

First American Title

OFFICIAL RECORDS OF
MARICOPA COUNTY RECORDER

HELEN PURCELL

20120257052 03/28/2012 02:25

5080499-10-2-1-

ELECTRONIC RECORDING

**CITY CLERK
ORIGINAL**

When recorded, mail to:
CITY OF GLENDALE
Neighborhood Revitalization
5850 West Glendale Avenue, Suite 107
Glendale, Arizona 85301

C-7945-2
03/26/2012

508049

**RECAPTURE PROVISION
DEED OF TRUST AND ASSIGNMENT OF RENTS**

DATE:

March 23, 2012

TRUSTOR: Norwood Village Apartments, LLC
ADDRESS: 2375 East Camelback Road, 6th Floor
Phoenix, Arizona 85016

BENEFICIARY: City of Glendale
(ADDRESS): 5850 West Glendale Avenue
Glendale, Arizona 85301

TRUSTEE: First American Title Company
(ADDRESS): National Commercial Services
24 Greenway Plaza, Suite 850
Houston, Texas 77046

PROPERTY in Maricopa County, State of Arizona, described as:

**See the Legal Description set forth in "Exhibit A"
attached and incorporated by this reference.**

This Deed of Trust is made between the Trustor, Trustee and Beneficiary above named.

WITNESSETH: That Trustor irrevocably grants and conveys to Trustee in Trust, with Power of Sale, the above-described real property, together with: (1) All buildings, improvements and fixtures now or hereafter placed thereon; (2) all existing leases, and all future leases executed with respect to such property; (3) all rents, issues, profits and income thereof (all of which are hereinafter called "property income"); (4) all classes of property now, or at any time hereafter, attached to or used in any way in connection with the use, operation or occupancy of such property; (5) all property, rights, permits and privileges now or hereafter owned by Trustor or now or hereafter appurtenant to such property, which entitle Trustor or such property to receive water or electrical power for use thereon; all property granted, transferred and assigned to Trustee hereunder is hereafter referred to as the "property," and Trustor warrants that it is well and truly seized of a good and marketable title in fee simple to the real property hereby conveyed; that the title to all property conveyed by this Deed of Trust is clear, free and unencumbered, and Trustor shall forever warrant and defend the same unto Beneficiary, its successors and assigns, against all claims whatsoever; **SUBJECT, HOWEVER**, to the right, power, and authority hereinafter given to and conferred upon Beneficiary to collect and apply such property income; **AND SUBJECT TO** any easements and restrictions listed in a schedule of exceptions to coverage in any title

insurance policy insuring Beneficiary's interest in the property; **AND SUBJECT TO** a first deed of trust, assignment of rent, security agreement and fixture filing granted in connection with a \$1,320,000 loan from Raza Development Fund, Inc. to Trustor.

FOR THE PURPOSE OF SECURING:

(a) Performance of each agreement of Trustor herein contained. (b) Payment of the indebtedness evidenced by promissory note or notes of even date herewith, and any extension or renewal thereof, in the principal sum of **One Million Eight Hundred Thousand and 00/100 Dollars (\$1,800,000.00)** executed by Trustor in favor of Beneficiary or order (the "Note"). (c) Payment of additional sums and interest thereon which may hereafter be loaned to Trustor, or his successors or assigns, when evidenced by a promissory note or notes that are secured by this Deed of Trust.

A. TO PROTECT THE SECURITY OF THIS DEED OF TRUST, TRUSTOR COVENANTS AND AGREES:

1. To keep said property in good condition and repair; not to remove or demolish any building thereon; to complete or restore promptly and in good and workmanlike manner any building which may be constructed, damaged, or destroyed thereon, and to pay when due all claims for labor performed and materials furnished therefor, to comply with all laws affecting said property or requiring any alterations or improvements to be made thereon; not to commit or permit waste thereof; not to commit, suffer, or permit any act upon said property in violation of law; and to do all other acts which from the character or use of said property may be reasonably necessary, the specific enumerations herein not excluding the general.

2. To keep all improvements now or hereafter erected on said property continuously insured against loss by fire or other hazards specified by Beneficiary in an amount not less than the total obligation secured hereby. Copies of all policies shall be delivered to Beneficiary and be in such companies as Beneficiary may approve and have loss payable first to Beneficiary, as his interest may appear and then to Trustor. The amount collected under any insurance policy shall be released to Trustor for purposes of rebuilding the improvements. Such release shall not cure or waive any default hereunder nor cause discontinuance of any action that may have been or may thereafter be taken by Beneficiary or Trustee because of such default.

