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City Clerk  
City of Donnelly  
P.O. Box 725  
Donnelly, Idaho 83615

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**AMENDED AND RESTATED  
DEVELOPMENT AGREEMENT  
NORTHWEST PASSAGE APARTMENTS**

This Amended and Restated Development Agreement ("Development Agreement") is entered on this \_\_\_\_ day of \_\_\_\_\_ 2016 by and between the City of Donnelly, a municipal corporation of the State of Idaho ("City"), and Northwest Passage Apartments Limited Partnership, an Idaho limited partnership ("Developer"), whose address is 210 W. Mallard Drive, Boise, Idaho 83706.

**RECITALS**

WHEREAS, the City and Donnelly Main Street Plaza LLC, an Idaho limited liability company ("DMSP"), entered into that certain Development Agreement dated on or about February \_\_, 2008 ("Original Development Agreement") in connection with the development project known as "Donnelly Main Street Plaza" ("Original Project"), which was to be located on certain land located within the geographic boundaries of the City, as more particularly described in **EXHIBIT A** attached hereto ("Property");

WHEREAS, Kevin Jones, a member of DMSP, signed that certain Personal Guarantee, whereby he personally guaranteed performance of all payments, covenants, promises and responsibilities that DMSP made to the City in the Original Development Agreement;

WHEREAS, the Original Development Agreement was amended by that certain Amendment to Development Agreement dated May \_\_, 2009 ("Original Amendment");

WHEREAS, the Original Project was not developed on the Property;

WHEREAS, DMSP was administratively dissolved on January 6, 2009;

WHEREAS, in connection with the winding up of DMSP' affairs, Kevin Jones, Beren Value and Carrie Value, former members thereof, and each of such members individually,

conveyed the Property to Beau Value, as his sole and separate property, pursuant to that certain Warranty Deed dated April 15, 2013, recorded on May 16, 2013, as Instrument #377508, Valley County, Idaho;

WHEREAS, Beau Value, as Seller, and North States Development LLC, a Nevada limited liability company (“North States”), as Buyer, have entered into that certain RE-24 Vacant Land Real Estate Purchase and Sale Agreement dated June 12, 2015—~~(“, as amended (collectively, “North States’ PSA”)~~) for the Property. North States is the assignee of Inflection Development, LLC, an Idaho limited liability company, the original Buyer under North States’ PSA;

WHEREAS, North States, as Seller, and Developer, as Buyer, have entered into that certain Purchase Agreement dated September 3, 2015 for the Property, as amended ~~by that certain Amendment to Purchase Agreement made effective November 15, 2015 (together~~(collectively, “Developer’s Purchase Agreement”). Developer is the assignee of VCD, LLC, an Idaho limited liability company, the original Buyer under Developer’s Purchase Agreement;

WHEREAS, Developer intends to develop on the Property a 37-unit mixed-income housing community, to be known as “Northwest Passage Apartments” (“Project”). The charitable purpose of the Project is to provide housing for households with income at or below 60% area median income; and

WHEREAS, the City and Developer have agreed upon certain conditions to the development of the Project, which the City and Developer now desire to memorialize herein.

**NOW THEREFORE**, for and in consideration of the mutual covenants, duties, and obligations herein set forth, and the City and Developer, as successor in interest to DMSP and Beau Value, hereby covenant as follows:

**ARTICLE I  
LEGAL AUTHORITY**

- 1.1 This Development Agreement is made pursuant to and in accordance with the provisions of Title 18, the City’s Zoning Code.

**ARTICLE II  
SANITARY SEWER SYSTEM IMPROVEMENTS**

- 2.1 Developer shall provide ~~the~~all necessary sewer connections for the Project and shall complete such work in accordance with the plans approved by the City. Developer shall be responsible for establishing to the satisfaction of the City and associated North Lake Recreational Sewer and Water District that the existing sewer line has adequate capacity for the Project and its proposed uses.

- 2.2 The City and Developer shall consider additional connections for Infiltration and Inflow reduction, and implement the same if mutually agreed to at that time.

### **ARTICLE III DRAINAGE PROJECT**

- 3.1. Kevin B. Jones, a member of DMSP contributed \$25,000.00 (“\$25,000 Contribution”) on March 27, 2006, on behalf of DMSP, to the City of Donnelly Drainage Project for financing of ~~the drainage project~~ improvements. Pursuant to the Original Amendment, this amount was credited to any obligation which DMSP may owe the City for reserved water hookups to the Original Project, rather than a credit on any potential Local Improvement District (LID) costs (as provided in the Original Development Agreement), which may be due on the Groundwater Project. The City acknowledges and agrees that the \$25,000 Contribution is hereby credited to and for the benefit of Developer and the Project toward the cost of water hookups in consideration of the costs incurred or to be incurred by Developer to develop the Project within the City. In the event the twenty five thousand dollars (\$25,000) is later determined to be an overpayment or underpayment, the City will provide notice to Developer of the payment adjustment, and the parties will settle and pay the correct amount at that time.

