

1st 1963339

After Recording Return to:
Housing and Community Services
Attn: Multifamily Housing Section
725 Summer Street, Suite B
Salem, OR 97301-1266

2012-014377
Klamath County, Oregon
12/27/2012 11:30:13 AM
Fee: \$147.00

SPACE ABOVE FOR RECORDERS USE

**HOUSING AND COMMUNITY SERVICES DEPARTMENT
STATE OF OREGON**

HOUSING DEVELOPMENT GRANT PROGRAM

**ASSIGNMENT AND ASSUMPTION AGREEMENT,
DECLARATION OF RESTRICTIVE COVENANTS AND EQUITABLE SERVITUDES**

THIS Assignment and Assumption Agreement, Declaration of Restrictive Covenants and Equitable Servitudes (this "Agreement") is made this 27th day of December, 2012, among:

PARTIES:

Grantee: Northwest Real Estate Capital Corp.,
an Idaho Nonprofit Corporation

Owner: Northwest High Valley Estates LLC
an Idaho Limited Liability Company

Department: STATE OF OREGON, acting by and through its
Housing and Community Services Department,
together with its successors and assigns.

RECITALS

A. Grantee, as Recipient, received a Housing Development Grant Program Grant (the "Grant") from the Department as described in a Grant Agreement, Declaration of Restrictive Covenants and Equitable Servitudes executed between itself and the Department dated December 27, 2012 (the "Grant Agreement"), for the purpose of partially reimbursing the financing and construction costs of a 36 unit plus one manger unit low-income housing project in Klamath County, Oregon, known as High Valley Estates Apartments ("the Project"). The real property for said Project is more particularly described in Exhibit A attached hereto and incorporated herein by reference.

B. The Grant Agreement was executed by Recipient and dated December 27, 2012. A copy of the original Grant Agreement, is attached hereto and incorporated herein as Exhibit B. Names and terms in this Agreement will have the meanings given them in this Agreement or in the Grant Agreement.

C. The parties desire to execute this Agreement to evidence and confirm the terms by which the Department hereby consents to Grantee loaning the funds received from the Grant to the Owner for the purposes described in the Grant Agreement.

D. The parties also desire that this Agreement will be recorded in the relevant county records and that certain terms herein will constitute restrictive covenants and equitable servitudes that shall run with the land and govern the maintenance and operation of the Project.

142-
ASSIGNMENT AND ASSUMPTION AGREEMENT – HOUSING DEVELOPMENT GRANT PROGRAM
High Valley Estates Apartments - #1766

Page 1 of 10

AGREEMENT

NOW, THEREFORE, for value received, Grantee and Owner hereby agree with the Department as follows:

1. Provision of Grant to Owner; Assumption of Grant Agreement Obligations; Consent.

(a) Grantee has loaned or is loaning the Grant to Owner, pursuant to documented terms, copies of which have been delivered to the Department. The Department hereby approves of the loan of the Grant to Owner.

(b) Owner hereby unconditionally assumes, jointly and severally with Grantee, all obligations owed to the Department under the Grant Agreement. Owner also hereby agrees to perform all obligations to the Department described herein. Owner will, at its own expense, record and deliver this Agreement to the Department. Grantee and Owner also will execute and deliver to the Department such other documents reasonably requested by the Department to effect and maintain its restrictive covenants and equitable servitude interests in and rights against the Project.

(c) Department hereby consents to and approves of Grantee loaning the Grant to Owner without undertaking any obligations thereby to Owner and without affecting in any manner the restrictions and requirements of the Grant Agreement with respect to any further or additional transfers or third-party beneficiaries. Additionally, nothing in this Agreement or in the Grant Agreement shall be construed as restricting or impairing any right of the Department to resort to, proceed against, or otherwise exercise its rights with respect to any property in accordance with the rights granted to the Department by this Agreement or by any other agreement.

2. Representations, Warranties and Covenants of Owner. Owner, jointly and severally with Grantee, hereby adopts, assumes and ratifies the representations, warranties and covenants with respect to responsibility to the Department for proper use of the Grant, with respect to the maintenance, use, and operation of the Project, reporting with respect to same and compliance with Grant program requirements as contained in the Grant Agreement.

3. Restrictive Covenants and Equitable Servitudes to Run with the Land.

(a) Inducement. The Owner represents and warrants that consent to Grantee loaning it the Grant by the Department is an inducement to the Owner to construct and operate the Project in accordance with this Agreement. In consideration of such consent, the Owner has entered into this Agreement and has agreed to restrict the uses to which the Project can be put on the terms and conditions set forth herein. Therefore, the Owner covenants, agrees and acknowledges that the Department has relied on this Agreement in determining to consent to Grantee loaning the Grant to Owner.

(b) Covenants; Equitable Servitudes. The parties hereby declare their express intent that, during the term of this Agreement or until January 1, 2063, whichever is later (the Affordability Period), the covenants, restrictions, charges and easements set forth herein shall be deemed covenants running with the land and shall be deemed equitable servitudes running with the land, and shall pass to and be binding upon the Department's and the Owner's successors in title including any purchaser, grantee or lessee of any portion of the Project 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 of any portion of the Project and any other person or entity having any right, title or interest therein. Each and every contract, deed or other instrument hereafter executed during (the Affordability Period) covering or conveying the Project or any portion thereof or interest therein (other than a rental agreement or lease for a dwelling unit) 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.