3. To appear in and 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 of Beneficiary or Trustee, including cost of evidence of title and attorney's fees in a reasonable sum, in any such action or proceeding in which Beneficiary or Trustee may appear or be named, and in any suit brought by Beneficiary to enforce this Deed of Trust.

4. To pay before delinquent, all taxes and assessments affecting said property; when due, all encumbrances, charges and liens, on said property or any part thereof, which appear to be prior or superior hereto; all costs, fees, and expenses of this Deed of Trust, including, without limiting the generality of the foregoing, the fees of Trustee for issuance of any Deed of Partial Release and Partial Reconveyance or Deed of Release and Full Reconveyance and all lawful charges, costs, and expenses in the event of reinstatement of, following default in, this Deed of Trust or the obligations secured hereby.

5. Should Trustor fail to make any payment or to do any act as herein provided, then Beneficiary or Trustee, but without obligation so to do, upon 10-days written notice to Trustor and without releasing Trustor from any obligation hereof, may: (1) Make or do the same in such manner and

to such extent as either may deem necessary to protect the security hereof, Beneficiary or Trustee being authorized to enter upon said property for such purposes; (2) appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; (3) pay, purchase, contest or compromise any encumbrance, charge, or lien which in the judgment of either appears to be prior or superior hereto; and, (4) in exercising any such powers, pay necessary expenses, employ counsel, and pay his reasonable fees. All amounts so paid, together with interest thereon at the rate of 4% per year, shall be part of the debt secured by this Deed of Trust and a lien on the above property.

6. To pay immediately and without demand all sums expended by Beneficiary or Trustee pursuant to the provisions hereof, together with interest from date of expenditure at the rate of 4% per year. Any amounts so paid by Beneficiary or Trustee shall become part of the debt secured by this Deed of Trust and a lien on said property and immediately due and payable at option of Beneficiary or Trustee.

B. RECAPTURE PROVISION:

The HOME Investment Partnerships (HOME) Program, and Neighborhood Stabilization Program (NSP 3) under 24 CFR § 92.254, requires that housing provided through these funds must be secured for the use of low-income households for a period of affordability. The period of affordability period is determined based on the amount of the HOME/NSP 3 subsidy.

Under the HOME/NSP 3 regulations, recapture is the option which will be used to control the recovery of the HOME/NSP 3 fund investment in a property during the affordability period.

The HOME/NSP 3 subsidy (i.e. the principal due under the Note) shall be recoverable any time the property is sold before the expiration of the affordability period.

In the case of a foreclosure or foreclosure sale, the period of affordability shall be terminated. Upon receipt of the notice that a foreclosure is pending the Beneficiary shall take positive steps to assert rights to a share of the proceeds from the foreclosure sale up to the amount of principal due under the Note. The Beneficiary shall, to the extent feasible, recapture the original HOME/NSP 3 investment (i.e. the principal due under the Note). If the Trustor has failed to make payment to the first mortgage holder, the Beneficiary will not be obligated to correct any deficient payment. The amount recaptured shall be based on the amount of the net proceeds from the foreclosure sale. If no proceeds are generated, the HOME investment shall not be recaptured.

If the original owner ceases to utilize the property as stated in the development agreement between the Trustor and the Beneficiary, voluntary or involuntarily, or upon dissolution of the Trustor, the original HOME investment (i.e. the principal due under the Note) shall become due and payable. The Beneficiary, at its discretion, can elect to allow the owners to properly utilize the property for the remainder of the affordability period.

RESTRICTED PARCELS; APPROVAL OF LEASES. In order to assure that the proper number and types of units are rented, a Declaration of Deed Restrictions will be recorded against the Property. The following numbers of Units are restricted for each respective funding source. The initial rents for the respective units shall be the following; provided, however, that upon the request of Owner, Owner and Agency may agree to a schedule for the Restricted Units that complies with the following affordability requirements as of the date when the Project is available for occupancy. In any event the rents for the respective units may be adjusted not more often than annually. The rents shall include allowance for

utilities and costs reasonably related to the rental of the units, as may be required in determining the rents for the applicable funding sources. Only units indicated under Agency Funding Source are assisted by the Agency. Nevertheless, Owner shall assure the affordability of all of the following units at the named affordability levels.

| Agency Funding Source: | Other Funding Source: | Affordability Level: | Number of Units: | Restricted Units: | Initial Rent per Unit per Month: |
|------------------------|-----------------------|---------------------------------|------------------|--|--------------------------------------|
| NSP III | | Up to 50% of area median income | -11- | Floating Eight (8)- (2) Two Bedroom and (3) Three Bedroom | 2-BR \$600.00 3-BR \$750.00 |

TERM. The term of this Deed of Trust shall commence on the Effective Date and continue until the Note has been repaid in full.

