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B: 1459 P: 1826 Fee \$40.00

Carri R. Jeffries, Iron County Recorder - Page 1 of 15

10/04/2019 02:15:06 PM By: COTTONWOOD TITLE INSURANCE AGENCY, INC.

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

Lanre A. Popoola, Esq.
Ballard Spahr LLP
1909 K Street, NW
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Washington, DC 20006

110692-DTF

B-1196-0040-0000

**DELIVERY ASSURANCE FEE MULTIFAMILY DEED OF TRUST,
SECURITY AGREEMENT AND FIXTURE FILING**

(UTAH)

**DELIVERY ASSURANCE FEE
MULTIFAMILY DEED OF TRUST,
SECURITY AGREEMENT AND
FIXTURE FILING**

THIS DELIVERY ASSURANCE FEE MULTIFAMILY DEED OF TRUST, SECURITY AGREEMENT AND FIXTURE FILING (the "**Instrument**") is dated as of the 4th day of October, 2019 from **NORTHWEST SANDSTONE, LLC**, an Idaho limited liability company, having an address at 210 W. Mallard Drive, Ste. A, Boise, ID 83706 ("**Borrower**" or "**Grantor**"), to **COTTONWOOD TITLE INSURANCE AGENCY, INC.**, as trustee, having an address at 1996 East 6400 South, Suite 120, Salt Lake City, UT 84121 ("**Trustee**" or "**Grantee**"), for the benefit of **THE COMMUNITY DEVELOPMENT TRUST, LP**, a Delaware limited partnership, having an address at 1350 Broadway, Suite 700, New York, New York 10018 ("**Lender**" or "**Grantee**").

Borrower, in consideration of the Indebtedness and the trust created by this Instrument, irrevocably grants, conveys and assigns to Trustee, in trust, with power of sale, the Mortgaged Property in the County of Iron, State of Utah and described in Exhibit A attached to this Instrument.

TO SECURE TO LENDER the repayment of the Indebtedness evidenced by Borrower's Promissory Note (Delivery Assurance Fee) payable to Lender, dated as of the date of this Instrument, and maturing on the Closing Date and all renewals, extensions and modifications of the Indebtedness, the payment of all sums advanced by or on behalf of Lender to protect the security of this Instrument under Section 5 hereof, and the performance of the covenants and agreements of Borrower contained in the Loan Documents.

Borrower represents and warrants that Borrower is lawfully seized of the Mortgaged Property and has the right, power and authority to grant, convey and assign the Mortgaged Property, and that the Mortgaged Property is unencumbered, except for the Permitted Liens. Borrower covenants that Borrower will warrant and defend generally the title to the Mortgaged Property against all claims and demands, subject to any easements, restrictions and other matters listed in a schedule of exceptions to coverage in any title insurance report delivered to Lender contemporaneously with the execution and recordation of this Instrument.

Covenants. Borrower and Lender covenant and agree as follows:

DEFINITIONS. The following terms, when used in this Instrument (including when used in the above recitals), shall have the following meanings:

- (a) "**Borrower**" means all persons or entities identified as "Borrower" in the first paragraph of this Instrument, together with their successors and assigns.
- (b) "**Closing Date**" means the Expiration Date as defined in the Note.
- (c) "**Event of Default**" means the occurrence of any event listed in Section

7.

(d) **“Fixtures”** means all property which is so attached to the Land or the Improvements as to constitute a fixture under applicable law.

(e) **“Forward Commitment”** means that certain Forward Commitment (as defined in the Note).

(f) **[Reserved]**

(g) **[Reserved]**

(h) **“Improvements”** means the buildings, structures, improvements, and alterations now constructed or at any time in the future constructed or placed upon the Land, including any future replacements and additions.

(i) **“Indebtedness”** means the maximum principal of, interest on, and all other amounts due at any time under, the Note, this Instrument or any other Loan Document, including prepayment premiums, late charges, default interest, and advances as provided in Section 5 to protect the security of this Instrument.

(j) **“Key Principal”** means the person or persons identified as such in the Forward Commitment.

(k) **“Land”** means the land described in Exhibit A.

(l) **[Reserved]**

(m) **“Lender”** means the entity identified as “Lender” in the first paragraph of this Instrument and its successors and assigns, or any subsequent holder of the Note.

(n) **“Loan Documents”** means the Note, the Forward Commitment, this Instrument and any other documents now or in the future executed by Borrower in connection with the Note, as such documents may be amended from time to time.