(c) Burden and Benefit. The Owner hereby declares its understanding and intent that the burdens of the covenants and equitable servitudes set forth herein touch and concern the land in that the Owner's legal interest in the Project is rendered less valuable thereby. The Owner hereby further declares its understanding and intent that the benefits of such covenants and equitable servitudes touch and concern the land by enhancing and increasing the enjoyment and use of the Project by tenants, the intended beneficiaries of such covenants, reservations and restrictions, and by furthering the public purposes for which the Grant was issued.

4. Foreclosure. Except with respect to government lenders, in the event the construction and/or permanent lender, its successors or assigns, lawfully acquire title to the Project through foreclosure or deed in lieu of foreclosure, neither the lender nor any subsequent purchaser of the Project following such a foreclosure or deed in lieu of foreclosure shall be deemed a "successor or assign" of the Owner, and neither the lender nor such subsequent purchaser shall have any obligation to repay the Grant to the Department and all conditions and restrictions contained herein shall terminate on the date, if any, that the Project is so acquired by foreclosure or deed in lieu of foreclosure.
5. Indemnity. Owner and Grantee shall save, hold harmless, indemnify and (subject to ORS chapter 180) defend the State of Oregon, Department and their officers, agents, employees, members and assigns, from all suits, actions, claims, losses or damages of whatsoever nature, kind or description related to the Project or resulting from or arising out of their acts, omissions, neglect or misconduct or the acts, omissions, neglect or misconduct or their subcontractors, agents, or employees under this Agreement or related to the Project.
6. Time of the Essence. Time is of the essence in the performance of this Agreement.
7. Remedies.
 - (a) If this Agreement terminates prior to the term of the restrictive covenants, Grantee and Owner shall, within 120 days of written demand for repayment, repay to Department all Grant funds disbursed under this Agreement on the Project together with any earnings on such funds.
 - (b) Upon any breach of this Agreement by Grantee or Owner, Department, at its option, also may take any one or more of the following steps:
 - (A) By mandamus or other suit, action or proceeding at law or in equity, require Owner or Grantee to perform its obligations and covenants under this Agreement or enjoin any acts or things that may be unlawful or in violation of the rights of Department under this Agreement;
 - (B) Have access to, and inspect, examine and make copies of, all of the books and records of Owner or Grantee pertaining to the Project;
 - (C) Withhold from Grantee or Owner, suspend or terminate, all or part of any un-disbursed Grant funding under this Agreement;
 - (D) Demand repayment of all Grant funding provided by Department to Grantee or Owner for the Project, and such amount shall be immediately due and payable by both of them, jointly and severally, to Department;

(E) Declare Grantee or Owner ineligible to receive further HDGP funds or other Department financial assistance; or

(F) Take such other action at law, in equity or otherwise as may appear necessary or desirable to the Department to enforce the obligations, covenants and agreements of Grantee or Owner under this Agreement.

(c) The rights and remedies of Department provided for in this Agreement shall not be exclusive and are in addition to any other rights and remedies available at law, in equity or otherwise. No failure of or delay by Department to enforce any provision of this Agreement shall constitute a waiver by Department of that or any other provision, nor shall any single or partial exercise of any right, power or privilege under this Agreement preclude any other or further exercise of such right, power or privilege or the exercise of any other right, power or privilege.

8. No Third Party Beneficiaries. Department, Grantee and Owner are the only parties to this Agreement and are the only parties entitled to rely on and enforce the terms of this Agreement. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right not held by or made generally available to the public, whether directly indirectly or otherwise, to third persons unless such third persons are individually identified by name in this Agreement and expressly described as intended beneficiaries of the terms of this Agreement.
9. Assignment; Successors and Assigns. Neither Owner nor Grantee shall assign or transfer any interest in this Agreement (other than leases for the residential units in the Project) without the prior express written consent of Department. Any attempted assignment or transfer in violation of this provision shall be null and void. The provisions of this Agreement shall be binding upon and shall run to the benefit of the parties to this Agreement and their respective successors and permitted assigns.
10. Severability. If any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular term or provisions held to be invalid.
11. Survival of Obligations. The obligations of Grantee (and of Owner by assumption herein) as set forth in the Application and Award, shall survive the reservation of any Grant funds and shall not be deemed to terminate or merge with the awarding of the funds. Provisions of this Agreement which by their nature are intended to survive termination of this Agreement shall survive.
12. Attorney Fees. In the event a lawsuit is instituted regarding this Agreement, the prevailing party in any dispute arising under this Agreement shall, to the extent permitted by law, be entitled to recover from the other its reasonable attorney fees and all costs and disbursements incurred at trial and on appeal. Attorney fees shall not exceed the rate charged to the Department by its Attorneys.
12. Governing Law; Venue; Consent to Jurisdiction. This Agreement shall be governed by the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively, "Claim") among two or more of the parties related to this Agreement shall be conducted exclusively within the Circuit Court of Marion County, Oregon (unless Oregon law requires that it be brought and conducted where the Project is located) or, if necessary, the United States District Court for the District of Oregon. In no event shall this provision be construed as a waiver by the State of Oregon of any form of defense or immunity, whether it is sovereign immunity, governmental immunity, immunity based on the Eleventh

Amendment to the Constitution of the United States or otherwise, from any Claim or from the jurisdiction of any court. GRANTEE AND OWNER, BY EXECUTION OF THIS AGREEMENT, HEREBY CONSENT TO THE IN PERSONAM JURISDICTION OF SAID COURTS.