C. IT IS MUTUALLY AGREED:

1. That any award of damages in connection with any condemnation or any taking, or for injury to the property by reason of public use, or for damages for private trespass or injury thereto, is assigned and shall be paid to Beneficiary as further security for all obligations secured hereby (reserving unto Trustor, however, the right to sue therefor and the ownership thereof, subject to this Deed of Trust), and upon receipt of such moneys Beneficiary shall release the same in the same manner and with the same effect as above provided for disposition of proceeds of fire or other insurance.

2. That by accepting payment of any sum secured hereby after its due date, Beneficiary does not waive his right either to require prompt payment when due of all other sums so secured or to declare default for failure so to pay. Without affecting the obligation of Trustor to pay and perform as herein required; without affecting the personal liability of any person for payment of the indebtedness secured hereby; and without affecting the lien or priority of lien hereof on the Trust Property, Beneficiary may, at its option, extend the time for payment of said indebtedness, or any part thereof, reduce the payment thereon, release any person liable on any of said indebtedness, accept a renewal note therefore, modify the terms of said indebtedness, take or release other or additional security or join in any extension or subordination agreement. Any such action by Beneficiary or the Trustee at Beneficiary's direction may be taken without the consent of any junior lien holder, and shall not affect the priority of this Deed of Trust over any junior lien. Time is of the essence of this Deed of Trust.

3. That at any time or from time to time, and without notice, upon written request of Beneficiary and presentation of this Deed of Trust and said note(s) for endorsement, and without liability therefor and without affecting the personal liability of any person for payment of the indebtedness secured hereby, and without affecting the security hereof for the full amount secured hereby on all property remaining subject hereto, and without the necessity that any sum representing the value or any portion thereof of the property affected by the Trustee's action be credited on the indebtedness, the Trustee may: (a) release and reconvey all or any part of said property; (b) consent to the making and recording, or either, of any map or plat of the property or any part thereof; (c) join in granting any easement thereon; or (d) join in or consent to any extension agreement of any agreement subordinating the lien, encumbrance or charge hereof. Any Trustor signing this Deed of Trust as a surety or accommodation party or that has subjected its property to this Deed of Trust to secure the debt of another, expressly waives the benefits of A.R.S. § 12-1641.

4. That upon written request of Beneficiary stating that all sums secured hereby have been paid, and upon surrender of this Deed of Trust and said note(s) to Trustee for cancellation and retention, and upon payment of its fees, Trustee shall release and reconvey, without covenant or warranty, express or implied, the property then held hereunder, the recitals in such reconveyance, of any matters or facts, shall be conclusive proof of the truthfulness thereof. The grantee in such reconveyance may be described as "the person or persons legally entitled thereto."

5. That as additional security, Trustor hereby gives to and confers upon Beneficiary the right, power, and authority, during the continuance of this Trust, to collect the property income, reserving to Trustor the right, prior to any default by Trustor in payment of any indebtedness secured hereby or in performance of any agreement hereunder, to collect and retain such property income as it becomes due and payable. Upon any such default Beneficiary may at any time, without notice either by person, by agent, or by receiver to be appointed by a court, and without regard to the adequacy of any security for the indebtedness hereby secured or the solvency of the Trustor, enter upon and take possession of said property or any part thereof, in his own name sue for or otherwise collect such property income, including that past due and unpaid and apply the same, less costs and expenses of operation and collection, including reasonable attorney's fees of Beneficiary and Trustee, upon any indebtedness secured hereby, and in such order as Beneficiary may determine. The entering upon and taking possession of said property, the collection of such property income, and the application thereof as aforesaid, shall not cure or waive any default or notice of Trustee's sale hereunder or invalidate any act done pursuant to such notice. Beneficiary shall expressly have all rights provided for in A.R.S. §§ 33-702(B) and 33-807.