(o) **“Mortgaged Property”** means all of Borrower’s present and future right, title and interest in and to all of the following:

The Land; the Fixtures; the Personalty; all current and future rights, including air rights, development rights, zoning rights and other similar rights or interests, easements, tenements, rights-of-way, strips and gores of land, streets, alleys, roads, sewer rights, waters, watercourses, and appurtenances related to or benefitting the Land or the Improvements, or both, and all rights-of-way, streets, alleys and roads which may have been or may in the future be vacated.

(p) **“Note”** means the Promissory Note (Delivery Assurance Fee) described on page 1 of this Instrument, and all schedules, riders, allonges and addenda, as such Promissory Note may be amended from time to time.

(q) **"Permitted Liens"** means each and all of those liens granted in connection with the loan(s) listed on Exhibit B attached hereto.

(r) **"Personalty"** means all furniture, furnishings, equipment, machinery, building materials, appliances, goods, supplies, tools, books, records (whether in written or electronic form), computer equipment (hardware and software) and other tangible personal property (other than Fixtures), which are used now or in the future in connection with the ownership, management or operation of the Land or the Improvements or are located on the Land or in the Improvements, and any operating agreements relating to the Land or the Improvements, and any surveys, plans and specifications and contracts for architectural, engineering and construction services relating to the Land or the Improvements.

(s) **"Senior Debt"** means the construction and/or permanent mortgage loans more particularly described on Exhibit B attached hereto.

(t) **"Senior Debt Documents"** means any and all loan documents that evidence or secure the Senior Debt.

(u) **"Senior Lender"** means, individually and collectively, the holder of any promissory note(s) evidencing the Senior Debt.

2. **PAYMENT OF INDEBTEDNESS; PERFORMANCE UNDER LOAN DOCUMENTS.** Borrower shall pay the Indebtedness when due in accordance with the terms of the Note and the other Loan Documents and shall perform, observe and comply with all other provisions of the Note and the other Loan Documents.

3. **EXCULPATION.** Borrower's personal liability for payment of the Indebtedness and for performance of the other obligations to be performed by it under this Instrument is limited in the manner, and to the extent, provided in the Note.

4. **APPLICATION OF PAYMENTS.** If at any time Lender receives, from Borrower or otherwise, any amount applicable to the Indebtedness which is less than all amounts due and payable at such time, then Lender may apply that payment to amounts then due and payable in any manner and in any order determined by Lender, in Lender's discretion. Neither Lender's acceptance of an amount which is less than all amounts then due and payable nor Lender's application of such payment in the manner authorized shall constitute or be deemed to constitute either a waiver of the unpaid amounts or an accord and satisfaction. Notwithstanding the application of any such amount to the Indebtedness, Borrower's obligations under this Instrument and the Note shall remain unchanged.

5. **PROTECTION OF LENDER'S SECURITY.**

(a) If Borrower fails to perform any of its obligations under this Instrument or any other Loan Document, or if any action or proceeding is commenced which purports to affect the Mortgaged Property, Lender's security or Lender's rights under this Instrument; including eminent domain, insolvency, code enforcement, civil or criminal forfeiture, enforcement of laws, fraudulent conveyance or reorganizations or proceedings involving a bankrupt or decedent, then Lender at Lender's option may make such appearances, disburse such sums and take such

actions as Lender reasonably deems necessary to perform such obligations of Borrower and to protect Lender's interest, including (1) payment of fees and out-of-pocket expenses of attorneys, accountants, inspectors and consultants, and (2) entry upon the Mortgaged Property to make repairs or secure the Mortgaged Property.

(b) Any amounts disbursed by Lender under this Section 5, or under any other provision of this Instrument that treats such disbursement as being made under this Section 5, shall be added to, and become part of, the principal component of the indebtedness, shall be immediately due and payable and shall bear interest from the date of disbursement until paid at the "Default Rate", as defined in the Note.

(c) Nothing in this Section 5 shall require Lender to incur any expense or take any action.

6. **LIENS; ENCUMBRANCES.** Borrower acknowledges that the grant, creation or existence of any mortgage, deed of trust, deed to secure debt, security interest or other lien or encumbrance (a "Lien") on the Mortgaged Property (other than the lien of this Instrument, standard utility easements, any other matter listed in a schedule of exceptions to coverage in any title insurance report delivered to Lender contemporaneously with the execution and recordation of this Instrument and any liens granted in connection with the Permitted Liens) or on certain ownership interests in Borrower, whether voluntary, involuntary or by operation of law, and whether or not such Lien has priority over the lien of this Instrument, constitutes an Event of Default.