### **ARTICLE IV WATER SYSTEM IMPROVEMENTS**

- 4.1 Developer shall complete all of the following described work in accordance with the approved plans:
- 4.1.1. Add dedicated utility easements to the plat notes (*e.g.*, water and sewer lines);
- 4.1.2. Work with the City Engineer to size the water line to be installed along Halferty Street prior to approval of Construction Drawings- (as defined in Section 9.1 below). Developer shall complete water system improvements, including water line size upgrades along Halferty Street, installation of fire hydrants, and water connections. Developer shall be responsible for 100% of the cost of this work, as well as the re-connection of all existing services to the new line.
- 4.1.3. Locate and install fire hydrants on the Property to locations which are reasonably acceptable to the City and approved by the Fire Chief. Developer shall be responsible for 100% of the cost of such relocation and installation.

### **ARTICLE V SIDEWALKS AND ROADS**

- 5.1 Developer shall construct sidewalk, curb, and gutter along the south side of Old Street for the length of the Project. Developer shall also pave Old Street from the south side to 10 feet (10’) over center line from Main Street (also known as Idaho State Highway No. 55) to Halferty Street. Developer shall be responsible for 100% of the cost of this work.

- 5.2 Developer shall construct sidewalk, curb, and gutter along the west side of Halferty Street for the length of the Project. Developer shall also pave Halferty Street from the west side to 10 feet (10') over center line from Old Street to State Street. Developer shall also construct a wrought iron fence along the west side of Halferty Street for the length of the Project, with openings for pathways ~~to common landing areas.~~ into the Project. ~~Developer shall also pave Halferty Street from the west side to 10 feet (10') over center line from Old Street to State Street.~~ Developer shall be responsible for 100% of the cost of this work.
- 5.3 Developer shall construct five foot (5') wide sidewalks along all public right-of-ways adjacent to the Project, except that a ten foot (10') sidewalk shall be constructed along the east side of Main Street from Old Street for the length of the Project and extending south to State Street. ~~Sidewalks in accordance with the street section of the Downtown Master Plan, including street trees, grates, street lights and irrigation comparable to the established Main Street section to the south.~~ All sidewalks will be designed to conform to the City of Donnelly Master Transportation Plan and Uniform Federal Accessibility Standards for the new installations considered under the terms of this Development Agreement, but no provision is made for existing conditions that do not conform to federal accessibility standards.
- 5.4 All road construction shall comply with the City road construction standards.
- 5.5 As a condition of final approval, Developer shall dedicate Old Street and Halferty Street to the City, and the City shall be responsible for maintenance thereof.
- 5.6 Developer shall construct a turn lane on Main Street (also known as Idaho State Highway No. 55) in accordance with the requirements of the Idaho Department of Transportation.

## ARTICLE VI DRAINAGE/STORM WATER

- 6.1 The Drainage Plan shall be approved by the City Engineer prior to approval of the Construction Drawings.

## ARTICLE VII SNOW REMOVAL & COMMON AREA MAINTENANCE

- 7.1 Developer, through its property management agent, shall be responsible for snow removal for all affected open space on the Project. ~~The snow accumulating~~ Snow shall be stored in designated areas on-site, and shall be exported ~~if on~~ off-site storage is not appropriate if needed. Upon request by the City, Developer shall provide the City with a copy of the snow removal contract confirming that the snow will be properly stored pursuant to City requirements or removed.

Developer shall also provide adequate proof to the City of the notice to and binding requirement of the Developer's property management agent to be responsible for snow removal at the Project.

- 7.2. Snow may be stored on-site, in the area designated as "Future Development". A snow storage area shall be designated on the plans or Developer may provide for off-site removal as covered in the preceding paragraph.
- 7.3. The Project shall generally be developed as shown on the plans and in accordance with the conditions and requirements of Title 18, the City's Zoning Code, except as otherwise provided in this Developer Agreement.

### **ARTICLE VIII POWER, TELEPHONE AND CABLE TELEVISION**

- 8.1. Power, telecommunications, and cable services are currently available to the Project. ~~Within the Project, Developer will provide underground utility service in compliance with the City Comprehensive Plan, unless exceptions are specifically approved by the City.~~ Power, telephone and cable lines shall be installed underground within the Project, unless the City approves otherwise.