6. That upon default by Trustor in the payment of any indebtedness secured hereby or in performance of any agreement hereunder, which default has not been cured within 90 days after Trustor's receipt of written notice thereof (provided, however, that if the default is of a nature that cannot be paid within 90 days, Trustor shall have such additional time as is reasonably necessary to cure such default provided Trustor commences the cure within the 30-day period and is diligently prosecuting same to completion), Beneficiary may declare all sums secured hereby immediately due and payable by delivery to Trustee of written notice thereof, setting forth the nature thereof, and of election to cause to be sold said property under this Deed of Trust. Beneficiary also shall deposit with Trustee this Deed of Trust, said note(s), and all documents evidencing expenditures secured hereby.

7. Trustee shall record and give notice of Trustee's sale in the manner required by law, and after the lapse of such time as may then be required by law, Trustee shall sell, in the manner required by law, said property at public auction at the time and place fixed by it in said notice of Trustee's sale to the highest bidder for cash in lawful money of the United States, payable at time of sale. Trustee at its discretion may postpone or continue the sale from time to time by giving notice of postponement or continuance by public declaration at the time and place last appointed for the sale. Trustee shall deliver to such purchaser its Deed conveying the property so sold, but without any covenant or warranty, expressed or implied. Any persons, including Trustor, Trustee or Beneficiary, may purchase at such sale. The purchaser at the Trustee's sale shall be entitled to immediate possession of the property as against the Trustee or other persons in possession and shall have a right to the summary proceedings to obtain possession provided in A.R.S. §§ 12-1171 *et seq.*, together with costs and reasonable attorneys' fees.

8. After deducting all costs, fees, and expenses of Trustee and of this Deed of Trust, including cost of evidence of title in connection with sale and reasonable attorney's fees of Beneficiary and Trustee, Trustee shall apply the proceeds of sale to payment of: all sums then secured hereby and all other sums due under the terms hereof, with accrued interest; and the remainder, if any, to the person or

persons legally entitled thereto, or as provided in A.R.S. § 33-812. To the extent permitted by law, an action may be maintained by Beneficiary to recover a deficiency judgment for any balance due hereunder. In lieu of sale pursuant to the power of sale conferred hereby, this Deed of Trust may be foreclosed in the same manner provided by law for the foreclosure of mortgages on real property. Beneficiary shall also have all other rights and remedies available to it hereunder and at law or in equity. All rights and remedies shall be cumulative.

9. That Beneficiary may appoint a successor Trustee in the manner prescribed by law. Trustor and Beneficiary authorize Trustee, in the event any demand or notice is made or tendered to it concerning this Deed of Trust or the property, to hold any money and documents and to withhold action or performance until an action shall be brought in a court of competent jurisdiction to determine the rights asserted or the property of the demand, notice or action requested and Trustee shall be without liability or responsibility for awaiting such court action. A Successor Trustee herein shall without conveyance from the predecessor Trustee, succeed to all the predecessor's title, estate, rights, powers, and duties. Trustee may resign at any time by mailing or delivering notice thereof to Beneficiary and Trustor and having so resigned shall be relieved of all liability and responsibility to Trustor, Beneficiary or otherwise hereunder. "Trustee" herein shall include all successor trustees. Trustee shall not be liable for any action taken in its discretion and in good faith, or upon advice of counsel, or upon any information supplied or direction given by Beneficiary. Unless Trustee is adjudged grossly negligent or guilty of intentional wrongdoing or breach of contract, Trustor and Beneficiary will, upon demand, indemnify and hold harmless Trustee against all costs, damages, attorney's fees, expenses and liabilities which it may incur or sustain in connection with this Deed of Trust or any foreclosure or sale hereof or any court or other action or proceeding arising from here.

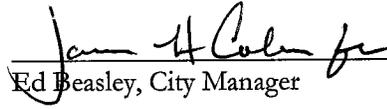
10. That this Deed of Trust applies to, inures to the benefit of, and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, successors and assigns. The term "Beneficiary" shall mean the owner and holder of the note(s) secured hereby, whether or not named as Beneficiary herein. In this Deed of Trust, whenever the context so required, the masculine gender includes the feminine and neuter, and the singular number includes the plural.