13. Merger Clause. This Agreement, including incorporations and exhibits, constitutes the entire agreement between the parties on the subject matter hereof. No modification or amendment of this Agreement shall bind either party unless in writing and signed by both parties (and the necessary approvals obtained), and no waiver or consent shall be effective unless signed by the party against whom such waiver or consent is asserted. Such waiver or consent, if given, shall be effective only in the specific instance and for the specific purpose given. There are no understandings, agreements or representations, oral or written, not specified herein regarding this Agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be signed by their duly authorized officers as of the first day written above.

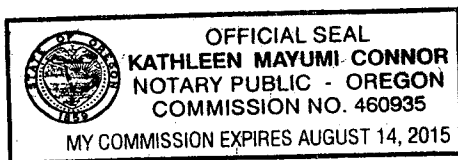
DEPARTMENT:

STATE OF OREGON, acting by and through its
Housing and Community Services Department

By: Heather Pate
Heather Pate, Manager
Multifamily Housing Section

STATE OF OREGON)
 : ss
County of Marion)

The foregoing instrument was acknowledged before me this 18th day of December 2012, by Heather Pate, who is the Manager of the Multifamily Finance and Resources Section, Housing and Community Services Department, on behalf of the Department.



Kathleen Connor
NOTARY PUBLIC FOR OREGON
My Commission Expires: August 14, 2015

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GRANTEE:

NORTHWEST HIGH VALLEY ESTATES LLC

By: Community Development of Oregon IV LLC
Its Managing Member

By: Northwest Real Estate Capital Corp.
Its Manager

By: 
Brad A. Elg, President

COMMUNITY DEVELOPMENT OF OREGON IV LLC

By: Northwest Real Estate Capital Corp.
Its Manager

By: 
Brad A. Elg, President

NORTHWEST REAL ESTATE CAPITAL CORP.

By: 
Brad A. Elg, President

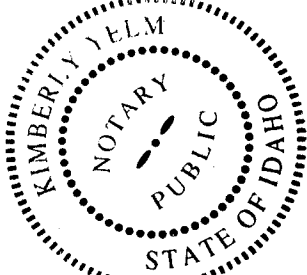
**Officers of Northwest Real Estate Capital Corp. authorized to sign:
The President or any Vice President or any of them acting individually

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STATE OF IDAHO)
) ss.
County of Ada)

On this 20th day of December, 2012, before me, the undersigned, a Notary Public in and for said State, personally appeared Brad A. Elg, known or identified to me to be the President of Northwest Real Estate Capital Corp., an Idaho corporation, which corporation is the manager of Community Development of Oregon IV LLC, an Idaho limited liability company, which limited liability company is the managing member of **NORTHWEST HIGH VALLEY ESTATES LLC**, an Idaho limited liability company (the "LLC"), or the person who executed the above instrument on behalf of said entities, in each of the aforesaid capacities, and on behalf of and in the name of the LLC, and that such LLC executed the same.

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

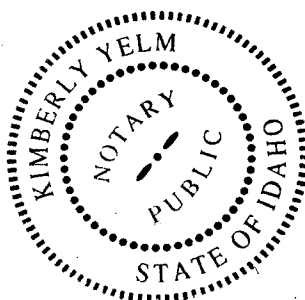


Kimberly Yelm
Notary Public for Idaho
Residing at Meridian, ID
My commission expires 6/15/2013

STATE OF IDAHO)
) ss.
County of Ada)

On this 20th day of December, 2012, before me, the undersigned, a Notary Public in and for said State, personally appeared Brad A. Elg, known or identified to me to be the President of Northwest Real Estate Capital Corp., an Idaho corporation ("NWRECC"), which NWRECC is the manager of **COMMUNITY DEVELOPMENT OF OREGON IV LLC**, an Idaho limited liability company (the "LLC"), or the person who executed the above instrument on behalf of said NWRECC, and acknowledged to me that such NWRECC executed the same in its managerial capacity, and on behalf of and in the name of the LLC, and that such LLC executed the same.