### **ARTICLE IX COMPLETION DATE**

- 9.1. Developer shall substantially complete all infrastructure improvements ~~contained herein~~ required under this Development Agreement ("Required Infrastructure"), including water, sewer, fire suppression, sidewalk, curb, gutter, and street cross sections, in accordance with the plans and specifications attached hereto as EXHIBIT B, which have been reviewed and approved by the City Engineer (collectively, "Construction Drawings"), by December 31, 2017.
- 9.2. Completion of the Required Infrastructure may be required by the City prior to issuance of all or a portion of the Certificates of Occupancy for the Project; provided, that in lieu of completion of the Required Infrastructure Developer may elect, in its sole discretion, to obtain and deliver to the City a bond from a surety reasonably acceptable to both the City and Developer, securing payment of all labor and materials for the Required Infrastructure in the amount of 125% of Developer's reasonably estimated budget therefor, and naming the City as obligee thereunder. Upon delivery of such bond to the City, completion of the Required Infrastructure shall be deemed to be waived as a condition for issuance of the Certificates of Occupancy for the Project.

### **ARTICLE X APPLICANTS CONTRIBUTIONS TO THE CITY OF DONNELLY**

~~10.1 In efforts to partner with the City and to develop this Project responsibly, as well as, to improve the City of Donnelly Services and Infrastructure, an approximate sum exceeding \$400,000.00 has been donated or infrastructure value has been or will be increased as follows:~~

~~(i) The dedication of Developer's interest in Old Street and Halferty Street adjacent to the Project with street improvements, including paving, extended utilities, curb, gutter and sidewalk as set forth in this Development Agreement;~~

~~(ii) The \$25,000.00 Contribution referenced in Article III, which has been made prior to the date of this Development Agreement;~~

~~(iii) A donation of \$6,500.00 to the Donnelly Beautification Project, which has been made prior to the date of this Development Agreement; and,~~

~~(iv) A donation of \$1,000.00 for the repaving of the City of Donnelly Tennis Courts, which has been made prior to the date of this Development Agreement.~~

~~The City acknowledges and agrees that the donations and infrastructure value set forth above are hereby credited to and for the benefit of Developer and the Project in consideration of the costs incurred or to be incurred by Developer to develop the Project within the City.~~

RESERVED.

## ARTICLE XI MISCELLANEOUS

11.1 This Development Agreement amends and restates the Original Development Agreement (as amended by the Original Amendment), in its entirety. Upon the execution of this Development Agreement ~~and closing of Developer's acquisition of the Property~~, the Original Development Agreement (as amended by the Original Amendment) shall be superseded hereby and of no further force or effect.

11.2 In the event Developer fails to comply with the commitments set forth herein, within one hundred eighty (180) days of written notice of such failure from the City, in addition to any other remedies which the City may have available to it, the City shall have the right, without prejudice to any other rights or remedies, to cure such default or enjoin such violation and otherwise enforce the requirements contained in this Development Agreement, and to collect the direct costs associated with such action from Developer.

11.3 In the event that a dispute arises between the parties regarding the interpretation and/or enforcement of this Development Agreement, the parties may choose to resort to mediation, arbitration, or judicial litigation. In any event, the prevailing party in such dispute proceedings shall be entitled to recover its attorneys' fees

and costs reasonably incurred, including fees and costs incurred on appeal, unless otherwise agreed.

- 11.4 If any term, provision, commitment, or restriction of this Development Agreement, or the application thereof to any party or circumstances shall, to any extent be held invalid or unenforceable, the remainder of this Development Agreement shall remain in full force and effect.
- 11.5 Upon execution of this Development Agreement ~~and closing of Developer's acquisition of the Property~~, this Development Agreement shall be recorded in the office of the Valley County Recorder, at the expense of Developer. Each commitment and covenant contained in this Development Agreement shall constitute a burden on, shall be appurtenant to, and shall run with the Property. This Development Agreement shall be binding on the City and Developer, and their respective heirs, administrators, executors, agents, legal representatives, successors and assigns; ~~provided, however, that if all or any portion of the Property is divided, each owner of a legal lot shall only be responsible for duties and obligations associated with an owner's parcel and shall not be responsible for duties and obligations or defaults as to other parcels of lots within the Property.~~ Developer shall not be relieved of its responsibilities and duties under this Development Agreement absent an agreement with the City which designates a successor to Developer, who accepts such responsibilities and duties as are then remaining.
- 11.6 ~~In the event that Developer does not close its acquisition of the Property, then this~~ This Development Agreement shall not be ~~null and void.~~ ~~In such case, Developer shall have no liability to~~ signed by the City ~~for any obligation, loss or cost arising hereunder~~ until the Developer is able to prove ownership of the Property.
- 11.7 Except as expressly set forth in this Development Agreement, neither Developer nor its principals, officers, or agents shall have any liability to the City for any obligation undertaken, or loss caused, or cost incurred by DMSA, or its members, or Kevin Jones, individually, or arising under the Original Development Agreement, as amended by the Original Amendment, or in connection with the Original Project; and the City releases Developer from any such obligation, loss or cost.
- 11.8 The recitals first set forth above constitute a part of and are hereby incorporated into this Development Agreement. This Development Agreement may only be amended or terminated by a written instrument executed by the City and Developer, or their successors and assigns. This Agreement is made for the benefit the City and Developer, and their respective successors, assigns, and not for any other party. This Agreement shall be governed by and construed in accordance with the laws of the State of Idaho.