7. **EVENTS OF DEFAULT.** The occurrence of any one or more of the following shall constitute an Event of Default under this Instrument:

(a) any failure by Borrower to pay or deposit when due any amount required by the Note, this Instrument or any other Loan Document;

(b) fraud or material misrepresentation or material omission by Borrower, or any of its officers, directors, trustees, general partners or managers, Key Principal or any guarantor in connection with (A) the application for or creation of the Indebtedness, (B) any financial statement, rent roll, or other report or information provided to Lender during the term of the Indebtedness, or (C) the Forward Commitment;

(c) the commencement of a forfeiture action or proceeding, whether civil or criminal, which, in Lender's reasonable judgment, could result in a forfeiture of the Mortgaged Property or otherwise materially impair the lien created by this Instrument or Lender's interest in the Mortgaged Property; and

(d) any failure by Borrower to perform any of its obligations under this Instrument (other than those specified in Sections 7(a) through 7(c)) or any other Loan Document, as and when required, which continues for a period of 30 days after notice of such failure by Lender to Borrower, but no such notice or grace period shall apply in the case of any such failure which could, in Lender's judgment, absent immediate exercise by Lender of a right or remedy under this Instrument, result in harm to Lender, impairment of the Note or this Instrument or any other security given under any other Loan Document.

Notwithstanding anything herein to the contrary, Equity Investor (as defined in the Forward Commitment) shall have the right, but not the obligation, to cure an Event of Default hereunder within the applicable cure period.

8. **REMEDIES CUMULATIVE.** Each right and remedy provided in this Instrument is distinct from all other rights or remedies under this Instrument or any other Loan Document or afforded by applicable law, and each shall be cumulative and may be exercised concurrently, independently, or successively, in any order.

9. **FORBEARANCE.**

(a) Lender may (but shall not be obligated to) agree with Borrower, from time to time, and without giving notice to, or obtaining the consent of, or having any effect upon the obligations of, any guarantor or other third party obligor, to take any of the following actions: extend the time for payment of all or any part of the Indebtedness; reduce the payments due under this Instrument, the Note, or any other Loan Document; release anyone liable for the payment of any amounts under this Instrument, the Note, or any other Loan Document; accept a renewal of the Note; modify the terms and time of payment of the Indebtedness; join in any extension or subordination agreement; release any Mortgaged Property; take or release other or additional security; modify the rate of interest or period of amortization of the Note; and otherwise modify this Instrument, the Note, or any other Loan Document.

(b) Any forbearance by Lender in exercising any right or remedy under the Note, this Instrument, or any other Loan Document or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any other right or remedy. The acceptance by Lender of payment of all or any part of the Indebtedness after the due date of such payment, or in an amount which is less than the required payment, shall not be a waiver of Lender's right to require prompt payment when due of the Indebtedness.

10. **LOAN CHARGES.** If any applicable law limiting the amount of interest or other charges permitted to be collected from Borrower is interpreted so that any charge provided for in any Loan Document, whether considered separately or together with other charges levied in connection with any other Loan Document, violates that law, and Borrower is entitled to the benefit of that law, that charge is hereby reduced to the extent necessary to eliminate that violation.

11. **WAIVER OF STATUTE OF LIMITATIONS.** Borrower hereby waives the right to assert any statute of limitations as a bar to the enforcement of the lien of this Instrument or to any action brought to enforce any Loan Document.

12. **FURTHER ASSURANCES.** Borrower shall execute, acknowledge, and deliver, at its sole cost and expense, all further acts, deeds, conveyances, assignments, estoppel certificates, financing statements, transfers and assurances as Lender may require from time to time in order to better assure, grant, and convey to Lender the rights intended to be granted, now or in the future, to Lender under this Instrument and the Loan Documents.

13. **GOVERNING LAW, CONSENT TO JURISDICTION AND VENUE.**

(a) This Instrument, and any Loan Document which does not itself expressly identify the law that is to apply to it, shall be governed by the laws of the jurisdiction in which the Land is located (the "Property Jurisdiction").