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

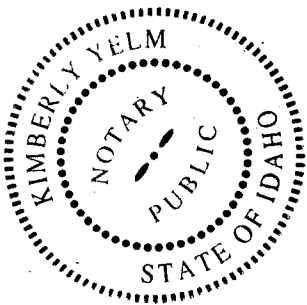


Kimberly Yelm
Notary Public for Idaho
Residing at Meridian, ID
My commission expires 6/15/2013

STATE OF IDAHO)
) ss.
County of Ada)

On this 20th day of December, 2012, before me, a Notary Public in and for said State, personally appeared Brad A. Elg, known or identified to me to be the President of **NORTHWEST REAL ESTATE CAPITAL CORP.**, an Idaho nonprofit corporation, and the corporation that executed the within instrument or the person who executed the instrument on behalf of said corporation, and acknowledged to me that such corporation executed the same.

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



Kimberly Yelm
Notary Public for Idaho
Residing at Meridian, ID
My commission expires 11/3/2013

EXHIBIT A

LEGAL DESCRIPTION: Real property in the County of Klamath, State of Oregon, described as follows:

A portion of Tract 31, ENTERPRISE TRACTS, in the County of Klamath, State of Oregon, more particularly described as follows:

Commencing at the Northeast corner of Lot 37 ENTERPRISE TRACTS, thence South 00° 15' 30" East, along the centerline of Avalon Street, 355.75 feet; thence South 56° 38' 10" East, 36.03 feet to a point on the East boundary of said street for the true point of beginning; thence South 56° 38' 10" East 108.05 feet; thence South 73° 31' 10" East, 41.51 feet; thence North 79° 52' East, 103.20 feet; thence North 70° 29' 20" East, 154.58 feet; thence North 89° 25' 40" East 82.78 feet; thence North 1° 24' 20" West 31.01 feet; thence North 89° 25' 40" East 50.00 feet; thence North 134.58 feet to a point on the Southwesterly boundary of the U.S.R.S. "A" Canal; thence along said canal boundary North 81° 17' West 23.93 feet; thence 94.98 feet along the arc of a curve right (which arc has a radius of 433.10 feet and a long chord of North 78° 00' 07" West 94.79 feet; thence South 00° 15' 30" East 59.01 feet; thence South 89° 44' 30" West 395.00 feet to a point on the East boundary of Avalon Street; thence along said boundary South 00° 15' 30" East, 132.87 feet to the true point of beginning.

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

Assignment and Assumption Agreement-Low-Income
Weatherization Program
High Valley Estates Apartments - #1766
Page 9 of 10

EXHIBIT B
Copy of Recipient signed Agreement Attached

ASSIGNMENT AND ASSUMPTION AGREEMENT – HOUSING DEVELOPMENT GRANT PROGRAM

High Valley Estates Apartments - #1766

Page 10 of 10

After Recording Return to:

Housing and Community Services
Attn: Multifamily Finance and Resources Section
725 Summer Street, Suite B
Salem, OR 97301-1266

SPACE ABOVE FOR RECORDERS USE

**HOUSING AND COMMUNITY SERVICES DEPARTMENT
STATE OF OREGON**

**HOUSING DEVELOPMENT GRANT PROGRAM
GRANT AGREEMENT, DECLARATION OF RESTRICTIVE COVENANTS
AND EQUITABLE SERVITUDES**

This Housing Development Grant Program ("HDGP") Grant Agreement, Declaration of Restrictive Covenants and Equitable Servitudes (this "Agreement") is made and entered into this 27th day of December, 2012, by and between Northwest Real Estate Capital Corp., an Idaho Nonprofit Corporation (the "Recipient") and the State of Oregon acting by and through its Housing and Community Services Department (together with its successors and assigns, the "Department").

RECITALS

- A. The Recipient has completed and submitted to the Department an application for an award of HDGP funds (the "Application"), which Application is incorporated herein by this reference.
- B. The Recipient, by the described Application, has requested an HDGP grant from the Department in the principal amount of Two Hundred Thousand Dollars (\$200,000) (the "Grant") for the purpose of partially reimbursing the rehabilitation a 36-unit plus one manager unit low-income housing project at in Klamath Falls, Oregon and known as High Valley Estates Apartments located at 1333 Avalon Street, Klamath Falls, Oregon (the "Project").
- C. The Department has conditionally awarded Recipient the requested Grant subject to the terms and conditions of this Agreement, including the terms and conditions of the Application as modified by the Department's conditional HDGP award letter dated August 16, 2012 (the "Award"), which Award also is incorporated herein by reference.

AGREEMENT

WHEREFORE, for good and sufficient consideration, including the terms and conditions herein, Department and Recipient mutually agree as follows:

PART I: GRANT ISSUANCE.

- (a) Subject to the availability of HDGP funds, the Department's continuing authority to disburse same, and conditioned upon the terms and conditions of this Agreement, the Department will make the Grant to Recipient up to the maximum principal amount of Two Hundred Thousand Dollars (\$200,000).
- (b) The Department will disburse the Grant to Recipient after satisfaction of Award conditions at its sole discretion and after execution and recording of this Agreement and delivery to the Department of information

satisfactory to it that Project work will commence. The Department may disburse the Grant prior to recording of this Agreement, at its sole discretion, upon placement of the Agreement in escrow with binding instructions to record this Agreement upon notice to the escrow officer by the Department or upon Recipient's establishment of fee title ownership to the Project.

