall be automatically terminated. As used in this Section 8.2, "substantial damage" caused by a casualty not required to be (and not) covered by insurance shall mean damage or destruction which is ten percent (10%) or more of the replacement cost of the improvements comprising the Improvements.

8.3 **Indemnity.** Developer shall defend (by counsel satisfactory to City), indemnify and save and hold harmless City Indemnitees from and against all claims, damages, demands, actions, losses, liabilities, costs and expenses (including, without limitation, attorneys' fees and court costs) arising from the acts or omissions of the Developer, or those acting on its behalf, relating to: (i) a claim, demand or cause of action that any person has or asserts against Developer; (ii) any act or omission of Developer, any contractor, subcontractor or material supplier, engineer, architect or other person acting by or on behalf of Developer with respect to the Site; or (iii) the ownership, occupancy or use of the Site. Notwithstanding the foregoing portion of this section, Developer shall not be obligated to indemnify City with respect to the consequences of any act of gross negligence or willful misconduct of City. Developer's obligations under this section shall survive Completion of Construction (except that the issuance of such Certificate shall constitute conclusive evidence that construction of the Improvements has been completed), and termination of this Agreement. City will not unreasonably withhold approval of counsel proposed by an insurer under a policy provided under this Agreement.

In the event of a default or breach under this Agreement by Developer, Developer shall reimburse City immediately upon written demand for all costs reasonably incurred by City (including the reasonable fees and expenses of attorneys, accountants, appraisers and other consultants, whether the same are independent contractors or employees of City) in connection with the enforcement of the Project Documents and all related matters including the following: (a) City's commencement of, appearance in, or defense of any action or proceeding purporting to affect the rights or obligations of the parties to any Project Document, and (b) all claims, demands, causes of action, liabilities, losses, commissions and other costs against which City is indemnified under the Project Documents. If such default remains uncured after any applicable cure period, such reimbursement obligations shall bear interest from the date occurring 10 days after City gives written demand to Developer at a rate equal to the lesser of 12% or the highest rate permitted by applicable law.

8.4 **Non-Liability of City**. Developer acknowledges and agrees that, notwithstanding any other provision of any Project Document (a) City is not a partner, joint venturer, alter-ego, manager, controlling person or other business associate or participant of any kind of Developer and City does not intend to ever assume any such status; (b) City s hall not be deemed responsible for or a participant in any acts, omissions or decisions of Developer, (c) City (and all Indemnitees) shall not be directly or indirectly liable or responsible for any loss or injury of any kind to any person or property resulting from any construction on, or occupancy or use of, the Site, whether arising from : (i) any defect in any building, grading, landscaping or other on-site or off-site improvement; (ii) any act or omission of Developer or any of Developer's agents, employees, independent contractors, licensees, invitees or volunteers; or (iii) any accident on the Site or any fire or other casualty or hazard thereon; and (d) by accepting or approving anything required to be performed or given to City under the Project Documents, including any certificate, financial statement, survey, appraisal or insurance policy, City (and all indemnitees) s hall not be deemed to have warranted or represented the sufficiency or legal effect of the same, and no such acceptance or approval shall constitute a warranty or representation by City (or any of the indemnitees) to anyone.

9. MISCELLANEOUS.

9.1 **Covenant Not to Sue**. The following covenant relating to Developer's obligation not to sue regarding the Project or the Site or any issues ancillary thereto (but excluding the specific performance of this Agreement) is a material incentive for and a part of the consideration to City to enter into this Agreement with Developer. Therefore, City shall have no obligation to make the City Grant to Developer, and the performance obligations of City under this Agreement shall automatically terminate, in the event from and after the Effective Date and until the Closing, Developer, or any Affiliate of Developer or any of its partners, officers, di rectors, employees, agents, representatives, consultants, attorneys, or any person acting at the direction of Developer, undertakes any act to oppose. or to commence, participate in, prosecute, or otherwise object to, or to litigate, directly or indirectly, any permit or discretionary decision of City, City's Planning Commission, or any other City Council or commission relating to the Site and/or the Project of whatever form or nature (but excluding the specific performance of this Agreement).

Notwithstanding the foregoing, nothing set forth in this Section 9.1 shall prevent Developer from asserting its rights relating to the performance and enforcement of this Agreement or due to the abuse of discretion by a governmental entity considering and acting upon a future discretionary decision related to the parameters of this covenant. Further, nothing in the foregoing covenant shall prevent Developer from asserting Developer's rights with respect to prospective action or future conduct by any person who interferes, opposes, or delays implementation and completion of the Project.

9.2 **Enforced Delay; Extension of Times of Performance**. In addition to specific provisions of this Agreement, performance by a party hereunder shall not be deemed to be in default, and all performance and other dates specified in this Agreement shall be extended, where delays or defaults are due to: war; insurrection; riots; floods; earthquakes; fires; casualties; acts of God; acts of the public enemy; epidemics; litigation; unusually severe weather; acts or omissions of the other party; acts or failures to act of a public or governmental City or entity (other than City acting as required pursuant to this Agreement); or any other causes beyond the reasonable control or without the fault of the party claiming an extension of time to perform. Notwithstanding anything to the contrary in this Agreement, an extension of time for any such cause shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, if notice by the party claiming such extension is sent to the other parties within 30 days of the commencement of the cause. Any requests for extension shall be in writing. Times of performance under this Agreement may also be extended in writing by the mutual agreement of City and Developer.

Notwithstanding the foregoing portion of this section, Developer is not entitled to an extension of time to perform because of past, present, or future difficulty in obtaining suitable temporary, construction, or permanent financing for the acquisition, development or lease of Housing Units on the Site.

9.3 **Nonliability of Officials and Employees of City**. No member, official or employee of City shall be personally liable to Developer, or any successor in interest, in the event of any default or breach by City or for any amount which may become due to Developer or its successors, or on any obligations under the terms of this Agreement.

9.4 **Obligations Unconditional and Independent**. Notwithstanding the existence at any time of any obligation or liability of City to Developer, or any other claim by Developer against City, in connection with the Site or otherwise, Developer hereby waives any right it might otherwise have (a) to offset any such obligation, liability or claim against Developer's obligations under this Agreement (including without limitation the attachments hereto), or (b) to claim that the existence of any such outstanding obligation, liability or claim excuses the nonperformance by Developer of any of its obligations under the Project Documents.

9.5 **Notices**. Any notice to or demand upon the following parties shall be given by registered or certified mail, return receipt requested, or by express delivery service, as follows, or to such other address as is specified in writing by any of the following to the others:

If to Developer:	HopeSource 700 E. Mountain View Avenue, #501 Ellensburg, Washington 98926 Attention: Susan Grindle
If to City:	City of Ellensburg 501 North Anderson Street Ellensburg, Washington 92552 Attention: City Manager

Addresses for notice may be changed from time to time by written notice to all other parties. All communications shall be effective when actually received; provided, however, that nonreceipt of any communication as the result of a change of address of which the sending party was not notified or as the result of a refusal to accept delivery shall be deemed receipt of such communication.

9.6 **Survival of Representations and Warranties**. All representations and warranties in the Project Documents shall survive the conveyance of the Site and have been or will be relied on by City notwithstanding any investigation made by City.

9.7 **Developer Payment of Third Party Costs**. Developer shall, within ten (10) days of written request (which shall include copies of invoices or billings for Third Party Costs incurred) pay for and reimburse City for all costs reasonably incurred by City for any and all out of pocket, third party costs, fees, and expenses incurred by City (but not in-house staff time) for attorneys, economic consultants, appraisers, engineers, affordable housing consultants, escrow company fees, title company fees, and other consulting and/or professional services incurred by City arising from and/or related in any respect to the implementation of this Agreement or the Project from the period of time commencing upon the Effective Date through the term of the Affordability Period (together, "Third Party Costs"). The Third Party Costs may include costs incurred in connection with (a) drafting, negotiation, and execution of post-Closing agreements, if any, (b) post-Closing enforcement of the Covenant, City Note, City Deed of Trust, or other Project Documents, including the following: (i) commencement of, appearance in, or defense of any action or proceeding purporting to affect the rights or obligations of the parties to any Project Documents, and (ii) all claims, demands, causes of action, liabilities, losses, commissions and other costs against which City is indemnified under the Project Documents, provided as to defense of any action which City has tendered the defense to Developer and Developer fails to defend any such action; and (c) other reasonable costs incurred related to requests for or provision of estoppel certificates, subordination agreements, affordable housing documents, escrow instructions, advisory assistance, amendments, implementation agreements, interpretations, modifications, any other agreements, instruments, documentation, legal advice, economic development/affordable housing advice, or other third party contracts for consulting or professional services necessitated by City's, City's or Developer's post-Closing implementation of this Agreement, and/or requested by Developer, and/or its Lender or other independent contractor or consultant to Developer post-Closing arising from or related in any manner to this Agreement. Notwithstanding the foregoing, Third Party Costs shall not include costs incurred or attributable to (i) City Council, Planning Commission, Zoning Administrator, or other City official with discretionary approval and/or disapproval rights over the Project or the implementation of this Agreement disapproves, denies, or refuses to take action on an application for a permit or other discretionary application necessary to commence and complete the Project; (ii) Default by City under this Agreement; or (iii) Any amendment to this Agreement or any other Project Documents that is initiated by City.

9.8 **No Third Parties Benefited**. This Agreement is made for the purpose of setting forth rights and obligations of Developer and City, and no other person shall have any rights hereunder or by reason hereof. There shall be no third-party beneficiaries of this Agreement.

9.9 **Use of Consultants by City**. City, at its sole cost, may engage consultants to assist City in connection with matters to be undertaken or reviewed under this Agreement, such as in connection with the calculation of allowable housing costs. Developer shall cooperate fully with any such consultants.

9.10 **Binding Effect; Assignment of Obligations**. This Agreement shall bind, and shall inure to the benefit of, Developer and City and their respective successors and assigns. Except for assignments or transfers permitted herein, Developer shall not assign any of its rights or obligations under any Project Document without the prior written consent of the City Manager, which consent may be withheld in the City Manager's sole and absolute discretion. Any such assignment without such consent shall, at City's option, be void. In connection with the foregoing consent requirement, Developer acknowledges that City relied upon Developer's particular expertise in entering this Agreement and continues to rely on such expertise to ensure the satisfactory completion of the Improvements and the qualification of eligible occupants of each Housing Unit in conformity with this Agreement.

9.11 **Superiority of City Agreement**. Developer agrees and acknowledges that any agreements between Developer and third parties, shall be subject and subordinate in all cases to this Agreement (including, without limitation, the Attachments hereto) and that in the event of conflict, this Agreement (including, without limitation, the Attachments hereto) shall control.

9.12 **Prior Agreements; Amendments; Consents**. This Agreement (together with the other Project Documents) contains the entire agreement between City and Developer with respect to the Site, and all prior negotiations, understandings and agreements with respect to such matters, including without limitation this Agreement, are superseded by this Agreement and such other Project Documents. No modification of any Project Document (including waivers of rights and conditions) shall be effective unless in writing and signed by the party against whom enforcement of such modification is sought, and then only in the specific instance and for the specific purpose given. This Agreement is executed in two duplicate originals, each of which is deemed to be an original. This Agreement includes pages 1 through 27 and Attachments 1 through 7 (which attachments are incorporated herein by reference), which constitutes the entire understanding and agreement of the parties.

This Agreement integrates all terms and conditions mentioned herein or incidental hereto and supersedes all negotiations or previous agreements between the parties or their predecessors in interest with respect to all or any part of the subject matter hereof.