(b) Borrower agrees that any controversy arising under or in relation to the Note, this Instrument, or any other Loan Document shall be litigated exclusively in the Property Jurisdiction. The state and federal courts and authorities with jurisdiction in the Property Jurisdiction shall have exclusive jurisdiction over all controversies which shall arise under or in relation to the Note, any security for the Indebtedness, or any other Loan Document. Borrower irrevocably consents to service, jurisdiction, and venue of such courts for any such litigation and waives any other venue to which it might be entitled by virtue of domicile, habitual residence or otherwise.

14. NOTICE.

(a) All notices, demands and other communications ("notice") under or concerning this Instrument shall be in writing. Each notice shall be addressed to the intended recipient at its address set forth in this Instrument, and shall be deemed given on the earliest to occur of (1) the date when the notice is received by the addressee; (2) the first Business Day after the notice is delivered to a recognized overnight courier service, with arrangements made for payment of charges for next Business Day delivery; or (3) the third Business Day after the notice is deposited in the United States mail with postage prepaid, certified mail, return receipt requested. As used in this Section 14, the term "Business Day" means any day other than a Saturday, a Sunday or any other day on which Lender is not open for business.

(b) Any party to this Instrument may change the address to which notices intended for it are to be directed by means of notice given to the other party in accordance with this Section 14. Each party agrees that it will not refuse or reject delivery of any notice given in accordance with this Section 14, that it will acknowledge, in writing, the receipt of any notice upon request by the other party and that any notice rejected or refused by it shall be deemed for purposes of this Section 14 to have been received by the rejecting party on the date so refused or rejected, as conclusively established by the records of the U.S. Postal Service or the courier service.

(c) Lender agrees that effective notice to Borrower under this Instrument and the other Loan Documents shall require delivery of a copy of any such Notice as follows.

Northwest Sandstone, LLC
210 W. Mallard Drive, Ste. A
Boise, ID 83706
Attention: Julie Marple

With copy to:

Rosenblum Goldenhersh
7733 Forsyth Boulevard, Suite 400

St. Louis, Missouri 63105-1812
Attention: Brad Britzmann, Esq.

15. **SALE OF NOTE; CHANGE IN SERVICER.** The Note or a partial interest in the Note (together with this Instrument and the other Loan Documents) may be sold one or more times without prior notice to Borrower.

16. **SUCCESSORS AND ASSIGNS BOUND.** This Instrument shall bind, and the rights granted by this Instrument shall inure to, the respective successors and assigns of Lender and Borrower.

17. **JOINT AND SEVERAL LIABILITY.** If more than one person or entity signs this Instrument as Borrower, the obligations of such persons and entities shall be joint and several.

18. **RELATIONSHIP OF PARTIES; NO THIRD PARTY BENEFICIARY.** The relationship between Lender and Borrower shall be solely that of creditor and debtor, respectively, and nothing contained in this Instrument shall create any other relationship between Lender and Borrower. No creditor of any party to this Instrument and no other person shall be a third party beneficiary of this Instrument or any other Loan Document.

19. **SEVERABILITY; AMENDMENTS.** The invalidity or unenforceability of any provision of this Instrument shall not affect the validity or enforceability of any other provision, and all other provisions shall remain in full force and effect. This Instrument contains the entire agreement among the parties as to the rights granted and the obligations assumed in this Instrument. This Instrument may not be amended or modified except by a writing signed by the party against whom enforcement is sought.

20. **CONSTRUCTION.** The captions and headings of the sections of this Instrument are for convenience only and shall be disregarded in construing this Instrument. All Exhibits attached to or referred to in this Instrument are incorporated by reference into this Instrument. Any reference in this Instrument to a statute or regulation shall be construed as referring to that statute or regulation as amended from time to time. Use of the singular in this Instrument includes the plural and use of the plural includes the singular. As used in this Instrument, the term "**including**" means "including, but not limited to."

21. **DISCLOSURE OF INFORMATION.** Lender may furnish information regarding Borrower or the Mortgaged Property to third parties with an existing or prospective interest in the servicing, enforcement, evaluation, performance, purchase or securitization of the Indebtedness, including trustees, master servicers, special servicers, rating agencies, and organizations maintaining databases on the underwriting and performance of multifamily mortgage loans. Borrower irrevocably waives any and all rights it may have under applicable law to prohibit such disclosure, including any right of privacy.