(c) The Department's Award commitment will expire six (6) months from the date of this Agreement if the Borrower fails to timely satisfy the requirements above in subsection (b) unless the Grant is sooner terminated by the Department. Approval of any extension, and the length of any approved extension, is at the Department's sole discretion.

PART II. REPRESENTATIONS, WARRANTIES AND COVENANTS OF RECIPIENT.

The Recipient represents, warrants and covenants that:

(a) It is an Idaho Nonprofit Corporation, duly organized, validly existing, and in good standing under the laws of Idaho and authorized to do business and in good standing in Oregon, and it has the power and authority to transact the business in which it is engaged and to enter into and perform this Agreement;

(b) The making and performance of this Agreement by Recipient have been duly authorized by all necessary action of Recipient; do not and will not violate any provision of any applicable law, rule, or regulation or order of any court, regulatory commission, board or other administrative agency or any provision of Recipient's organizing documents or authorizing statutes; and do not and will not result in the breach of, or constitute a default or require any consent under, any other agreement or instrument to which Recipient is a party or by which Recipient or any of its properties is bound or affected; and do not and will not result in the creation or imposition of any prohibited encumbrance of any nature;

(c) This Agreement, when executed and delivered, shall be a valid and binding obligation of Recipient enforceable in accordance with its terms;

(d) Recipient agrees to fulfill all requirements of this Agreement, HDGP requirements, Department directives, and administrative rules (including as such administrative rules are amended from time to time), including but not limited to any requirements, including funding requirements, set forth in the Award or other reservation letter, to the satisfaction of Department; and

(e) Recipient shall complete the Project no later than November 1, 2014 and in accordance with the plans and specifications that have been approved by Department or modifications to those plans and specifications, which modifications must be approved by Department, and in accordance with the terms and conditions of this Agreement.

PART III: ADDITIONAL REPRESENTATIONS, WARRANTIES AND COVENANTS OF RECIPIENT.

The Recipient also agrees, represents, warrants and covenants that:

(a) Affordability.

(1) Recipient will use Grant funds only for financing of appropriate costs related to rehabilitation of two income-restricted residential rental units (the "Qualified Units") of the 37 total units in the Project and/or such eligible common areas and other aspects of the Project, consistent with HDGP requirements, Department directives, and administrative rules, including as are described in the Application and approved in the Award.

(2) Recipient will ensure that of the two qualified units in the Project, two units will be occupied by very low income persons. "Very low income persons" mean persons with a household income at or below 50% of the county median income. County median income levels are published annually by the U.S. Department of Housing and Urban Development ("HUD").

(3) Recipient will maintain the very low income affordability limits required in this Agreement, consistent with HDGP requirements, Department directives, and administrative rules, with respect to occupancy of the Qualified Units continuously for a period of sixty (60) years from the date that the Project is placed in service or January 1, 2063, whichever is later (the "Affordability Period").

(4) If at any time during the Affordability Period the Department determines that the Project, or any of the Qualified Units is used in a manner inconsistent with this Agreement, Recipient will repay the Grant to the Department upon thirty (30) days written notice to it by the Department.

(b) Resident Service Programs.

(1) Recipient will file with the Department a Project Resident Services Plan (the "Plan"), consistent with HDGP requirements, Department directives, and administrative rules, satisfactory to the Department when required by the Department. The Department may require periodic revisions to the Plan from the Recipient at the Department's reasonable discretion. The Recipient may propose revisions to the Plan for approval by the Department. All Plan revisions must be approved in writing by the Department prior to becoming effective.

(2) Recipient will provide timely resident services appropriate to the Project population and consistent with the Plan, including as the Plan is revised from time to time.

(3) If the Department determines that the Recipient has failed to provide timely resident services appropriate to the Project population and consistent with the Plan (including as the Plan is revised from time to time) at any time during the Affordability Period, Recipient will repay the Grant to the Department upon thirty (30) days written notice to it by the Department.

(c) Inspections; Maintenance of Records; Reporting.

(1) The Department shall have the right to inspect the Project and to inspect and copy all documents related to the Project throughout the Affordability Period. Recipient will cooperate fully with the Department in any such inspection of the Project or in any inspection and/or copying of Project documents.

(2) The Recipient will maintain all Project documents as required by the Department throughout the Affordability Period and for six (6) years thereafter or as otherwise required by the Department pursuant to this Agreement.

(3) The Recipient will provide reports satisfactory in form and content to the Department with respect to the Recipient's compliance with the terms and conditions of this Agreement as reasonably required from time to time by the Department.

(4) If the Department determines that the Recipient has failed to comply with any of the terms of this Part III(c), Recipient will repay the Grant to the Department upon thirty (30) days written notice to it by the Department.

PART IV: COVENANTS AND EQUITABLE SERVITUDES TO RUN WITH THE LAND.

(a) Inducement. The Recipient represents and warrants that the issuance to it of the Grant described herein by the Department is an inducement to the Recipient to construct and operate the Project in accordance with this Agreement. In consideration of the issuance of the Grant, the Recipient has entered into this Agreement and has agreed to restrict the uses to which the Project can be put on the terms and conditions set forth herein. Therefore, the Recipient covenants, agrees and acknowledges that the Department has relied on this Agreement in determining to issue the Grant.