All waivers of the provisions of this Agreement must be in writing by the appropriate authorities of City and Developer, and all amendments hereto must be in writing by the appropriate authorities of City and Developer; provided that after conveyance of the Site to Developer, only the consent of City shall be required.

9.13 **Governing Law**. All of the Project Documents shall be governed by, and construed and enforced in accordance with, the laws of the State of Washington. Developer irrevocably and unconditionally submits to the jurisdiction of the Superior Court of the State of Washington for the County of Kittitas or the United States District Court of the Central District of Washington, as City may deem appropriate, in connection with any legal action or proceeding arising out of or relating to this Agreement or the other Project Documents. Assuming proper service of process, Developer also waives any objection regarding personal or *in rem* jurisdiction or venue.

9.14 **Attorney Fees.** If either party places the enforcement of this Agreement, or any part thereof, in the hands of an attorney, or files suit upon the same, or seeks a judicial declaration of rights hereunder, the prevailing party shall recover its reasonable attorneys' fees, court costs, and collection agency charges. As used herein, "prevailing party" shall mean the party who substantially prevails in the matter at issue, including without limitation, a party who dismisses an action for recovery hereunder in exchange for payment of the sums allegedly due, performance of covenants allegedly breached or consideration substantially equal to the relief sought in the action.

9.15 **Severability of Provisions**. No provision of any Project Document that is held to be unenforceable or invalid shall affect the remaining provisions, and to this end all provisions of the Project Documents are hereby declared to be severable.

9.16 **Headings**. Article and section headings are included in the Project Documents for convenience of reference only and shall not be used in construing the Project Documents.

9.17 **Conflicts**. In the event of any conflict between the provisions of this Agreement and those of any other Project Document, this Agreement shall prevail; provided however that, with respect to any matter addressed in both such documents, the fact that one document provides for greater, lesser or different rights or obligations than the other shall not be deemed a conflict unless the applicable provisions are inconsistent and could not be simultaneously enforced or performed.

9.18 **Time of the Essence**. Time is of the essence of all of the Project Documents.

9.19 **Conflict of Interest**. No member, official or employee of City shall have any direct or indirect financial interest in this Agreement, nor participate in any decision relating to the Agreement which is prohibited by law.

9.20 **Warranty against Payment of Consideration**. Developer warrants that it has not paid or given, and will not pay or give, any third person any money or other consideration for obtaining this Agreement.

9.21 **Real Estate Commissions**. Each of City and Developer represents to the other party that it has not engaged the services of any finder or broker and that it is not liable for any real estate commissions, broker's fees, or finder's fees which may accrue by means of the acquisition of all or part of the Site, and agrees to hold harmless the other party from such commissions or fees as are alleged to be due from the party making such representations.

9.22 **Counterparts**. Any Project Document (including this Agreement) may be executed in counterparts, all of which, taken together, shall be deemed to be one and the same document.

[Remainder of page blank; signature page follows.]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on the dates hereinafter respectively set forth.

DEVELOPER:

HOPESOURECE,
a Washington nonprofit corporation

By: ______________________

Name: ___________________

Title: ____________________

CITY:

CITY OF ELLENSBURG,
a Washington municipal corporation

By: ____
City Manager

Signature Page – Affordable Housing Agreement

ATTACHMENT NO. 1

LEGAL DESCRIPTION OF THE SITE

ACRES 4.86, CD. 8112-1; PTN NE1/4 NE1/4 & (PARCEL A, SURVEY #480271); SEC 11, TWP 17, RGE 18

ATTACHMENT NO. 2

RESERVED

ATTACHMENT NO. 3

RESERVED

ATTACHMENT NO. 4

REQUEST FOR NOTICE OF DEFAULT

Recording Requested By and When Recorded Mail To: City of Ellensburg 501 North Anderson Street Ellensburg, Washington 98926 Attention: City Manager	

(Space above for Recorder's use.)

REQUEST FOR NOTICE UNDER RCW 61.24.031
(HopeSource)

In accordance with Revised Code of Washington 61.24.031 request is hereby made that a copy of any Notice of Default and a copy of any Notice of Sale under the Deeds of Trust recorded as Instrument Nos. ______________, and __________________ on _________________, 20__ in the Official Records of Kittitas County, Washington, and describing land therein as:

[See Exhibit A attached hereto]

executed by HopeSource, a Washington nonprofit corporation, as Trustor/Borrower, in which ___________________ is named as a Beneficiary, and _______________________________________ is named as Trustee, be mailed to: City of Ellensburg, 501 N. Anderson Street, Ellensburg, Washington 98926, Attention: City Manager.

NOTICE: A COPY OF ANY NOTICE OF DEFAULT AND OF ANY NOTICE OF SALE WILL BE SENT ONLY TO THE ADDRESS CONTAINED THIS RECORDED REQUEST. IF ADDRESS CHANGES, A NEW REQUEST MUST BE RECORDED.

AUTHORITY:

CITY OF ELLENSBURG
a municipal corporation

By: ________________________________
Heidi Behrends Cerniwey
City Manager

ATTEST:

BETH LEADER

____
City Clerk

ATTACHMENT NO. 5

CITY NOTE

ATTACHMENT NO. 6

AFFORDABLE HOUSING COVENANT

ATTACHMENT NO. 7

CITY DEED OF TRUST

ATTACHMENT NO. 5

CITY NOTE

$750,000.00 Ellensburg, Washington May _____, 2022

FOR VALUE RECEIVED, **HOPESOURCE,** a Washington nonprofit corporation ("Developer"), promises to pay to the **CITY OF ELLENSBURG,** a municipal corporation ("City"), at its offices at 501 North Anderson Street, Ellensburg, Washington 98926, or at such other place as City may from time to time designate in writing, (a) the principal sum of Seven Hundred Fifty Thousand Dollars ($750,000.00) ("City Note Amount"); and (b) all costs and expenses payable hereunder.

RECITALS

A. This Promissory Note Secured By Deed of Trust ("City Note") is made pursuant to that certain unrecorded Affordable Housing Agreement by and between Developer and City, dated as of May __, 2022 ("Agreement").

B. Capitalized terms used in this City Note shall have the meaning set forth in the Agreement, unless expressly otherwise defined herein.

NOW, THEREFORE, for good valuable consideration, receipt of which is hereby acknowledged, Developer agrees as follows:

1. Agreement. The principal sums hereunder have been and are being conditionally granted by City to Developer in accordance with and pursuant to the Agreement, which is a public record on tile in the office of the City Clerk. The proceeds of the City Grant shall be disbursed only to pay for the items and in accordance with the procedures set forth in the Agreement. The terms of the Agreement are incorporated herein and made a part hereof to the same extent and with the same force and effect as if fully set forth herein. In the event of any inconsistencies between the terms of this City Note and the terms of the Agreement or any other document related to the City Note Amount, the terms of this City Note shall prevail.

A default by Developer under any of the provisions of the Agreement, the City Deed of Trust of even date herewith, or any of the other Transaction Documents shall, after the expiration of any cure period under the respective agreement, be a default hereunder, and a default hereunder after the expiration of any applicable cure periods shall be a default under the Project Documents.

2. Interest. Three percent simple interest (3%) per annum (based on a 360-day year and charged on the basis of the actual number of days elapsed) shall accrue on the Note Amount and all other amounts due under this City Note (other than accrued interest), except as set forth in Section 8 hereof.

3. Payment; Forgiveness. There are no regularly scheduled payments under this City Note. Payment shall be due as provided in Section 8 hereof only upon a Default. June 1, 2073 (the fifty-first anniversary of the date of this Note) shall be the "Maturity Date" of this City Note. If, as of the Maturity Date, there are no uncured defaults under the Project Documents, including all attachments thereto, and there are no amounts which have become payable pursuant to Section 8 hereof, all outstanding amounts on this City Note shall be forgiven.

4. Form of Payments. All amounts due hereunder are payable in immediately available funds and lawful monies of the United States of America.

5. Application of Payments. All payments shall be applied (i) first, to costs and fees owing hereunder, (ii) second, to the payment of unpaid accrued interest owing hereunder for each calendar year in which no payment was made by Developer pursuant to Section 3 hereof, (iii) third, to the payment of accrued interest for the preceding calendar year, and (iv) fourth, to the payment of principal.

6. Prepayment. At any time, Developer may prepay in whole or in part the outstanding principal balance under this City Note, together with all accrued interest, if any, and unpaid fees, costs and expenses, if any, payable hereunder, without penalty or premium. In the event of prepayment by Developer, the Affordable Housing Covenant shall remain intact, and shall be unaffected by the prepayment of this Note by Developer.

7. Security. This City Note and all amounts payable hereunder are secured by the City Deed of Trust of even date herewith ("City Deed of Trust"), executed by Developer in favor of City and recorded against the Site in the Official Records of Kittitas County, which City Deed of Trust shall only be subordinate to (i) a deed of trust securing the repayment of the Senior Loan, and, if applicable (ii) such other encumbrances reasonably approved by City in writing. The terms of the City Deed of Trust are incorporated herein and made a part hereof to the same extent and with the same force and effect as if fully set forth herein. A default under any of the provisions of the City Deed of Trust shall be a default hereunder, and a default hereunder shall be a default under the City Deed of Trust.

8. Acceleration and Other Remedies. If elected by City pursuant to the following sentence, the entire balance due under this City Note shall be paid to City upon the earlier of any of the following (each, a "Default"): (i) the uncured default of Developer under the Project Documents, this City Note, or the City Deed of Trust, in each case, after delivery of notice and expiration of the applicable cure period provided in the respective agreement; or (ii) the sale, lease or other transfer or conveyance (other than the permitted rentals and conveyances under the Agreement) of all or any part of the Project, or any interest therein (individually or collectively a "Transfer"), without the prior written consent of City in accordance with the Agreement, in each case, after delivery of notice and expiration of the applicable cure period provided in the applicable Project Document. Upon the occurrence and during the continuance of a Default, City may, at City's option, declare the outstanding principal amount of this City Note, together with the then accrued and unpaid interest thereon and other charges hereunder, and all other sums secured by the City Deed of Trust, to be due and payable immediately, and upon such declaration, such principal and interest and other sums shall immediately become and be due and payable without demand or notice, all as fu1ther set forth in the City Deed of Trust. All costs of collection, including, but not limited to, reasonable attorneys' fees and all expenses incurred in connection with protection of, or realization on, the security for this City Note, may be added to the principal hereunder, and shall accrue interest as provided herein. City shall at all times have the right to proceed against any portion of the security for this City Note in such order and in such manner as City may consider appropriate, without waiving any rights with respect to any of the security. Any delay or omission on the part of City in exercising any right hereunder, under the Agreement, the Project Documents or under the Deed of Trust shall not operate as a waiver of such right, or of any other right. No single or partial exercise of any right or remedy hereunder or under the Agreement, the Project Documents, the City Deed of Trust or any other document or agreement shall preclude other or further exercises thereof, or the exercise of any other right or remedy. The acceptance of payment of any sum payable hereunder, or part thereof, after the due date of such payment shall not be a waiver of City's right to either require prompt payment when due of all other sums payable hereunder or to declare a Default for failure to make prompt or complete payment. In addition, upon any Default, the City Note Amount and all outstanding amounts due under this City Note shall accrue interest at the default rate of ten percent (10%) per annum (based on a 360-day year and charged on the basis of the actual number of days elapsed) ("Alternate Rate").