22. **NO CHANGE IN FACTS OR CIRCUMSTANCES.** All information in the application for the loan submitted to Lender (the "**Loan Application**") and in all financial statements, rent rolls, reports, certificates and other documents submitted in connection with the

Loan Application are complete and accurate in all material respects. There has been no material adverse change in any fact or circumstance that would make any such information incomplete or inaccurate.

23. **ACCELERATION; REMEDIES.**

(a) If an Event of Default has occurred and is continuing, Lender, at Lender's option, may declare the Indebtedness to be immediately due and payable without further demand, and may invoke the power of sale and any other remedies permitted by Utah law or provided in this Instrument or in any other Loan Document. Borrower acknowledges that the power of sale granted in this Instrument may be exercised by Lender without prior judicial hearing. Lender shall be entitled to collect all costs and expenses incurred in pursuing such remedies, including attorneys' fees, costs of documentary evidence, abstracts and title reports.

(b) In the event Lender invokes the power of sale:

(1) Lender shall send to Borrower and any other Persons required to receive such notice, written notice of Lender's election to cause the Mortgaged Property to be sold. Borrower hereby authorizes and empowers Trustee to take possession of the Mortgaged Property, or any part thereof, and hereby grants to Trustee a power of sale and authorizes and empowers Trustee to sell (or, in the case of the default of any purchaser, to resell) the Mortgaged Property or any part thereof, in compliance with applicable law, including compliance with any and all notice and timing requirements for such sale. Trustee shall advertise the sale at least once a week for two (2) weeks in a newspaper having general circulation in the city or county where the Mortgaged Property is located;

(2) Trustee shall have the authority to determine the terms of the sale, subject to applicable law. In connection with any such sale, the whole of the Mortgaged Property may be sold in one (1) parcel as an entirety or in separate lots or parcels at the same or different times. Lender shall have the right to become the purchaser at any such sale. Trustee shall be entitled to receive fees and expenses from such sale not to exceed the amount permitted by applicable law.

(3) within a reasonable time after the sale, Trustee shall deliver to the purchaser of the Mortgaged Property a deed or such other appropriate conveyance document conveying the Mortgaged Property so sold without any express or implied covenant or warranty. The recitals in such deed or document shall be prima facie evidence of the truth of the statements made in those recitals; and

(4) the outstanding principal amount of the Mortgage Loan and the other Indebtedness, if not previously due, shall be and become immediately due and payable without demand or notice of any kind. Trustee shall apply the proceeds of any sale in the following order:

(1) to all costs and expenses of the sale, including a reasonable Trustee's fee not to exceed the amount permitted by applicable law, attorneys' fees and costs of title evidence;

- (2) to the discharge of all Taxes, if any, as provided by Utah law;
- (3) to the Indebtedness in such order as Lender, in Lender's discretion, directs; and
- (4) the excess, if any, to the person or persons legally entitled to the excess, including, if any, the holders of liens inferior to this Security Instrument in the order of their priority, provided that Trustee has actual notice of such liens. Trustee shall not be required to take possession of the Mortgaged Property before the sale or to deliver possession of the Mortgaged Property to the purchaser at the sale.

24. **FIXTURE FILING.** This Instrument also constitutes a fixture filing financing statement pursuant to the terms of the Uniform Commercial Code ("UCC") with respect to any part of the Mortgaged Property that is or may become a fixture under Utah law. For purposes of the UCC, the debtor is Borrower and the secured party is Lender.

25. **WAIVER OF MARSHALLING; OTHER WAIVERS.** To the extent permitted by law, Borrower waives (i) the benefit of all present or future laws providing for any appraisement before sale of any portion of the Mortgaged Property; (ii) all rights of redemption, valuation, appraisement, stay of execution, notice of election to mature or declare due the whole of the Indebtedness and marshalling in the event of foreclosure of the lien created by this Instrument; (iii) all rights and remedies which Borrower may have or be able to assert by reason of the laws of the State of Utah pertaining to the rights and remedies of sureties; (iv) the right to assert any statute of limitations as a bar to the enforcement of the lien of this Instrument or to any action brought to enforce the Note or any other obligation secured by this Instrument; and (v) any rights, legal or equitable, to require marshalling of assets or to require upon foreclosure sales in a particular order. Lender shall have the right to determine the order in which any or all of the Mortgaged Property shall be subjected to the remedies provided by this Instrument. Lender shall have the right to determine the order in which any or all portions of the Indebtedness are satisfied from the proceeds realized upon the exercise of the remedies provided by this Instrument.