(b) Covenants; Equitable Servitudes. The Department and the Recipient hereby declare their express intent that throughout the Affordability Period, the covenants, restrictions, charges and easements set forth herein shall be deemed covenants running with the land and shall be deemed equitable servitudes running with the land, and shall pass to and be binding upon the Department's and the Recipient's successors in title including any purchaser, grantee or lessee of any portion of the Project 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 of any portion of the Project and any other person or entity having any right, title or interest therein. Each and every contract, deed or other instrument hereafter executed covering or conveying the Project or any portion thereof or interest therein (other than a rental agreement or lease for a dwelling unit) 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.

(c) Burden and Benefit. The Recipient hereby declares its understanding and intent that the burdens of the covenants and equitable servitudes set forth herein touch and concern the land in that the Recipient's legal interest in the Project is rendered less valuable thereby. The Recipient hereby further declares its understanding and intent that the benefits of such covenants and equitable servitudes touch and concern the land by enhancing and increasing the enjoyment and use of the Project by tenants, the intended beneficiaries of such covenants, reservations and restrictions, and by furthering the public purposes for which the Grant was issued.

PART V: SUBORDINATION.

This Agreement and the restrictive covenants and equitable servitudes created hereunder may be subordinated to the lien of Recipient's primary financing loan in a principal amount not to exceed \$1,077,000. The Department, at its sole discretion, may subordinate this Agreement to other financing on the Project.

PART VI: FORECLOSURE.

Except with respect to government lenders, in the event the construction and/or permanent lender, its successors or assigns, lawfully acquire title to the Project through foreclosure or deed in lieu of foreclosure, neither the lender nor any subsequent purchaser of the Project following such a foreclosure or deed in lieu of foreclosure shall be deemed a "successor or assign" of the Recipient, and neither the lender nor such subsequent purchaser shall have any obligation to repay the Grant to the Department and all conditions and restrictions contained herein shall terminate on the date, if any, that the Project is so acquired by foreclosure or deed in lieu of foreclosure.

PART VII: GENERAL PROVISIONS.

(a) Financial and Performance Reports and Monitoring. Recipient shall maintain all financial records relating to this Agreement in accordance with generally accepted accounting principles. In addition, Recipient shall maintain any other records pertinent to this Agreement in such a manner as to clearly document Recipient's performance. Recipient acknowledges and agrees that Department and the Oregon Secretary of State's Office and the federal government and their duly authorized representatives shall have access to such financial records and other books, documents, papers, plans, records of shipments and payments and writings of Recipient that are pertinent to this Agreement, whether in paper, electronic or other form, to perform examinations and audits and make excerpts and transcripts and take copies. Recipient shall retain and keep accessible all such financial records, books, documents, papers, plans, records of shipments and payments and writings for a minimum is six (6) years, or such longer period as may be required by applicable law, following final payment and termination of this Agreement and the Affordability Period, or until the conclusion of any audit, controversy or litigation arising out of or related to this Agreement, whichever date is later.

(b) Compliance with Applicable Federal, State and Local Laws.

(1) Recipient shall comply with all federal, state and local laws, regulations, codes and ordinances applicable to the Project, including but not limited to all applicable requirements outlined in the Application, Award, HDGP administrative rules (including as amended from time to time) and HDGP handbooks providing funding under this Agreement.

(2) Recipient shall ensure that all contracts and subcontracts for the Project must comply with all applicable local, state and federal laws, regulations, ordinances and codes.

(3) Recipient shall remain fully obligated under the provisions of the Agreement notwithstanding its designation of any third party or parties for the undertaking of all or any part of the Project with respect to which Grant assistance is being provided by the Department or Plan compliance is being required by the Department under this Agreement.

(4) Recipient shall obtain and maintain on file for each person residing in the Project a certification of tenant eligibility and income verification in the form required by Department, updated periodically according to the requirements of the Department, and submitted to Department at its request.

(5) Recipient shall permit Department to inspect housing units within the Project assisted by funding under this Agreement, including all Qualified Units, at reasonable times and under reasonable conditions.

(c) Indemnity. Recipient shall save, hold harmless, indemnify and (subject to ORS chapter 180) defend the State of Oregon, Department and their officers, agents, employees, members and assigns, from all suits, actions, claims, losses or damages of whatsoever nature, kind or description related to the Project or resulting from or arising out of the acts, omissions, neglect or misconduct of Recipient or its subcontractors, agents, or employees under this Agreement or related to the Project.