9. Waivers. Except to the extent notice is required under any of the Project Documents, Developer and all endorsers, guarantors and sureties hereof jointly and severally waive presentment, demand, notice of protest and nonpayment, notice of default or delinquency, notice of acceleration, notice of costs, expenses or leases or interest thereon, notice of dishonor, diligence in collection or in proceeding against any of the rights or interests in or to any and all properly securing this City Note, and the benefit of any exemption under any homestead exemption laws, if applicable. Developer expressly agrees that this City Note or any payment hereunder may be extended from time to time at City's sole discretion and that City may accept security in consideration for any such extension or release any security for this City Note at its sole discretion all without in any way affecting the liability of Developer. No extension of time for payment of this City Note made by agreement by City with any person now or hereafter liable for the payment of this City Note shall operate to release, discharge, modify, change or affect the original liability of Developer under this City Note, either in whole or in part. The obligations of Developer under this Note shall be absolute and Developer waives any and all rights to offset, deduct or withhold any payments or charges due under this City Note for any reasons whatsoever. No previous waiver and no failure or delay by City in acting with respect to the terms of this City Note or the City Deed of Trust shall constitute a waiver of any breach, default, or failure or condition under this City Note, the City Deed of Trust or the obligations secured thereby. A waiver of any term of this City Note, the City Deed of Trust or any of the obligations secured thereby must be made in writing and shall be limited to the express written terms of such waiver.

10. Consents. Developer and all endorsers, guarantors and sureties consent to: (a) any renewal, extension or modification (whether one or more, and subject to the terms and provisions of the Agreement relating to modification, extension, and/or amendment) of the terms of the Agreement as such terms relate to this City Note or the terms or time of payment under this City Note, (b) the release or surrender or exchange or substitution of all or any part of the security, whether real or personal, or direct or indirect, for the payment hereof to the extent requested or approved by Developer, (c) the granting of any other indulgences to Developer, and (d) the taking or releasing of other or additional parties primarily or contingently liable hereunder. Except as otherwise set forth above, any such renewal, extension, modification, release, surrender, exchange or substitution may be made without notice to Developer or to any endorser, guarantor or surety hereof, and without affecting the liability of said patties hereunder.

11. Successors and Assigns. Whenever "City" is referred to in this Note, such reference shall be deemed to include City, and its successors and assigns, including, without limitation, any subsequent assignee or holder of this City Note. All covenants, provisions and agreements by or on behalf of Developer, and on behalf of any makers, endorsers, guarantors and sureties hereof which are contained herein shall inure to the benefit of City's successors and assigns. City may, at its option, assign its right to receive payment under this City Note without necessity of obtaining the consent of Developer. Whenever "Developer" is referred to in this City Note, such reference shall be deemed to include HopeSource, a Washington nonprofit corporation, and its approved successors and assigns, including, without limitation, any approved subsequent assignee or obligor of this City Note, if such approval is given in accordance with the Agreement. In no event shall Developer assign or transfer any portion of this Note without the prior express written consent of City, except as permitted in the Agreement.

12. Usury. It is the intention of Developer and City to conform strictly to the Interest Law, as defined below, applicable to this transaction. Accordingly, it is agreed that notwithstanding any provision to the contrary in this City Note, or in any of the documents securing payment hereof or otherwise relating hereto, the aggregate of all interest and any other charges or consideration constituting interest under the applicable Interest Law that is taken, reserved, contracted for, charged or received under this City Note, or under any of the other aforesaid agreements or otherwise in connection with this loan transaction, shall under no circumstances exceed the maximum amount of interest allowed by the Interest Law applicable to this loan transaction. If any excess of interest in such respect is provided for in this City Note, or in any of the documents securing payment hereof or otherwise relating hereto, then, in such event:

(a) the provisions of this paragraph shall govern and control;

(b) neither Developer nor Developer's heirs, legal representatives, successors or assigns shall be obligated to pay the amount of such interest to the extent that it is in excess of the maximum amount of interest allowed by the Interest Law applicable to this loan transaction:

(c) any excess shall be deemed canceled automatically and, if theretofore paid, shall be credited on this City Note by City or, if this City Note shall have been paid in full, refunded to Developer; and

(d) the effective rate of interest shall be automatically subject to reduction to the Maximum Legal Rate of Interest (as defined below), allowed under such Interest Law, as now or hereafter construed by courts of appropriate jurisdiction. To the extent permitted by the Interest Law applicable to this loan transaction, all sums paid or agreed to be paid to City for the use, forbearance or detention of the indebtedness evidenced hereby shall be amortized, prorated, allocated and spread throughout the full term of this City Note. For purposes of this City Note, "Interest Law" means any present or future law of the State of Washington, the United States of America, or any other jurisdiction which has application to the interest and other charges under this City Note. The "Maximum Legal Rate of Interest" means the maximum rate of interest that City may from time to time charge Developer, and under which Developer would have no claim or defense of usury under the Interest Law.

13. Costs of Enforcement. Developer agrees to pay upon demand all reasonable costs and expenses, including attorneys' fees, expert witness fees, and costs of suit (including appeals), incurred by City to enforce the terms hereof. In addition to the foregoing award of attorneys' fees, City shall be entitled to its reasonable attorneys' fees incurred in any post-judgment proceedings to enforce any judgment in connection with this City Note. This provision is separate and several and shall survive the merger of this provision into any judgment.

14. Miscellaneous. Time is of the essence hereof. If this City Note is now, or hereafter shall be, signed by more than one party or person, it shall be the joint and several obligation of such parties or persons (including, without limitation. all makers, endorsers, guarantors and sureties), and shall be binding upon such parties and upon their respective successors and assigns. This City Note shall be governed by and construed under the laws of the State of Washington. Developer irrevocably and unconditionally submits to the jurisdiction of the Superior Court of the State of Washington for Kittitas County or the United States District Court of the Central District of Washington as City hereof may deem appropriate, in connection with any legal action or proceeding arising out of or relating to this City Note. Developer also waives any objection regarding personal or in rem jurisdiction or venue to the extent such action is filed in the above-referenced courts. In the event of a conflict between the provisions of this City Note and the Agreement, this City Note shall control with respect to the subject matter hereof.

15. Non-Recourse Obligation. In the event of any Default under the terms of the Agreement or any of the other Project Documents, the sole recourse of City for any such Default shall be the Site and the Project and Developer and its partners and Affiliates shall not be personally liable for the payment of any obligations under this Agreement; provided, however, that the foregoing shall not in any way affect any rights City may have hereunder, or any right of City to recover or collect funds, damages or costs (including without limitation reasonable attorneys' fees and costs) incurred by City as a result of fraud, intentional misrepresentation or bad faith waste, and/or any costs and expenses incurred by City in connection therewith (including without limitation reasonable attorneys' fees and costs).

[Signature Follows]

IN WITNESS WHEREOF, the parties hereto have caused this City Note, Promissory Note Secured by Deed of Trust to be executed on the date first set forth above.

DEVELOPER:

HOPESOURECE,
a Washington nonprofit corporation

By:_________________________
Name: ______________________
Title:________________________

APPROVED AS TO FORM:

____
Attorney for HopeSource

ATTACHMENT NO. 6

When Recorded Return To:

City of Ellensburg
501 North Anderson Street
Ellensburg, Washington 98926
Attention: City Manager

AFFORDABLE HOUSING COVENANT
(HOPESOURCE)

GRANTOR:	HopeSource
GRANTEE:	City of Ellensburg, Washington
ABBREV. LEGAL DESCRIPTION:	Official legal description on Exhibit A attached
ASSESSOR'S TAX PARCEL NOS.	
REFERENCE NUMBERS:	N/A

AFFORDABLE HOUSING COVENANT
(HOPESOURCE)

This Affordable Housing Covenant ("Covenant") is made as of the ____ day of May, 2022, by **HOPESOURCE**, a Washington nonprofit corporation ("HopeSource" or "Grantor") in favor of the **CITY OF ELLENSBURG,** a public body corporate and politic of the State of Washington ("City" or "Grantee"), and is part of the consideration for the financial assistance provided by the City pursuant to an Affordable Housing Agreement dated on or about the date hereof (the "Agreement"), for the construction of a 16-unit multifamily rental complex initially to be known as ____________ on real property legally described on Exhibit A hereto (the "Property").

WHEREAS, this Covenant will be filed and recorded in the official public land records of Kittitas County, Washington and shall constitute a restriction upon the use of the Property, subject to, and in accordance with, the terms of this Covenant for at least **fifty (50) years of affordability** ending on **[June 1, 2073]**, the Maturity Date of the City Note executed by HopeSource in favor of the City and dated of even date herewith (the "Affordability Period").

WHEREAS, the covenants contained herein are to be taken and construed as covenants running with the land and shall pass to and be binding upon the Grantor, its respective successors and assigns, heirs, or grantees and lessees of the Property, beginning on the date of initial residential occupancy after the construction of the improvements on the Property contemplated by the Agreement. Each and every contract, deed, mortgage or other instrument covering or conveying the Property, or any portion thereof, shall be conclusively held to have been executed, delivered and accepted subject to such covenants, regardless of whether such covenants are set forth in such contract, deed, mortgage or other instruments. Capitalized terms not defined herein shall have the meaning given in the Agreement.

NOW THEREFORE, it is hereby covenanted during the Affordability Period as follows:

Section 1. Set-Asides; Reporting. The Grantor hereby represents, covenants and agrees as follows:

(a) **Sixteen (16)** of the residential units in the Property shall be rented to tenants with gross annual household incomes at the time of initial occupancy no higher than **sixty (60) percent of median income** in Kittitas County, Washington adjusted for family size ("AMI") as published annually, effective July 1, by the U.S. Department of Housing and Urban Development ("HUD"), as HOME Income Limits. If HUD ceases to provide such determinations of median income, then median income shall mean such comparable figure for Kittitas County, Washington published or reported by a federal, state, or local agency as the City shall select.

(b) Rents payable by tenants may not exceed **Thirty (30) percent** of the maximum **sixty (60) percent AMI** tenant income for the unit, assuming occupancy of 1.5 persons per bedroom including a utility allowance ("Affordable Rent"). The amount of the utility allowance shall be as calculated annually by HopeSource or at another level acceptable to the City. The foregoing provisions shall be subject to the provisions of the Agreement.

(c) Consistent with the requirements of RCW 84.14.530(2)(b), as it may be amended from time to time, the residential units in the Property shall be occupied by tenants who at the time of initial occupancy of a residential unit are: (i) persons with behavioral health disabilities, (ii) veterans, (iii) senior citizens, (iv) persons who are homeless or at-risk of being homeless, including families with children, (v) unaccompanied homeless youth or young adults, (vi) persons with disabilities, or (vii) domestic violence survivors.

(d) Within 90 days after the end of each calendar year after the commencement of the Affordability Period, HopeSource shall prepare and submit a certificate to the City, in a form acceptable to the City, certifying that it has complied in all respects with the requirements of this Covenant.

(e) HopeSource shall keep any records and make any reports relating to compliance with this Covenant that the City may reasonably require. HopeSource shall permit any duly authorized representative of the City to inspect, during regular business hours and upon reasonable notice, the Property, the residential units, and the books and records of HopeSource pertaining to the incomes of the tenants who are residing or have resided in the Property.

Section 2. Covenants. The Grantor hereby represents, covenants and agrees as follows:

(a) HopeSource shall use the Property to provide safe and sanitary housing, and shall comply with all Federal, State, and local housing codes, licensing requirements, and other requirements regarding the condition and the operation of the Property.

(b) Except as otherwise required or contemplated by this Covenant or allowed by applicable law for the purpose of providing low-income housing, HopeSource will not discriminate in the provision of housing on the basis of race, creed, color, sex, national origin, religion, marital status, age, disability, the receipt of public assistance or housing assistance or any other characteristic protected from discrimination by applicable law.