- 11.9 Any notice which a party may desire to give to another party must be in writing and may be given by personal delivery, by mailing the same by registered or certified mail, return receipt requested postage prepaid, or by Federal Express or other reputable overnight delivery service, to the party to whom the notice is directed at the address of such party set forth below:

City: City of Donnelly  
P.O. Box 725  
Donnelly, Idaho 83615  
Attn: City Clerk

Developer: Northwest Passage Apartments Limited Partnership  
210 W. Mallard Drive  
Boise, Idaho 83607  
Attn: Julie Marple

*With copy to:*

Lobo Rojo, PLLC  
3846 N. Arches Way  
Meridian, Idaho 83646  
Attn: Bryan W. Aydelotte

or such other address and to such other persons as the parties may hereafter designate in writing to the other parties. Any such notice shall be deemed given upon delivery if by personal delivery, or three (3) business days after deposit in the United States mail, if sent by mail.

- 11.10 This Development Agreement may be executed in two or more counterparts, each of which shall be deemed an original as against any party whose signature appears thereon, and all of which together shall constitute one and the same instrument. This Agreement shall become binding upon the parties when one or more counterparts, individually or taken together, shall bear the signatures of all parties.



**IN WITNESS WHEREOF**, the parties hereto have executed this Development Agreement on the date first set forth above, to be made effective on the date Developer closes its acquisition of the Property.

**NORTHWEST PASSAGE APARTMENTS LIMITED PARTNERSHIP**

An Idaho limited partnership

By: NWP Manager, LLC  
An Idaho limited liability company  
Its General Partner

By: Northwest Real Estate Capital Corp.  
An Idaho nonprofit corporation  
Its Sole Member

By: \_\_\_\_\_  
Julie Marple, Vice President

**CITY OF DONNELLY**

A municipal corporation of the State of Idaho

By: \_\_\_\_\_  
\_\_\_\_\_, Mayor

**ATTEST:**

By: \_\_\_\_\_  
\_\_\_\_\_, City Clerk

STATE OF IDAHO )  
(ss.  
County of Valley )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2016, before me, \_\_\_\_\_, a Notary Public in and for said State, personally appeared \_\_\_\_\_, known or identified to me to be the Mayor of the CITY OF DONNELLY, a municipal corporation of the State of Idaho, and acknowledged to me that she/he executed said instrument on behalf of said city.

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

\_\_\_\_\_  
NOTARY PUBLIC FOR IDAHO  
Residing at: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

STATE OF IDAHO )  
(ss.  
County of Valley )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2016, before me, \_\_\_\_\_, a Notary Public in and for said State, personally appeared \_\_\_\_\_, known or identified to me to be the City Clerk of the CITY OF DONNELLY, a municipal corporation of the State of Idaho, and acknowledged to me that she/he executed said instrument on behalf of said city.

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

\_\_\_\_\_  
NOTARY PUBLIC FOR IDAHO  
Residing at: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

STATE OF IDAHO            )  
  (ss  
County of ADA                )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2016, before me, \_\_\_\_\_, a Notary Public in and for said State, personally appeared JULIE MARPLE, known or identified to me to be the Vice President of NORTHWEST REAL ESTATE CAPITAL CORP., an Idaho nonprofit corporation, the Sole Member of NWP MANAGER, LLC, an Idaho limited liability company, the General Partner of NORTHWEST PASSAGE APARTMENTS LIMITED PARTNERSHIP, an Idaho limited partnership, and acknowledged to me that she executed said instrument on behalf of said nonprofit corporation and that said nonprofit corporation executed said instrument on behalf of said limited liability company and that said limited liability company executed said instrument on behalf of said limited partnership.

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

\_\_\_\_\_  
NOTARY PUBLIC FOR IDAHO  
Residing at: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

**EXHIBIT A**

Property

|

**EXHIBIT B**

Plans and Specifications