(d) Time of the Essence; Termination. Time is of the essence in the performance of this Agreement. Department may terminate this Agreement in whole or in part, without further liability, effective upon delivery of written notice to Recipient, under any of the following conditions:

(1) If Department funding from federal, state, or other sources is not obtained or is not continued at levels sufficient to allow for payment of the indicated quantity of Grant funding; or

(2) If federal or state laws, regulations, rules or other requirements are modified or interpreted in such a way that the intended use of funds for the Project is no longer allowable or appropriate or the Project is no longer eligible for the funding proposed by this Agreement from the planned funding source(s) or if Department is determined by its counsel or otherwise to lack or loses the authority to administer the HDGP; or

(3) If any authority required by law or regulation to be held by Recipient to complete the Project ends for any reason; or

(4) If Recipient is unable or fails to commence the Project within six (6) months from the date of this Agreement; or

(5) If there is a breach of any of the provisions of this Agreement or other any applicable Grant documents that is not cured within the grace period provided for cure in the applicable document, if any; or

(6) If Recipient (1) applies for or consents to the appointment of, or the taking of possession by, a receiver, custodian, trustee, or liquidator of itself or all or substantially all of its property, (2) admits in writing its inability, or is generally unable, to pay its debts as they become due, (3) makes a general assignment for the benefit of its creditors, (4) commences a voluntary case under the federal Bankruptcy Code (as now or hereafter in effect), (5) is adjudicated bankrupt or insolvent, (6) files a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, liquidation, winding-up, or composition or adjustment of debts, (7) fails to controvert in a timely and appropriate manner, or acquiesces in writing to, any petition filed against it in an involuntary case under the federal Bankruptcy Code (as now or hereafter in effect), or (8) takes any action for the purpose of effecting any of the foregoing.

(e) Remedies.

(1) If this Agreement terminates prior to the term of the restrictive covenants, Recipient shall, within 30 days of written demand for repayment, repay to Department all Grant funds disbursed under this Agreement on the Project together with any earnings on such funds.

(2) Upon the occurrence of an event listed in Subsection (d) above, Department, at its option, also may take any one or more of the following steps:

(A) By mandamus or other suit, action or proceeding at law or in equity, require Recipient to perform its obligations and covenants under this Agreement or enjoin any acts or things that may be unlawful or in violation of the rights of Department under this Agreement;

(B) Have access to, and inspect, examine and make copies of, all of the books and records of Recipient pertaining to the Project;

(C) Withhold from Recipient, suspend or terminate, all or part of any un-disbursed Grant funding under this Agreement;

(D) Demand repayment of all Grant funding provided by Department to Recipient for the Project, and such amount shall be immediately due and payable by Recipient, its successors or assigns, to Department;

(E) Declare Recipient ineligible to receive further HDGP or other Department financial assistance; or

(F) Take such other action at law, in equity or otherwise as may appear necessary or desirable to the Department to enforce the obligations, covenants and agreements of Recipient under this Agreement.

(3) The rights and remedies of Department provided for in this Agreement shall not be exclusive and are in addition to any other rights and remedies available at law, in equity or otherwise. No failure of or delay by Department to enforce any provision of this Agreement shall constitute a waiver by Department of that or any other provision, nor shall any single or partial exercise of any right, power or privilege under this Agreement preclude any other or further exercise of such right, power or privilege or the exercise of any other right, power or privilege.

(f) **Notice.** Except as otherwise expressly provided in this Agreement, any notices required or permitted to be given under this Agreement shall be given in writing, by personal delivery, or mailing the same, postage prepaid, to Department or Recipient at the following addresses:

Department: Oregon Housing and Community Services Department
Attn: Multifamily Housing Section Manager
725 Summer Street N.E., Suite B
Salem, Oregon 97301-1266

Recipient: Northwest Real Estate Capital Corp.
Attn: President/Authorized Agent
210 W. Mallard Drive, Suite A
Boise, Idaho 83706

or to such other address a party may indicate to the other pursuant to this Section. Any notice so addressed and mailed shall be effective five (5) days after mailing. Any notice by personal delivery shall be deemed to be given when actually delivered.

(g) **No Third Party Beneficiaries.** Department and Recipient are the only parties to this Agreement and are the only parties entitled to rely on and enforce the terms of this Agreement. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right not held by or made generally available to the public, whether directly indirectly or otherwise, to third persons unless such third persons are individually identified by name in this Agreement and expressly described as intended beneficiaries of the terms of this Agreement.

(h) **Assignment; Successors and Assigns.** Recipient shall not assign or transfer any interest in this Agreement or in the Project (other than leases for the residential units in the Project) without the prior express written consent of Department. Any attempted assignment or transfer in violation of this provision shall be null and void. The provisions of this Agreement shall be binding upon and shall run to the benefit of the parties to this Agreement and their respective successors and permitted assigns.

(i) **Severability.** If any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular term or provisions held to be invalid.

(j) Further Assurances.

(1) Recipient, at any time upon request of Department, will do, make, execute and deliver all such additional and further acts, instruments or papers as Department may reasonably require, assuring Department its rights under this Agreement.

(2) Department may rely upon statements and certificates of Recipient and persons or families of very low income believed to be genuine and to have been executed by the proper person or persons, and upon audits of the books and records of Recipient pertaining to occupancy on the Project.

(3) Department may consult with counsel, and the opinion of such counsel shall be full and complete authorization and protection in respect of any action taken or suffered by Department hereunder in good faith and in conformity with the opinion of such counsel.