Section 3. Covenants Run With the Land. Grantor hereby declares its express intent that the covenants, restrictions, charges and easements set forth herein shall be deemed covenants running with the land throughout the Affordability Period, and shall pass to and be binding upon the Grantor's successors in title including any purchaser, grantee or lessee of any portion of the Property and any other person or entity having any right, title or interest therein and upon the respective heirs, executors, administrators, devisees, successors and assigns of any purchaser, grantee or lessee (other than a resident) of any portion of the Property and any other person or entity having any right, title or interest therein. Each and every contract, deed or other instrument (other than residential resident leases) hereafter executed conveying the Property or any portion thereof or interest therein shall contain an express provision making such conveyance subject to the covenants, restrictions, charges and easements contained herein; provided, however, that any such contract, deed or other instrument shall conclusively be held to have been executed, delivered and accepted subject to such covenants, regardless of whether or not such covenants are set forth or incorporated by reference in such contract, deed or other instrument.

Section 4. Survival. This Covenant has priority over the Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filings in favor of the City of even date herewith (the "Deed of Trust"), and shall survive any payment, release, satisfaction or cancellation of the City Note or the Deed of Trust occurring prior to the expiration of the Affordability Period. The covenants herein are independent of and in addition to the covenants in the Deed of Trust and Affordable Housing Agreement between the Grantor and the City, any other covenants made for the benefit of the City. This Section shall not prohibit any mortgages, deeds of trust, regulatory agreements and covenants for the purposes of the future financing, nor prohibit any transfer upon foreclosure of a deed of trust or mortgage approved by the City, or in lieu of foreclosure thereof, or any subsequent transfer, but any transfer shall be subject to the terms of this Covenant.

Section 5. Default. If a violation of any of the foregoing covenants occurs, the City may, after thirty days' notice to HopeSource, and if applicable, its successors and assigns, heirs, grantees, or lessees of the Property, institute and prosecute any proceeding at law or in equity to abate, default the loan evidenced by the City Note, prevent, or enjoin any such violation or to compel specific performance by HopeSource of its obligations hereunder; provided that HopeSource shall not be required by any provision herein to evict a residential tenant. No delay in enforcing the provisions hereof as to any breach or violation, shall impair, damage or waive the right of the City to enforce the provisions hereof or to obtain relief against or recover for the continuation or repetition of such breach or violations or any similar breach or violation hereof at any later time.

[*Signatures on following page.*]

IN WITNESS HEREOF, this Affordable Housing Covenant was executed as of the date set forth above.

HOPESOURCE,
a Washington nonprofit corporation

By: ______________________________
Name: ___________________________
Title: ____________________________

THE CITY OF ELLENSBURG, a Washington public corporation

By: ______________________________
Name: ___________________________
Title: ____________________________

STATE OF WASHINGTON)
)ss.
COUNTY OF KITTITAS)

On this ______ day of ________________, 202_, before me personally appeared _______________________, to me known to be the _________________ of ________________________, that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said party for the uses and purposes therein mentioned, and on oath stated that he/she was authorized to execute said instrument.

____
(Signature of Notary)

____
(Legibly Print or Stamp Name of Notary)
Notary public in and for the State of Washington, residing at ____

STATE OF WASHINGTON)
)ss.
COUNTY OF KITTITAS)

On this ______ day of ________________, 202_, before me personally appeared _______________________, to me known to be the _________________ of ________________________, that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said party for the uses and purposes therein mentioned, and on oath stated that he/she was authorized to execute said instrument.

____
(Signature of Notary)

____
(Legibly Print or Stamp Name of Notary)
Notary public in and for the State of Washington, residing at ____

EXHIBIT A

LEGAL DESCRIPTION

ATTACHMENT NO. 7

WHEN RECORDED, MAIL TO:

City of Ellensburg
501 North Anderson Street
Ellensburg, Washington 98926
Attention: City Manager

Washington State Recorder's Cover Sheet (RCW 65.04.047)

.

Document Title: Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing
Reference Number(s) of Related Documents: N/A
Grantor: HopeSource, a Washington nonprofit corporation
Grantee(s)/Trustee(s)/Beneficiary(ies): 1. THE CITY OF ELLENSEBURG, a Washington municipal corporation 2. AmeriTitle
Abbreviated Legal Description: 1200 South Ruby Street, Ellensburg, Washington 98926 ☒ Additional legal within document.
Assessor's Property Tax Parcel/Map Numbers: Tax Parcel ID #555136, Kittitas County Auditor's Map No. 17-18-11010-0074

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

(For Use in the State of Washington Only)

THIS DEED OF TRUST, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING, made this ____ day of ____________, 20___ (together with any amendments or modifications hereto in effect from time to time, the "**Deed of Trust**"), between HOPESOURCE, a Washington nonprofit corporation, GRANTOR, whose address is 601 West Fifth Avenue, Ellensburg, WA 98926, AMERITITLE, TRUSTEE, whose address is 101 W. Fifth Avenue, Ellensburg, Washington 98926, and the CITY OF ELLENSBURG, a Washington municipal corporation, "BENEFICIARY", whose address is c/o City Manager 501 North Anderson Street, Ellensburg, Washington 98926.

WITNESSETH: Grantor hereby bargains, sells and conveys to Trustee in trust, with power of sale, the following described real property in Kittitas County, Washington:

ACRES 4 .86, CD. 8112-1; PTN NEl/4 NEl/4 & (PARCEL A, SURVEY #480271); SEC 11, TWP 17, RGE18

which real property is not used principally for agricultural or farming purposes, together with all the tenements, hereditaments, and appurtenances now or hereafter thereunto belonging or in any wise appertaining, and the rents, issues and profits thereof.

Grantor has received a grant from Beneficiary in the amount of $750,000.00 ("**Grant**") pursuant to that certain Affordable Housing Agreement by and between Grantor and Beneficiary, dated as of the date hereof ("**Affordable Housing Agreement**") and that certain Promissory Note dated as of the date hereof executed by Grantor in favor of Beneficiary ("**Note**"). In connection with the Grant, Grantor has also executed that certain Affordable Housing Covenant dated on or about the date hereof in favor of Beneficiary ("**Covenant**"). The Affordable Housing Agreement, Note, and Covenant are referred to herein as the "**Grant Documents**". Grantor's obligation to repay the Grant to Beneficiary shall only be required in the event Grantor defaults in its obligations under the Grant Documents. This Deed of Trust is for the purpose of securing performance of each agreement of Grantor herein contained and contained in the Grant Documents, and payment of the Grant in the event of Grantor's breach of its obligations herein or under the Grant Documents and all renewals, modifications and extensions thereof.

This Deed of Trust shall be subordinate to the liens set forth in a Priority and Subordination Agreement for the Project signed by the Beneficiary.

1. **Grant in Trust**. In consideration and for the purpose of securing payment and performance of the secured obligations (as set forth above), Grantor hereby irrevocably and unconditionally grants, bargains, conveys, sells, transfers, and assigns to Trustee, in trust for the benefit of Beneficiary, with power of sale and right of entry and possession, all of the estate, right, title, and interest which Grantor now has or may later acquire in and to the following property (all or any part of such property, or any interest in all or any part of it, as the context may require, is herein referred to as the "**Property**"):

(a) The real property located in Kittitas County, Washington, as more fully described on page 1 of this Deed of Trust (the "**Land**"); together with

(b) All buildings, structures and improvements now located or later to be constructed on the Land (the "**Improvements**") and all building materials, equipment, work in process or other personal property of any kind, whether stored on the Land or elsewhere, which have been or later will be acquired for the purpose of being delivered to, incorporated into or installed in or about the Land or Improvements and all existing and future as-extracted collateral produced from or allocated to the Land, including, all minerals, oil, gas, other hydrocarbons and associated substances, sulphur, nitrogen, carbon dioxide, helium and any other commercially valuable substances which may be in, under or produced from any part of the Land, and all products processed or obtained therefrom, and the proceeds thereof, and all development rights and credits, air rights, water, water courses, water rights (whether riparian, appropriative or otherwise, and whether or not appurtenant) and water stock, easements, rights-of-way, gores or strips of land, and any land lying in the streets, ways, alleys, passages, roads or avenues, open or proposed, in front of or adjoining the Land and Improvements; together with

(c) All easements, rights-of-way or use, rights, strips and gores of land, streets, ways, alleys, passages, sewer rights, water, water courses, water rights and powers, air rights and development rights, and all estates, rights, titles, interests, privileges, liberties, servitudes, tenements, hereditaments and appurtenances of any nature whatsoever, in any way now or hereafter belonging, relating or pertaining to the Land and the Improvements and the reversion and reversions, and remainder and remainders thereof, and all land lying in the bed of any street, road or avenue, opened or proposed, in front of or adjoining the Land, to the center line thereof and all the estates, rights, titles, interests, dower and rights of dower, curtesy and rights of courtesy, property, possession, claim and demand whatsoever, both at law and in equity, of Grantor of, in and to the Land and the Improvements and every part and parcel thereof, with the appurtenances thereto; together with

(d) All articles of personal property (including those specified below) and any software imbedded therein, now owned or hereafter acquired by Grantor and attached to, placed upon for an indefinite term, or used in connection with the Land and/or Improvements, together with all goods and other property that are, or at any time become, so related to the Property that an interest in them arises under real estate law, or they are otherwise a "fixture" under applicable law (each a "**Fixture**," collectively "**Fixtures**"); together with

(e) All existing and future leases, subleases, subtenancies, licenses, occupancy agreements, concessions, and other agreements of any kind relating to the use or occupancy of all or any portion of the Property, whether now in effect or entered into in the future, except for the Ground Lease (each a "**Lease**," collectively, the "**Leases**") relating to the use and enjoyment of all or any part of the Land and Improvements, all amendments, extensions, renewals, or modifications thereof (subject to Beneficiary's right to approve same pursuant to the terms of the Grant Documents), and any and all guaranties of, and security for, lessees' performance under any and all Leases, and all other agreements relating to or made in connection with any of such Leases; together with

(f) All rents (and payments in lieu of rents), royalties, issues, profits, income, proceeds, payments, and revenues of or from the Property, and/or at any time payable under any and all Leases, including all rent loss insurance proceeds, prepaid rents and any and all security deposits received or to be received by Grantor pursuant to any and all Leases, and all rights and benefits accrued, or to accrue, to Grantor under any and all Leases (some or all collectively, as the context may require, "**Rents**"); together with

(g) All goods, materials, supplies, chattels, furniture, fixtures, machinery, apparatus, fittings, equipment, and articles of personal property of every kind and nature whatsoever, including consumable goods, now or hereafter located in or upon the Property or any part thereof, or to be attached to or placed in or on, or used or useable in connection with any present or future use, enjoyment, occupancy or operation of all or any part of the Land and Improvements, whether stored on the Land or elsewhere, including by way of description but without limiting the generality of the foregoing, all computer systems, telephone and telecommunication systems, televisions and television systems, all software embedded within or used in connection with any of the property described above, pumps or pumping plants, tanks, motors, conduits, engines, pipes, ditches and flumes, and also all gas and electrical apparatus (including, but not limited to, all electrical transformers, switches, switch boxes, and equipment boxes), cooking, heating, cooling, air conditioning, sprinkler equipment, lighting, power equipment, ventilation, incineration, refrigeration and plumbing apparatus, fixtures and equipment, screens, storm doors and windows, stoves, wall beds, refrigerators, attached cabinets, partitions, ovens, ranges, disposals, dishwashers, carpeting, plants and shrubbery, ground maintenance equipment, ducts and compressors; together with all building materials, goods and personal property on or off the Property intended to be affixed to or incorporated in the Property but not yet affixed to or incorporated in the Property, all which shall be considered to the fullest extent of the law to be real property for purposes of this Deed of Trust; together with