11. That Trustee accepts this Deed of Trust when this Deed of Trust, duly executed and acknowledged, is made a public record as provided by law. Trustee may, but is not obligated to, notify any party hereto of the pending sale under any other Deed of Trust or of any action or proceeding in which Trustor, Beneficiary, or Trustee shall be a party, unless brought by Trustee.

The undersigned Trustor requests that a copy of any notice of Trustee's sale hereunder be mailed to him at his address set forth above.

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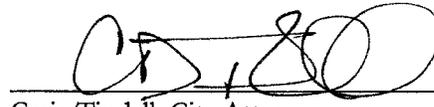
CITY OF GLENDALE, an Arizona
municipal corporation


Ed Beasley, City Manager

ATTEST:


Pamela Hanna, City Clerk (SEAL)

APPROVED AS TO FORM:


Craig Tindall, City Attorney

(Remainder of page intentionally left blank)

CITY OF GLENDALE, an Arizona
municipal corporation


Ed Beasley, City Manager

STATE OF ARIZONA)
) ss.
County of Maricopa)

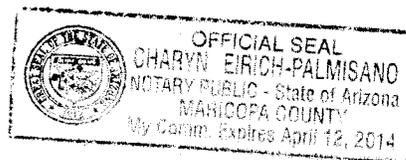
On this the 28 day of March, 2012, before me, the undersigned Notary Public, personally appeared James H. Colson, who acknowledged himself to be the Deputy City Manager of the City of Glendale and that he, as such official, being authorized to do so, executed the foregoing Recapture Deed of Trust for and on behalf of the City of Glendale for the purpose and consideration therein expressed.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.


Notary Public

My Commission Expires

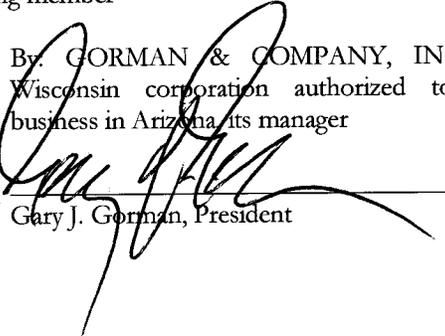
4-12-2014



NORWOOD VILLAGE APARTMENTS, LLC, a
Wisconsin limited liability company

By: NORWOOD VILLAGE APARTMENTS MM,
LLC, a Wisconsin limited liability company, its
managing member

By: GORMAN & COMPANY, INC., a
Wisconsin corporation authorized to do
business in Arizona, its manager

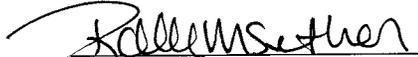


Gary J. Gorman, President

STATE OF WISCONSIN)
) ss.
County of Dane)

On this the 22 day of March, 2012, before me, the undersigned Notary Public, personally appeared Gary J. Gorman, who acknowledged himself to be the President of Gorman & Company, Inc. and that he, as such official, being authorized to do so, executed the foregoing Note for and on behalf of Gorman & Company, Inc., as manager of Norwood Village Apartments MM, LLC, as member of Norwood Village Apartments, LLC for the purpose and consideration therein expressed.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.


Notary Public

My Commission Expires

12/13/15



Do not destroy this Deed of Trust or the Note which it secures. Both must be delivered to the Trustee for cancellation before release and conveyance will be made.

Exhibit A – Legal Description of Property

Address: 6738 North 45th Avenue, Glendale, Arizona 85301

Legal Description:

PARCEL NO. 1:

TRACT "A," GRANADA VISTA, ACCORDING TO BOOK 134 OF MAPS, PAGE 42 AND CERTIFICATE OF CORRECTION RECORDED IN DOCKET 8965, PAGE 235, RECORDS OF MARICOPA COUNTY, ARIZONA.

PARCEL NO. 2:

THAT PORTION OF THE ABANDONED ALLEY LOCATED TO THE WEST OF TRACT "A," GRANADA VISTA, ACCORDING TO BOOK 134 OF MAPS, PAGE 42, RECORDS OF MARICOPA COUNTY, ARIZONA, AS ABANDONED BY THE CITY OF GLENDALE ORINANCE NO. 2019, NEW SERIES, RECORDED IN RECORDING NO. 98-0823776, LYING BETWEEN THE WESTERLY EXTENSION OF THE NORTH AND SOUTH LINES OF SAID TRACT "A."