26. **WAIVER OF TRIAL BY JURY. BORROWER AND LENDER EACH (A) COVENANTS AND AGREES NOT TO ELECT A TRIAL BY JURY WITH RESPECT TO ANY ISSUE ARISING OUT OF THIS INSTRUMENT OR THE RELATIONSHIP BETWEEN THE PARTIES AS BORROWER AND LENDER THAT IS TRIABLE OF RIGHT BY A JURY AND (B) WAIVES ANY RIGHT TO TRIAL BY JURY WITH RESPECT TO SUCH ISSUE TO THE EXTENT THAT ANY SUCH RIGHT EXISTS NOW OR IN THE FUTURE. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS SEPARATELY GIVEN BY EACH PARTY, KNOWINGLY AND VOLUNTARILY WITH THE BENEFIT OF COMPETENT LEGAL COUNSEL.**

27. **SUBORDINATION.** This Instrument is hereby made expressly subordinate and junior to the Senior Debt and the Senior Debt Documents. Irrespective of (A) the date, time, method, manner or order of attachment or perfection of any liens the Borrower has granted to the Lender in the Mortgaged Property or any other collateral for the Senior Debt, (B) the usual application of the priority provisions of the Uniform Commercial Code or any other applicable

laws or agreements, (C) whether the liens granted to the Senior Lender in the Mortgaged Property or any other collateral for the Senior Debt are properly perfected, (D) whether arising pre-petition or post-petition, (E) whether granted pursuant to any Senior Debt Document or the post-petition use of cash collateral by the Borrower, (F) any understanding between the Lender and the Borrower, and (G) any other priority provided by law or by any other agreement or any other matter, any liens in the Mortgaged Property or any other collateral for the Senior Debt in favor of or for the benefit of Lender whether now existing or arising in the future, are hereby expressly made subordinate and junior in priority and right of enforcement to any liens in the Mortgaged Property or any other collateral for the Senior Debt both now existing and arising in the future, securing any of the Senior Debt. Lender shall not enforce any rights or remedies Lender has or may have under this Mortgage so long as any of the Senior Debt remains unpaid or outstanding; provided, however, that the Lender may collect payments under the Note as and when the same become due.

(a) Enforcement Actions. Lender agrees that, until the Senior Debt is paid in full:

(1) Lender will not take or cause to be taken any action, the purpose or effect of which is to make any lien of this Instrument pari passu with or senior to, or to give the Lender any preference or priority relative to, the liens with respect to the Senior Debt or the Senior Lender with respect to the Mortgaged Property or any collateral which secures the Senior Debt;

(2) Lender will not contest, oppose, object to, interfere with, hinder or delay, in any manner, whether by judicial proceedings (including without limitation the filing of a Proceeding) or otherwise, any foreclosure, sale, lease, exchange, transfer or other disposition of the Mortgaged Property by the Senior Lender or any other enforcement action taken (or any forbearance from taking any enforcement action) by or on behalf of the Senior Lender;

(3) Lender has no right to (x) direct the Senior Lender to exercise any right, remedy or power with respect to the Mortgaged Property or any other collateral for the Senior Debt or pursuant to the Senior Loan Documents or (y) consent or object to the exercise by the Senior Lender of any right, remedy or power with respect to the Mortgaged Property, any other collateral for the Senior Debt or pursuant to the Senior Debt Documents or to the timing or manner in which any such right is exercised or not exercised (or, to the extent the Lender may have any such right described in this clause (C), whether as a junior lien creditor or otherwise, it hereby irrevocably waives such right);

(4) Lender will not institute any suit or other Proceeding or assert in any suit, Proceeding or other proceeding any claim against the Senior Lender seeking damages from or other relief by way of specific performance, injunction or otherwise, with respect to, and the Senior Lender shall not be liable for, any action taken or omitted to be taken by the Senior Lender with respect to the Mortgaged Property or any other collateral for the Senior Debt or pursuant to the Senior Debt Documents; and

(5) Lender will not commence judicial or nonjudicial foreclosure proceedings with respect to, seek to have a trustee, receiver, liquidator or similar official appointed for or over, attempt any action to take possession of, exercise any right, remedy or power with respect to, or otherwise take any action to enforce their interest in or realize upon, the Mortgaged Property or any other collateral for the Senior Debt.