(h) All rights to the payment of money and all guaranties thereof and judgments therefor, and all accounts, accounts receivable, reserves, deferred payments, refunds of real property and personal property taxes and other refunds, cost savings, payments and deposits, whether now or later to be received from third parties (including all earnest money sales deposits) or deposited by Grantor with third parties (including all utility deposits), warranty rights, contract rights, management contracts, service contracts, construction and architectural contracts, contracts for the purchase and sale of the Property or any part thereof, end-loan or other financing commitments, development and use rights, governmental permits and licenses, applications, architectural and engineering plans, specifications and drawings, as-built drawings, chattel paper, instruments, documents, promissory notes, drafts, letters of credit, letter of credit rights (whether or not the letter of credit is evidenced by a writing), supporting obligations, and general intangibles, including payment intangibles, whether any of the foregoing are tangible or electronic, which arise from or relate to construction on the Land or to any business now or later to be conducted on it, or to the Land and Improvements generally; together with

(i) All insurance policies (and the unearned premiums therefor) and bonds required by the Grant Documents and all proceeds thereof, and all proceeds (including all claims to and demands for them) of the voluntary or involuntary conversion of any of the Land, the Improvements, or the other property described above into cash or liquidated claims, including proceeds of all present and future fire, hazard or casualty insurance policies and all condemnation awards or payments now or later to be made by any public body or decree by any court of competent jurisdiction for any taking or in connection with any condemnation or eminent domain proceeding, and all causes of action and their proceeds for any damage or injury to, or defect in, the Land, the Improvements, or the other property described above or any part of them, or breach of warranty in connection with the construction of the Improvements, including causes of action arising in tort, contract, fraud, misrepresentation, or concealment of a material fact; together with

(j) All books, records, and all recorded data of any kind or nature (regardless of the medium of recording) pertaining to any and all of the property described above, including records relating to tenants under any leases, and the qualification of such tenants, and all certificates, vouchers, and other documents in any way related thereto, and all records relating to the application and allocation of any federal, state, and local tax credits or benefits, including computer-readable memory and any computer hardware or software necessary to access and process such memory (collectively, the "**Books and Records**"); together with

(k) All commercial tort claims Grantor now has or hereafter acquires relating to any of the property described above; together with

(l) All documents, instruments, chattel paper, intangibles, and general intangibles as the foregoing terms are defined in the Uniform Commercial Code, relating to the Property; together with

(m) All products, accounts, and proceeds (cash or non-cash) of, additions, betterments, extensions, accessions and accretions to, substitutions, renewals and replacements for, and changes in any of the property described above, including all proceeds of any voluntary or involuntary disposition or claim respecting any such property (arising out of any judgment, condemnation or award, or otherwise arising) and all supporting obligations ancillary to or arising in connection therewith, general intangibles (including payment intangibles) arising in connection therewith, and all goods, accounts, instruments, documents, promissory notes, chattel paper, deposit accounts, supporting obligations, and general intangibles (including payment intangibles) (whether any of the foregoing are tangible or electronic), wherever located, acquired with cash proceeds of any of the foregoing or its proceeds.; together with

(n) Any and all other rights of Grantor in and to the items set forth in Subsections (a) through (m) above.

AND without limiting any of the other provisions of this Deed of Trust, to the extent permitted by applicable statutes, regulations or ordinances ("**Applicable Law**"), Grantor expressly grants to Beneficiary, as secured party, a security interest in the portion of the Property which is or may be subject to the provisions of the Uniform Commercial Code which are applicable to secured transactions; it being understood and agreed that the Improvements and Fixtures are part and parcel of the Land (the Land, the Improvements and the Fixtures are collectively referred to herein as the "**Real Property**") appropriated to the use thereof and, whether affixed or annexed to the Real Property or not, shall for the purposes of this Deed of Trust be deemed conclusively to be real estate and conveyed hereby

Grantor shall and will warrant and forever defend the above-bargained Property in the quiet and peaceable possession of Trustee, its successors and assigns, against all and every person or persons lawfully claiming or to claim the whole or any part thereof. Grantor agrees that any greater title to the Property hereafter acquired by Grantor during the term hereof shall be subject hereto.

2. **Assignment of Rents**.

(a) Grantor hereby irrevocably absolutely and unconditionally assigns and transfers to Beneficiary all of Grantor's right, title and interest in and to the Leases and the Rents; provided, however, that so long as no event of default has occurred and is continuing under the Grant Documents, Grantor shall have the right under a license granted hereby to collect and receive all Rents as trustee for the benefit of Beneficiary and to apply the amounts so collected first to the payment of costs and expenses associated with the ownership maintenance, operation and leasing of the Property, including, principal, interest and all other amounts required to be paid under the Grant Documents, before using or applying such Rents for any other purpose. If an Event of Default has occurred and is continuing, Grantor's right to collect and receive the Rents under the license granted hereby shall cease and the license shall be revoked automatically and, Beneficiary shall have the sole right, with or without taking possession of the Property, to collect all Rents. The assignment of Rents is intended as security for the Grant pursuant to RCW 7.28.230 and, upon recording of this Deed of Trust, shall immediately perfect the security interest and shall not require any further action by Beneficiary to be perfected as to any subsequent purchaser, mortgagee, or assignee of any interest in the Property. The lien created by this assignment shall, when recorded, be deemed specific, perfected, and choate.

(b) Grantor shall timely perform all of its obligations under the Leases. Grantor represents and warrants that: (i) Grantor has title to and full right to assign presently, absolutely and unconditionally the Leases and Rents; and (ii) no other assignment of any interest in any of the Leases or Rents has been made except pursuant to the Grant Documents.

(c) Except as expressly permitted pursuant to the terms of the Grant Documents, Grantor shall not: (i) enter into any lease of all or any portion of the Property; (ii) amend, modify, terminate or accept a surrender of any Lease; or (iii) collect or accept rent from any tenant of the Property for a period of more than one (1) month in advance. Any of the foregoing acts, if done, in each instance, shall be null and void.

3. **Security Agreement; Fixture Filing.**

(a) This Deed of Trust shall also be considered a security agreement under the Uniform Commercial Code. This Deed of Trust is both a security deed and a "security agreement" within the meaning of the Uniform Commercial Code. The Property includes both real and personal property and all other rights and interests, whether tangible or intangible in nature, of Grantor in the Property. By executing and delivering this Deed of Trust, Grantor hereby grants to Beneficiary, as security for the Obligations (hereinafter defined), a security interest in the Fixtures, the Equipment, the Personal Property and other property constituting the Property to the full extent that the Fixtures, the Equipment, the Personal Property and such other property may be subject to the Uniform Commercial Code (said portion of the Property so subject to the Uniform Commercial Code being called the "Collateral"). Grantor hereby authorizes Beneficiary to file financing statements, continuation statements and financing statement amendments in such form as Beneficiary may require to perfect or continue the perfection of this security interest without the authorization or signature of Grantor. If an Event of Default shall occur and be continuing, Beneficiary, in addition to any other rights and remedies which it may have, shall have and may exercise immediately and without demand, any and all rights and remedies granted to a secured party upon default under the Uniform Commercial Code, including, without limiting the generality of the foregoing, the right to take possession of the Collateral or any part thereof, and to take such other measures as Beneficiary may deem necessary for the care, protection and preservation of the Collateral. Upon request or demand of Beneficiary after the occurrence and during the continuance of an Event of Default, Grantor shall, at its expense, assemble the Collateral and make it available to Beneficiary at a location (at the Land if tangible property) reasonably acceptable to Beneficiary. Grantor shall pay to Beneficiary on demand any and all expenses, including reasonable legal expenses and attorneys' fees, incurred or paid by Beneficiary in protecting its interest in the Collateral and in enforcing its rights hereunder with respect to the Collateral after the occurrence and during the continuance of an Event of Default. Any notice of sale, disposition or other intended action by Beneficiary with respect to the Collateral sent to Grantor in accordance with the provisions hereof at least ten (10) business days prior to such action, shall, except as otherwise provided by Applicable Law, constitute reasonable notice to Grantor. The proceeds of any disposition of the Collateral, or any part thereof, may, except as otherwise required by Applicable Law, be applied by Beneficiary to the payment of the Grant and other Obligations in such priority and proportions as Beneficiary in its discretion shall deem proper.

(b) From the date of its recording, this Deed of Trust shall be effective as a "fixture filing" for the purposes of RCW 62A.9A-502 with respect to all of the Property which is or is to become fixtures (within the meaning of the Uniform Commercial Code). The addresses of Grantor (Debtor) and Beneficiary (Secured Party) are set forth below. This Deed of Trust is to be filed for recording with the Recorder of any county or counties where the Land (including such fixtures) is located. For this purpose, the following information is set forth:

Name and Address of Debtor:	HopeSource 700 E. Mountain View Avenue, #501 Ellensburg, Washington 98926 Attention: Susan Grindle
Name and Address of Secured Party:	City of Ellensburg 501 North Anderson Street

Ellensburg, Washington 92552
Attention: City Manager

This document covers any portion of the Property that now is or later may become a fixture attached to the Land.

Debtor is the record owner of the Property.

4. **Conditions to Grant.** TO HAVE AND TO HOLD the above granted and described Property unto the Trustee and its heirs, successors and assigns, in fee simple forever, for the benefit of Beneficiary and their successors and assigns forever;

PROVIDED ALWAYS, these presents are upon the express condition, that if Grantor has performed all of its obligations pursuant to this Deed of Trust and the other Grant Documents, and no further advances are to be made under the Grant Documents, Beneficiary will provide a satisfaction and cancellation of this Deed of Trust and termination statements for filed financing statements, if any, to Grantor within the time required by Applicable Law. Grantor shall be responsible for the recordation of such cancellation and satisfaction and the payment of any recording and filing costs, subject to any limitations set forth in Applicable Law. Upon the recording of such cancellation and satisfaction and the filing of such termination statements, the absolute assignments set forth in Section 2 shall automatically terminate and become null and void.

5. **Grantor Covenants**. To protect the security of this Deed of Trust, Grantor covenants and agrees:

(a) To keep the Property in good condition and repair; to permit no waste thereof; to complete any building, structure or improvements being built or about to be built thereon; to restore promptly any building, structure, or improvement thereon which may be damaged or destroyed; and to comply with all laws, ordinances, regulations, covenants, conditions and restrictions affecting the Property.

(b) All the covenants, conditions and agreements contained in all and any of the Grant Documents, are hereby made a part of this Deed of Trust to the same extent and with the same force as if fully set forth herein.

(c) Grantor shall obtain and maintain, or cause to be maintained, in full force and effect at all times insurance with respect to Grantor and the Property as required pursuant to the Grant Documents. The amount collected under any insurance policy shall be applied in accordance with Section 6(c) below. 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 in insurance policies then in force shall pass to the purchaser at the foreclosure sale.

(d) To pay before delinquent all lawful taxes and assessments upon the property; and to keep the Property free and clear of all other charges, liens or encumbrances impairing the security of this Deed of Trust.

(e) 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 in any suit brought by Beneficiary to foreclose this Deed of Trust.

(f) 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 hereby and Trustee's and attorney's fees actually incurred, as provided above.

(g) Should Grantor fail to pay when due any taxes, assessments, insurance premiums, liens encumbrances or other charges against the Property hereinabove described Beneficiary may pay the same, and the amount so paid, with interest at the rate set forth in the note secured hereby, shall be added to and become a part of the debt secured in this Deed of Trust.

(h) Grantor shall observe and perform each and every term, covenant and provision to be observed or performed by Grantor pursuant to the Grant Documents and any other agreement or recorded instrument affecting or pertaining to the Property and any amendments, modifications or changes thereto.

(i) Grantor shall not remove or permit to be removed from the Property any Fixtures presently or in the future owned by Grantor (unless such Fixtures have been replaced with similar Fixtures of equal or greater utility and value).

(j) Grantor hereby warrants that (a) Grantor is seized of an indefeasible estate in fee simple in, and warrants the title to, the Property subject only to those matters set forth in Exhibit A attached hereto (the "**Permitted Encumbrances**"); (b) Grantor has the right, full power and lawful authority to grant, convey and assign the same to Beneficiary in the manner and form set forth herein; and (c) this Deed of Trust creates a valid and enforceable first lien on and security title to the Property, subject to Permitted Encumbrances. Grantor hereby covenants that Grantor shall (a) preserve such title and the validity and priority of the lien of this Deed of Trust and shall forever warrant and defend the same to Beneficiary against all lawful claims whatsoever, subject to the Permitted Encumbrances; and (b) execute, acknowledge and deliver all such further documents or assurances as may at any time hereafter be required by Beneficiary to protect fully the lien of this Deed of Trust.

6. **FURTHER ASSURANCES**.

(a) Grantor forthwith upon the execution and delivery of this Deed of Trust and thereafter, from time to time, will cause this Deed of Trust and any of the other Grant Documents conveying, creating or evidencing the security title, liens or security interest hereof upon the Property and each instrument of further assurance to be filed, registered or recorded in such manner and in such places as may be required by any present or future law in order to publish notice of and fully to protect and perfect the security title, liens or security interest hereof upon, and the interest of Beneficiary in, the Property. Grantor will pay all taxes, filing, registration or recording fees, and all expenses incident to the preparation, execution, acknowledgment and/or recording of this Deed of Trust, the other Grant Documents, any note, deed of trust or mortgage supplemental hereto, any Deed of Trust with respect to the Property and any instrument of further assurance, and any modification or amendment of any of the foregoing documents, and all federal, state, county and municipal taxes, duties, imposts, assessments and charges arising out of or in connection with the execution and delivery of this Deed of Trust, any deed of trust or mortgage supplemental hereto, any Deed of Trust with respect to the Property or any instrument of further assurance, and any modification or amendment of any of the foregoing documents, except where prohibited by law so to do, provided that Grantor shall have no liability for taxes paid on the revenue or income of Beneficiary that is derived from the Grant.

(b) Grantor will, at the cost of Grantor, and without expense to Beneficiary, do, execute, acknowledge and deliver all and every such further acts, deeds, conveyances, security deeds, deeds of trust, mortgages, assignments, notices of assignments, transfers and assurances as Beneficiary shall, from time to time, reasonably require, for the better assuring, conveying, assigning, transferring, and confirming unto Beneficiary the property and rights hereby deeded, granted, bargained, sold, conveyed, confirmed, pledged, assigned, warranted and transferred or intended now or hereafter so to be, or which Grantor may be or may hereafter become bound to convey or assign to Beneficiary, or for carrying out the intention or facilitating the performance of the terms of this Deed of Trust or for filing, registering or recording this Deed of Trust, or for complying with all Applicable Law. Grantor hereby irrevocably authorizes Beneficiary, its counsel or its representative, at any time and from time to time, to file financing statements and amendments as Beneficiary may deem necessary, including financing statements and amendments that describe the collateral covered by such financing statements as "all assets of Grantor" or "all personal property of Grantor" or words of similar effect, in order to perfect the security title and interests granted by Grantor under this Deed of Trust. Grantor grants to Beneficiary an irrevocable power of attorney coupled with an interest for the purpose of exercising and perfecting any and all rights and remedies available to Beneficiary at law and in equity, including without limitation such rights and remedies available to Beneficiary pursuant to this Section 5.2.

(c) In the event of any fire or other casualty to the Property or eminent domain proceedings resulting in condemnation of the Property or any part thereof, Grantor shall have the right to rebuild the Property, and to use all available insurance or condemnation proceeds therefore, provided that (i) such proceeds are sufficient to keep the loan in balance and rebuild the Property in a manner that provides adequate security to the Beneficiary for repayment of the loan, or if such proceeds are insufficient to provide adequate security or to keep the loan in balance, then Grantor has funded any deficiency, (ii) Beneficiary shall have the right to approve plans and specifications for any major rebuilding and the right to approve disbursements of insurance or condemnation proceeds for rebuilding under a construction escrow or similar arrangement, and such approval shall not be unreasonably withheld, (iii) the Project can, in Beneficiary's reasonable discretion be rebuilt within 36 months of the casualty or condemnation; and (iv) no material default then exists under the this Deed of Trust, the Affordable Housing Agreement, the Note, or the Covenant, including any validly executed amendments to any of those documents, which are herein incorporated by reference. If Grantor elects to rebuild under this section, Grantor shall diligently pursue such construction and shall ensure that no material default occurs under the Affordable Housing Agreement, the Note, the Deed of Trust, or Covenant during the period of construction. If the casualty or condemnation affects only part of the Property and total rebuilding is infeasible, then such insurance and/or condemnation proceeds may be used for partial rebuilding and partial repayment of the loan in a manner that provides adequate security to the Beneficiary for repayment of the remaining balance of the loan. In the event that the conditions of items (a) through (d) cannot be met, Beneficiary, subject to the rights of any senior lienholders shall be entitled to the entire amount of such insurance or condemnation proceeds or such portion as may be necessary to fully satisfy the obligation secured hereby.

(d) Grantor acknowledges that Beneficiary has examined and relied on the experience of Grantor and its general partners, managers, members, principals and beneficial owners in owning and operating properties such as the Property in agreeing to make the Grant, and will continue to rely on Grantor's ownership of the Property as a means of maintaining the value of the Property as security for the repayment of the Grant and the payment and performance of the other Obligations. Grantor acknowledges that Beneficiary has a valid interest in maintaining the value of the Property so as to ensure that, should there be an Event of Default, Beneficiary can recover the Grant and the other Obligations by a sale of the Property for the benefit of Beneficiary.

(e) Except as may be expressly permitted in the Affordable Housing Agreement, Grantor shall not permit or suffer any Transfer of the Property. Except as may be expressly permitted under the Affordable Housing Agreement, Grantor will not to the extent within Grantor's control permit the Property to become subject to any lien, easement, right of way, roadway (public or private), common area, condominium regime, cooperative housing regime, restrictive covenant, Lease or other matter of any nature that would affect title to the Property, other than the Permitted Encumbrances. Grantor shall give Beneficiary written notice in accordance with the Affordable Housing Agreement of any default under any obligation secured by a Lien. As used herein, the term "**Transfer**" means any direct or indirect sale, transfer, conveyance, mortgage, pledge or assignment of (i) the Property or any part thereof, or any direct legal or beneficial interest therein; or (ii) any ownership interest in Grantor, or any owner of Grantor, direct or indirect.

(f) The Trustee shall reconvey all or any part of the property covered by this Deed of Trust to the person entitled thereto, on written request of the Grantor and the Beneficiary, or upon satisfaction of the obligation secured and written request for reconveyance made by the Beneficiary or the person entitled thereto.

(g) Trustee shall deliver to the purchaser at the sale its deed, without warranty, which shall convey to the purchaser the interest in the Property which Grantor had or had the power to convey at the time of his execution of this Deed of Trust, and such as he 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 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 encumbrances for value.

(h) The power of sale conferred by this Deed of Trust and by the Deed of Trust Act of the State of Washington, now or as hereafter amended, is not an exclusive remedy; Beneficiary may cause this Deed of Trust to be foreclosed as a mortgage.

(i) 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 the Trustee brings such action or proceeding.

(j) This Deed of Trust applies to, inures to the benefit of, and is binding not only on the parties hereto, but on 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.

7. **Events of Default**. Each of the following shall constitute an event of default (each, an "**Event of Default**") hereunder:

(a) default (as defined therein) occurs under the Affordable Housing Agreement;

(b) Grantor fails to promptly perform or comply with any of the obligations set forth in this Deed of Trust, and such failure continues beyond that date which is thirty (30) days after the earlier of (i) the date on which Beneficiary notifies Grantor of such failure or (ii) the date on which Grantor otherwise becomes aware of such failure, provided, however, if such failure cannot be reasonably cured within such thirty (30) day period, Grantor shall have such additional time (not to exceed a total cure period of sixty (60) days) as reasonably necessary to cure such failure provided that Grantor commences such cure within such thirty (30) day period and diligently pursues such cure thereafter; or

(c) A default or event of default occurs under any other Grant Document other than the Affordable Housing Agreement, and such default or event of default continues beyond the expiration of the applicable grace or notice and cure period therefor, if any, set forth in such Grant Document (without duplication).

8. **Remedies.** If an Event of Default shall have occurred and be continuing, Beneficiary may take any of the following actions:

(a) Acceleration. Beneficiary may declare the entire amount of the Grant immediately due and payable, without presentment, demand, notice of any kind, protest or notice of protest, all of which are expressly waived, notwithstanding anything to the contrary contained in any of the Grant Documents.

(b) Possession. Beneficiary may enter upon and take possession of the Property, with or without legal action, lease the Property, collect therefrom all rentals and, after deducting all costs of collection and administration expense, apply the net rentals to any one or more of the following items in such manner and in such order of priority as provided in the Affordable Housing Agreement or otherwise agreed to in writing with the Beneficiary: the payment of any sums due under any prior lien, taxes, water and sewer rents, charges and claims, insurance premiums and all other carrying charges, to the maintenance, repair or restoration of the Property, or on account of the Obligations. Beneficiary is given full authority to do any act which Grantor could do in connection with the management and operation of the Property. This covenant is effective either with or without any action brought to foreclose this Deed of Trust and without applying for a receiver of such rents. In addition to the foregoing, upon the occurrence of an Event of Default, Grantor shall pay monthly in advance to Beneficiary or to any receiver appointed to collect said rents the fair and reasonable rental value for Grantor's use and occupation of the Property, and upon default in any such payment Grantor shall vacate and surrender the possession of the Property to Beneficiary or to such receiver. If Grantor does not vacate and surrender the Property then Grantor may be evicted by summary proceedings.

(c) Foreclosure and Sale. Beneficiary may sell the Property or any part thereof at one or more public sales before the door of the courthouse of the County in which the Property or any part thereof is located, without notice except as otherwise set forth herein or in the other Grant Documents or required by Applicable Law, to the highest bidder for cash, in order to pay the Grant, and all expenses of sale and of all proceedings in connection therewith, including reasonable attorneys' fees, after advertising the time, place and terms of sale once a week for four (4) weeks immediately preceding such sale (but without regard to the number of days) in a newspaper in which sheriff's sales are advertised in said County. At any such public sale, Beneficiary (or any person on behalf of Beneficiary) may bid and purchase at such sale on behalf of Beneficiary (including itself), and Beneficiary (or, as applicable, its designee) shall have the right to credit upon the amount of Beneficiary's (or, as applicable, its designee's) successful bid, to the extent necessary to satisfy such bid, all or any part of the Grant, in such manner and order as Beneficiary may elect in its sole discretion. Upon any such sale, Beneficiary may execute and deliver to the purchaser at such sale a conveyance of the Property or any part thereof in fee simple, with warranties of title subject to Permitted Exceptions, and to this end Grantor hereby constitutes and appoints Beneficiary its agent and attorney-in-fact to make such sale and conveyance, and thereby to divest Grantor of all right, title and equity that Grantor may have in and to the Property and to vest the same in the purchaser at such sale; and all the acts and doings of said agent and attorney-in-fact are hereby ratified and confirmed and any recitals in said conveyance as to facts essential to a valid sale shall be binding upon Grantor. The aforesaid power of sale and agency hereby granted are coupled with an interest and are irrevocable, are granted as cumulative of the other remedies provided hereby or by law for collection of the Grant, and shall not be exhausted by one exercise thereof but may be exercised until full payment of all of the Grant. The unpaid balance of any judgment shall bear interest at the statutory rate provided for judgments. In the event of any sale under this Deed of Trust by virtue of the exercise of the powers herein granted, or pursuant to any order in any judicial proceedings or otherwise, the Property may be sold as an entirety or in separate parcels and in such manner or order as Beneficiary in its sole discretion may elect, and one or more exercises of the powers herein granted shall not extinguish nor exhaust such powers, until the entire Property is sold or the Obligations are paid in full.