(b) Notices to Senior Lender. Until the Senior Debt is paid in full, Senior Lender shall be copied on all notices provided to Borrower under this Instrument and the Loan Documents in the manner set forth in the deed of trust securing the Senior Debt.

(c) Senior Lender is Third Party Beneficiary. Lender acknowledges and agrees that Senior Lender is a third party beneficiary of this Section 27 and that such section may not be modified, nor may any consent or waiver hereunder be granted, without the prior written consent of the Senior Lender so long as any Senior Debt remains outstanding.

(d) This Section 27 supersedes and governs any inconsistent provision hereof or of any other Loan Document.

28. **RECONVEYANCE.** Upon payment of the Indebtedness or the cancellation of the Note pursuant to Section 4 thereof, Lender shall execute a satisfaction of this Instrument and the Note and shall deliver the same to the Borrower. To the extent required by law, Trustee shall reconvey the Mortgaged Property without warranty to the person or persons legally entitled thereto. Such person or persons shall pay Trustee's reasonable costs incurred in so reconveying the Mortgaged Property.

29. **SUBSTITUTE TRUSTEE.** Lender, at Lender's option, may from time to time remove Trustee and appoint a successor trustee to any Trustee appointed under this Instrument by an instrument recorded in the county in which this Instrument is recorded. Without conveyance of the Mortgaged Property, the successor trustee shall succeed to all the title, power and duties conferred upon the Trustee herein and by applicable law.

30. **REQUEST FOR NOTICES.** Borrower requests that copies of the notice of default and notice of sale be sent to Borrower and other third parties as provided in Section 14 hereof.

ATTACHED EXHIBITS. The following Exhibits are attached to this Instrument:

Exhibit A – Legal Description

Exhibit B – Permitted Liens

**[NO MORE TEXT APPEARS ON THIS PAGE;
SIGNATURE/NOTARY PAGE FOLLOWS]**

IN WITNESS WHEREOF, Borrower has signed and delivered this Instrument or has caused this Instrument to be signed and delivered by its duly authorized representative.

BORROWER:

NORTHWEST SANDSTONE LLC,
an Idaho limited liability company

By: **THE SANDSTONE MANAGER LLC,**
an Idaho limited liability company,
its Managing Member

By: **NORTHWEST REAL ESTATE
CAPITAL CORP.,** an Idaho nonprofit
corporation, its Sole Member

By: *Julie Marple*
Julie Marple
Vice President

ACKNOWLEDGMENT

State of Idaho)
County of Ada) ss.:

On the 26th day of September in the year 2019, before me, the undersigned, personally appeared Julie Marple, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

[Signature]
Notary Public

LORI BENFIET
NOTARY PUBLIC - STATE OF IDAHO
COMMISSION NUMBER 61935
MY COMMISSION EXPIRES 7-18-2025

EXHIBIT A
LEGAL DESCRIPTION

The Land referred to herein below is situated in the County of Iron, State of Utah, and is described as follows:

Beginning South 00°18'38" East, 1035.35 feet along the section line and North 90°00'00" West, 2679.92 feet from the East quarter corner of Section 35, Township 35 South, Range 11 West, Salt Lake Meridian; thence South 76°44'30" East, 84.06 feet; thence along the arc of a curve to the right, having a radius of 200.00 feet, a distance of 206.22 feet; thence South 17°39'43" East, 189.85 feet; thence along the Northwesternly right of way line of Canyon Commercial Avenue and the arc of a non-tangent curve to the left, having a radius of 330.00 feet, a distance of 195.82 feet, long chord for said curve bears South 54°45'08" West, 192.96 feet South; thence 37°45'11" West, 145.22 feet along said right of way line; thence North 52°14'49" West, 202.76 feet; thence North 13°19'22" East, 181.52 feet; thence South 76°44'26" East, 19.17 feet; thence North 13°15'34" East, 271.13 feet to the point of beginning.

EXHIBIT B
PERMITTED LIENS

Any matter listed in a schedule of exceptions to coverage in the Commitment for Title Insurance issued by Fidelity National Title Insurance Company, as File No. 110692-DTF, with an effective date of July 16, 2019, and any liens granted in connection with the following:

1. Construction financing provided by Boston Capital Finance LLC in the approximate principal amount of \$7,400,000.00.
2. Financing provided by Olene Walker in the approximate principal amount of \$413,544.00.