(d) Appointment of Receiver. Beneficiary may petition a court of competent jurisdiction to appoint a receiver of the Property. Such appointment may be made either before or after sale, without notice, without regard to the solvency or insolvency of Grantor at the time of application for such receiver, without regard to the then value of the Property or whether the Property shall be then occupied as a homestead or not, and without regard to whether Grantor has committed waste or allowed deterioration of the Property, and Beneficiary or any agent of Beneficiary may be appointed as such receiver. Grantor hereby agrees that Beneficiary has a special interest in the Property and absent the appointment of such receiver the Property may suffer waste and deterioration and Grantor further agrees that it shall not contest the appointment of a receiver and hereby so stipulates to such appointment pursuant to this paragraph. Such receiver shall have the power to perform all of the acts permitted Beneficiary pursuant to sub-section (b) above and such other powers which may be necessary or customary in such cases for the protection, possession, control, management and operation of the Property during such period.

(e) Rights as a Secured Party. Beneficiary shall have, in addition to other rights and remedies available at law or in equity, the rights and remedies of a secured party under the Uniform Commercial Code. Beneficiary may elect to foreclose such of the Property as then comprise Fixtures pursuant either to the law applicable to foreclosure of an interest in real estate or to that applicable to personal property under the Uniform Commercial Code. To the extent permitted by law, Grantor waives the right to any stay of execution and the benefit of all exemption laws now or hereafter in effect.

(f) Excess Monies. Beneficiary may apply on account of the Obligations any unexpended monies still retained by Beneficiary or any Beneficiary that were paid by Grantor to Beneficiary: (a) for the payment of, or as security for the payment of taxes, assessments or other governmental charges, insurance premiums, or any other charges; or (b) to secure the performance of some act by Grantor.

(g) Collection of Rents. Upon the occurrence of an Event of Default, the license granted to Grantor to collect the Rents shall be automatically and immediately revoked, without further notice to or demand upon Grantor. Beneficiary may, but shall not be obligated to, perform any or all obligations of the landlord under any or all of the Leases, and Beneficiary may, but shall not be obligated to, exercise and enforce any or all of Grantor's rights under the Leases. Without limitation to the generality of the foregoing, Beneficiary may notify the tenants under the Leases that all Rents are to be paid to Beneficiary, and following such notice all Rents shall be paid directly to Beneficiary and not to Grantor or any other person other than as directed by Beneficiary, it being understood that a demand by Beneficiary on any tenant under the Leases for the payment of Rent shall be sufficient to warrant payment by such tenant of Rent to Beneficiary without the necessity of further consent by Grantor. Grantor hereby irrevocably authorizes and directs the tenants under the Leases to pay all Rents to Beneficiary instead of to Grantor, upon receipt of written notice from Beneficiary, without the necessity of any inquiry of Grantor and without the necessity of determining the existence or non-existence of an Event of Default. Grantor hereby appoints Beneficiary as Grantor's attorney-in-fact with full power of substitution, which appointment shall be effective upon the occurrence of an Event of Default and is coupled with an interest and is irrevocable prior to the full and final payment and performance of the Obligations, in Grantor's name or in Beneficiary's name: (a) to endorse all checks and other instruments received in payment of Rents and to deposit the same in any account selected by Beneficiary; (b) to give receipts and releases in relation thereto; (c) to institute, prosecute and/or settle actions for the recovery of Rents; (d) to modify the terms of any Leases including terms relating to the Rents payable thereunder; (e) to cancel any Leases; (f) to enter into new Leases; and (g) to do all other acts and things with respect to the Leases and Rents which Beneficiary may deem necessary or desirable to protect the security for the Obligations. Any Rents received shall be applied in accordance with the terms of sub-section (b), above.

(h) Other Remedies. Beneficiary shall have the right from time to time to protect, exercise and enforce any legal or equitable remedy against Grantor provided under the Grant Documents or by

Applicable Law. Beneficiary shall have the right, in the name and on behalf of Grantor during the continuance of an Event of Default, to appear in and defend any action or proceeding brought with respect to the Property and to commence any action or proceeding to protect the interest of Beneficiary in the Property. Beneficiary shall also have the right from time to time to bring an appropriate action to recover any sums required to be paid by Grantor under the terms of this Deed of Trust, as they become due, without regard to whether or not any other Obligations shall be due, and without prejudice to the right of Beneficiary thereafter to bring an action of foreclosure, or any other action, for any default by Grantor existing at the time the earlier action was commenced. In addition, Beneficiary shall have the right to set-off all or any part of any amount due by Grantor to Beneficiary under any of the Obligations, against any indebtedness, liabilities or obligations owing by Beneficiary in any capacity to Grantor, including any obligation to disburse to Grantor any funds or other property on deposit with or otherwise in the possession, control or custody of Beneficiary.

(i) Waiver of Grantor's Rights. BY EXECUTION OF THIS DEED OF TRUST, GRANTOR EXPRESSLY: (a) ACKNOWLEDGES THE RIGHT OF TRUSTEE TO ACCELERATE THE LIABILITIES SECURED BY THIS DEED OF TRUST AND THE POWER OF SALE GIVEN HEREIN TO TRUSTEE TO SELL THE PROPERTY BY NONJUDICIAL FORECLOSURE UPON AND DURING THE CONTINUANCE OF AN EVENT OF DEFAULT BY GRANTOR WITHOUT ANY JUDICIAL HEARING AND WITHOUT ANY NOTICE OTHER THAN SUCH NOTICE (IF ANY) AS IS SPECIFICALLY REQUIRED TO BE GIVEN UNDER THE PROVISIONS OF THIS DEED OF TRUST OR OTHER GRANT DOCUMENTS; (b) WAIVES ANY AND ALL RIGHTS WHICH GRANTOR MAY HAVE UNDER THE CONSTITUTION OF THE UNITED STATES OF AMERICA (INCLUDING, WITHOUT LIMITATION, THE FIFTH AND FOURTEENTH AMENDMENTS THEREOF), OR THE VARIOUS PROVISIONS OF THE CONSTITUTIONS FOR THE SEVERAL STATES, OR BY REASON OF ANY OTHER APPLICABLE LAW, (i) TO NOTICE AND TO JUDICIAL HEARING PRIOR TO THE EXERCISE BY TRUSTEE OF ANY RIGHT OR REMEDY HEREIN PROVIDED TO TRUSTEE, EXCEPT SUCH NOTICE (IF ANY) AS IS SPECIFICALLY REQUIRED TO BE GIVEN UNDER THE PROVISIONS OF THIS DEED OF TRUST OR ANOTHER GRANT DOCUMENT AND (ii) CONCERNING THE APPLICATION, RIGHTS OR BENEFITS OF ANY STATUTE OF LIMITATION OR ANY MORATORIUM, REINSTATEMENT, MARSHALLING, FORBEARANCE, APPRAISEMENT, VALUATION, STAY, EXTENSION, HOMESTEAD, EXEMPTION OR REDEMPTION LAWS; (c) ACKNOWLEDGES THAT GRANTOR HAS READ THIS DEED OF TRUST AND ANY AND ALL QUESTIONS OF GRANTOR REGARDING THE LEGAL EFFECT OF THIS DEED OF TRUST AND ITS PROVISIONS HAVE BEEN EXPLAINED FULLY TO GRANTOR, AND GRANTOR HAS CONSULTED WITH COUNSEL OF GRANTOR'S CHOICE PRIOR TO EXECUTING THIS DEED OF TRUST; AND (d) ACKNOWLEDGES THAT ALL WAIVERS OF THE AFORESAID RIGHTS OF GRANTOR HAVE BEEN MADE KNOWINGLY, INTENTIONALLY AND WILLINGLY BY GRANTOR AS PART OF A BARGAINED FOR TRANSACTION AND THAT THIS DEED OF TRUST IS VALID AND ENFORCEABLE BY TRUSTEE AGAINST GRANTOR IN ACCORDANCE WITH ALL THE TERMS AND CONDITIONS HEREOF.

9. **Right to Cure Defaults**. Upon the occurrence and during the continuance of any Event of Default, Beneficiary may, but without any obligation to do so and without notice to or demand on Grantor and without releasing Grantor from any obligation hereunder, remedy such Event of Default in such manner and to such extent as Beneficiary may deem necessary to protect the security hereof. Beneficiary is authorized to enter upon the Property for such purposes, or appear in, defend, or bring any action or proceeding to protect its interest in the Property or to foreclose this Deed of Trust or collect the Obligations, and the cost and expense thereof actually incurred (including reasonable attorneys' fees to the extent permitted by law), with interest as provided in this Section 7.3, shall constitute a portion of the Obligations and shall be due and payable to Beneficiary upon demand. All such costs and expenses incurred by Beneficiary in remedying such Event of Default or in appearing in, defending, or bringing any such action

or proceeding shall bear interest at the Default Rate, for the period beginning on the first day after notice from Beneficiary that such cost or expense was incurred and continuing until the date of payment to Beneficiary. All such costs and expenses incurred by Beneficiary together with interest thereon at the Default Rate shall be deemed to constitute a portion of the Obligations and be secured by this Deed of Trust and the other Grant Documents and shall be immediately due and payable upon demand by Beneficiary therefor.

10. **Other Rights, Etc.** The failure of Beneficiary to insist upon strict performance of any term hereof shall not be deemed to be a waiver of any term of this Deed of Trust. Grantor shall not be relieved of Grantor's obligations hereunder by reason of (i) the failure of Beneficiary to comply with any request of Grantor or any guarantor or indemnitor with respect to the Grant to take any action to foreclose this Deed of Trust or otherwise enforce any of the provisions hereof or of the other Grant Documents, (ii) the release, regardless of consideration, of the whole or any part of the Property, or of any person liable for the Obligations or any portion thereof, or (iii) any agreement or stipulation by Beneficiary extending the time of payment or otherwise modifying or supplementing the terms of, this Deed of Trust or the other Grant Documents.

It is agreed that the risk of loss or damage to the Property is on Grantor, and Beneficiary shall have no liability whatsoever for any decline in value of the Property, for failure to maintain the insurance policies, or for failure to determine whether insurance in force is adequate as to the amount of risks insured. Possession by Beneficiary shall not be deemed an election of judicial relief, if any such possession is requested or obtained, with respect to any Property or collateral not in Beneficiary's possession.

Beneficiary may resort for the payment and performance of the Obligations (including, but not limited to, the payment of the Grant) to any other security held by Beneficiary in such order and manner as Beneficiary, in its discretion, may elect. Beneficiary may take action to recover the Grant, or any portion thereof, or to enforce the other Obligations or any covenant hereof without prejudice to the right of Beneficiary thereafter to foreclose this Deed of Trust. The rights of Beneficiary under this Deed of Trust shall be separate, distinct and cumulative and none shall be given effect to the exclusion of the others. No act of Beneficiary shall be construed as an election to proceed under any one provision herein to the exclusion of any other provision. Beneficiary shall not be limited exclusively to the rights and remedies herein stated but shall be entitled to every right and remedy now or hereafter afforded at law or in equity.

11. **Additional Provisions**.

(a) Remedies Cumulative. The rights and remedies of Beneficiary as provided in this Deed of Trust or in any other Grant Document shall be cumulative and concurrent, may be pursued separately, successively or together, may be exercised as often as occasion therefor shall arise, and shall be in addition to any other rights or remedies conferred upon Beneficiary at law or in equity. The failure, at any one or more times, of Beneficiary to assert the right to declare the Obligations due, grant any extension of time for payment of the Obligations, take other or additional security for the payment thereof, release any security, change any of the terms of the Grant Documents, or waive or fail to exercise any right or remedy under any Grant Document shall not in any way affect this Deed of Trust or the rights of Beneficiary.

(b) No Implied Waiver. Beneficiary shall not be deemed to have modified or waived any of its rights or remedies hereunder unless such modification or waiver is in writing and signed by Beneficiary, and then only to the extent specifically set forth therein. A waiver in one event shall not be construed as continuing or as a waiver of or bar to such right or remedy with respect to a subsequent event.

(c) No Warranty by Beneficiary. By inspecting the Property or by accepting or approving anything required to be observed, performed or fulfilled by Grantor or to be given to Beneficiary pursuant to this Deed of Trust or any of the other Grant Documents, Beneficiary shall not be deemed to have warranted or represented the condition, sufficiency, legality, effectiveness or legal effect of the same, and such acceptance or approval shall not constitute any warranty or representation with respect thereto by Beneficiary.

(d) Partial Invalidity. The invalidity or unenforceability of any one or more provisions of this Deed of Trust shall not render any other provision invalid or unenforceable. In lieu of any invalid or unenforceable provision, there shall be added automatically a valid and enforceable provision as similar in terms to such invalid or unenforceable provision as may be possible.

(e) Binding Effect. The covenants, conditions, waivers, releases and agreements contained in this Deed of Trust shall bind, and the benefits thereof shall inure to, the parties hereto and their respective heirs, executors, administrators, successors and assigns and are intended and shall be held to be real covenants running with the land; provided, however, that this Deed of Trust cannot be assigned by Grantor without the prior written consent of Beneficiary, and any such assignment or attempted assignment by Grantor shall be void and of no effect with respect to Beneficiary.

(f) Modifications. This Deed of Trust may not be supplemented, extended, modified or terminated except by an agreement in writing signed by the Grantor and Beneficiary, with such consent of the Beneficiary (if any) required by the Grant Documents. No course of dealing or conduct by or among Beneficiary and Grantor shall be effective to amend, modify or change any provisions of this Deed of Trust or the other Grant Documents.

(g) Commercial Loan. Grantor represents and warrants that the loans or other financial accommodations secured by this Deed of Trust were obtained solely for the purpose of carrying on or acquiring a business or commercial investment and not for residential, consumer or household purposes.

(h) Governing Law. The provisions of this Deed of Trust regarding the creation, perfection and enforcement of the liens and security interests herein granted shall be governed by and construed under the laws of the state in which the Property is located. All other provisions of this Deed of Trust shall be governed by the laws of the State of Washington.

(i) Joint and Several Liability. If Grantor consists of more than one person or entity, the word "Grantor" shall mean each of them and their liability shall be joint and several.

(j) Substitution of Trustee. Trustee may resign at any time by giving notice thereof to Beneficiary as provided by law. Beneficiary may, from time to time, by instrument in writing, substitute a successor to any Trustee named herein or acting hereunder in the manner provided by law. Such writing, upon recordation, shall be conclusive proof of proper substitution of such successor Trustee, who shall, without conveyance from the predecessor Trustee, succeed to all its title. Beneficiary shall at any time have the irrevocable right to remove the Trustee herein named without notice or cause and to appoint his successor by an instrument in writing, duly acknowledged, in such form as to entitle such written instrument to record in Washington, and in the event of the death or resignation of the Trustee herein named, Beneficiary shall have the right to appoint his successor by such written instrument, and any Trustee so appointed shall be vested with the title to the Property hereinbefore described, and shall possess all the powers, duties and obligations herein conferred on the Trustee in the same manner and to the same extent as though he were named herein as Trustee. Any oath or bond by the Trustee is hereby waived

(k) ORAL AGREEMENTS. 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. RCW 19.36.140.

(l) Fixture Filing. To the extent that any Property constitutes a fixture, this Deed of Trust will serve as a fixture filing pursuant to the Uniform Commercial Code.

(m) Other Purposes. The Grant is not being made for personal, family or household purposes as provided in RCW 19.52.080.

(n) *Power of Sale*.

i. If an Event of Default occurs and Beneficiary so requests, Trustee shall sell the Property in accordance with the Deed of Trust Act of the State of Washington (RCW Chapter 61.24 as existing now or hereafter amended) at public auction to the highest bidder. Any person, except Trustee, may bid at the Trustee's sale. Trustee shall apply the proceeds of the sale as follows: (i) to the expenses of sale, including Trustee's fees and attorneys' fees, to the extent that such trustee's fees and charges do not, in the aggregate, exceed the amount which would, by the superior court of the county in which the trustee's sale occurred, have been deemed a reasonable attorney's fee, had this instrument been foreclosed as a mortgage in a non-contested action in that court; (ii) to the amount of the Grant and all other indebtedness secured by this Deed of Trust; and (iii) the surplus, if any, less the clerk's filing fee, shall be deposited, together with written notice of the amount of the surplus, a copy of the notice of trustee's sale, and an affidavit of mailing as provided in RCW 61.24.080(3), with the clerk of the superior court of the county in which the sale took place. The Trustee shall deliver to the purchaser at the sale its deed, without warranty, which shall convey to the purchaser the interest in the Property which Grantor had or had the power to convey at the time of its execution of this Deed of Trust and such as it may have acquired thereafter. The Trustee's deed shall recite the facts showing that the sale was conducted in compliance with all the requirements of the law and of this Deed of Trust, which recital shall be prime facie evidence that such compliance and conclusive evidence thereof in favor of bona fide purchasers and encumbrancers for value. The power of sale conferred by this Deed of Trust is not an exclusive remedy, and when not exercised, Beneficiary may foreclose this Deed of Trust as a mortgage.

ii. Beneficiary shall have the right to proceed with respect to the Personal Property in accordance with Beneficiary's rights and remedies with respect to real property or sell the personal property separately and without regard to the remainder of the Property in accordance with Beneficiary's rights and remedies provided by the Uniform Commercial Code, as well as other rights and remedies available at law and equity.

iii. Upon the occurrence and continuation of an Event of Default, Beneficiary is authorized, either by itself or its agent, to be appointed by it for the purpose, or by a receiver appointed by a court of competent jurisdiction, to enter into and upon and take hold and possession of any portion or all of the Property, both real and personal, and exclude Grantor and all other persons therefrom; to operate and manage the Property and rent and lease the same; to perform such reasonable acts of repair and protection as may be reasonably necessary or proper to conserve the value thereof; and collect any Rents for the benefit and protection of Beneficiary, and from time to time apply or accumulate such Rents in such order and manner as Beneficiary or such receiver, in its sole discretion shall consider advisable to or upon the following: expenses of receivership, if any; the costs of upkeep, maintenance, repair and/or operation of the Property; the repayment of any sums theretofore, or thereafter advanced pursuant to this Deed of Trust, the interest then due or to become due upon the Grant secured hereby; the taxes and assessments upon the Property then due or next to become due; or upon the unpaid principal of such indebtedness. The collection or receipt of Rents by Beneficiary, its agent or receiver after notice of default and notice of sale shall not affect or impair such default of notices or any sale proceedings predicated thereon. Any Rents in possession of Beneficiary's agents or receiver at the time of sale and not theretofore applied as herein provided shall be applied in the same manner and for the same purposes as the proceeds of sale. Neither Trustee nor Beneficiary shall be under any obligation to make any of the payments or do any of the acts referred to in this paragraph, and any actions referred to in this paragraph may be taken by Beneficiary regardless of whether any notice of default or notice of sale has been given hereunder and without regard to the adequacy of the security for the Grant evidenced by the Affordable Housing Agreement. Nothing herein shall require Beneficiary, debtor or receiver appointed to collect any Rents; however, Beneficiary shall be entitled to such appointment at its options in accordance with this 9.12(iii).

iv. The Property, real, personal or mixed, may be sold as an entirety or in parcels by one sale or by several sales held at one time or at different times, all as Trustee or Beneficiary, in their unrestricted discretion, may elect. Grantor, for and on behalf of itself and all persons including by, through or under Grantor, waives any and all right to have the Property marshalled upon any foreclosure sale, and agrees that upon foreclosure, the Property may be sold as an entirety and not in parcels.

v. Upon the occurrence and continuation of an Event of Default, Beneficiary, separately or in an action to foreclose this Deed of Trust, shall be entitled without notice and without regard of the adequacy of any security for the Grant, the absence of waste or deterioration of the Property or other arguments based on equity, to the appointment of a receiver of the Rents of the Property who shall have, in addition to all the rights and powers customarily given to and exercised by such receiver, all the rights and powers granted to Beneficiary by the covenants herein. Once appointed, at Beneficiary's option, such receiver shall remain in place until the default is cured.

vi. Whenever this Deed of Trust requires that amounts payable by a third party be paid directly to Beneficiary (for example, insurance proceeds and proceeds of claims of loss or damage to the Property), Beneficiary may enforce such rights with a preliminary injunction or temporary restraining order. Grantor agrees that irreparable harm may resolve if such payments are not made directly to Beneficiary. Grantor agrees not to oppose such a motion for injunction or restraining order provided the arrangements are made to deposit such sums in a third party depository.

WARNING

Unless you provide us with evidence of the insurance coverage as required by our contract, we may purchase insurance at your expense to protect our interest. This insurance may, but need not, also protect your interest. If the collateral becomes damaged, the coverage we purchase may not pay any claim you make or any claim made against you. You may later cancel this coverage by providing evidence that you have obtained property coverage elsewhere.

You are responsible for the cost of any insurance purchased by us. The cost of this insurance may be added to your contract. If the cost is added to your contract, the interest rate on the underlying contract will apply to this added amount. The effective date of coverage may be the date your prior coverage lapsed or the date you failed to provide proof of coverage.

The coverage we purchase may be considerably more expensive than insurance you can obtain on your own and may not satisfy any need for property damage coverage or any mandatory liability insurance requirements imposed by applicable law.

[*Remainder of Page Intentionally Left Blank]*

IN WITNESS WHEREOF, Grantor, intending to be legally bound, has duly executed and delivered this Deed of Trust under seal as of the day and year first above written

HOPESOURECE,
a Washington nonprofit corporation

By: ______________________
Name: ___________________
Title: ____________________

STATE OF WASHINGTON)
) ss.
COUNTY OF KITTITAS)

On this ______ day of ________________, 202_, before me personally appeared ________________, to me known to be the ___________________ of HopeSource, that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said party, for the uses and purposes therein mentioned, and on oath stated that he/she was authorized to execute said instrument.

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

____
Notary Public
Print Name______________________________
My commission expires __________________________

(Use this space for notarial stamp/seal)

Exhibit A

Permitted Encumbrances

[TO BE ATTACHED]