(k) Survival of Obligations. The obligations of Recipient as set forth in the Application and Award, shall survive the reservation of any Grant funds and shall not be deemed to terminate or merge with the awarding of the funds. Provisions of this Agreement which by their nature are intended to survive termination of this Agreement shall survive.

(l) Attorney Fees. In the event a lawsuit is instituted regarding this Agreement, the prevailing party in any dispute arising under this Agreement shall, to the extent permitted by law, be entitled to recover from the other its reasonable attorney fees. Attorney fees shall not exceed the rate charged to the Department by its attorneys.

(m) Governing Law; Venue: Consent to Jurisdiction. This Agreement shall be governed by the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively, "Claim") between Department and Recipient related to this Agreement shall be conducted exclusively within the Circuit Court of Marion County, Oregon (unless Oregon law requires that it be brought and conducted where the real property is located) or, if necessary, the United States District Court for the District of Oregon. In no event shall this provision be construed as a waiver by the State of Oregon of any form of defense or immunity, whether it is sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any Claim or from the jurisdiction of any court. RECIPIENT, BY EXECUTION OF THIS AGREEMENT, HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS.

(n) Merger Clause; Order of Precedence. This Agreement, including the Application, Award, and any exhibits, schedules, appendices and attachments hereto (which are by this reference incorporated herein), constitutes the entire agreement between the parties on the subject matter hereof. Recipient hereby acknowledges that the Application and the Award survive the execution and delivery of this Agreement. In the event of any inconsistencies between the body of the Agreement, the Application, the Award, and any of the attachments to the Agreement, the following is the descending order of precedence in which the various provisions are to be interpreted: the Agreement without any attachments or any incorporated provisions, the Plan, the Award, the Application, the property description, any other attachments. No modification or amendment of this Agreement shall bind either party unless in writing and signed by both parties (and the necessary approvals obtained), and no waiver or consent shall be effective unless signed by the party against whom such waiver or consent is asserted. Such waiver or consent, if given, shall be effective only in the specific instance and for the specific purpose given. There are no understandings, agreements or representations, oral or written, not specified herein regarding this Agreement.

IN WITNESS WHEREOF, Department and Recipient have caused this Agreement to be signed by their duly authorized officers as of the first day written above.

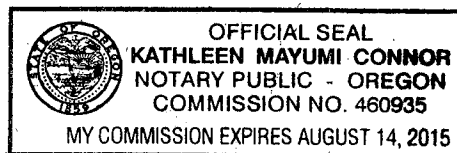
DEPARTMENT:

STATE OF OREGON, acting by and through its
Housing and Community Services Department

By: Heather Pate
Heather Pate, Manager
Multifamily Finance and Resources Section

STATE OF OREGON)
 : ss
County of Marion)

The foregoing instrument was acknowledged before me this 18th day of December 2012,
by Heather Pate, who is the Manager of the Multifamily Finance and Resources Section, Housing and
Community Services Department, on behalf of the Department.



Kathleen Connor
NOTARY PUBLIC FOR OREGON
My Commission Expires: August 14, 2015

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RECIPIENT:

NORTHWEST HIGH VALLEY ESTATES LLC

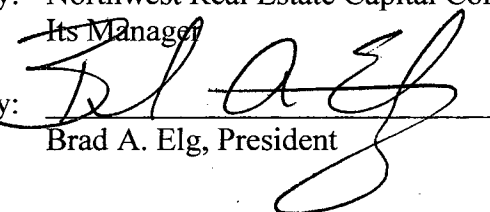
By: Community Development of Oregon IV LLC
Its Managing Member

By: Northwest Real Estate Capital Corp.
Its Manager

By: 
Brad A. Elg, President

COMMUNITY DEVELOPMENT OF OREGON IV LLC

By: Northwest Real Estate Capital Corp.
Its Manager

By: 
Brad A. Elg, President

NORTHWEST REAL ESTATE CAPITAL CORP.

By: 
Brad A. Elg, President

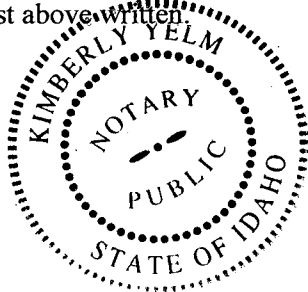
****Officers of Northwest Real Estate Capital Corp. authorized to sign:
The President or any Vice President or any of them acting individually**

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STATE OF IDAHO)
) ss.
County of Ada)

On this 20th day of December, 2012, before me, the undersigned, a Notary Public in and for said State, personally appeared Brad A. Elg, known or identified to me to be the President of Northwest Real Estate Capital Corp., an Idaho corporation, which corporation is the manager of Community Development of Oregon IV LLC, an Idaho limited liability company, which limited liability company is the managing member of **NORTHWEST HIGH VALLEY ESTATES LLC**, an Idaho limited liability company (the "LLC"), or the person who executed the above instrument on behalf of said entities, in each of the aforesaid capacities, and on behalf of and in the name of the LLC, and that such LLC executed the same.

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

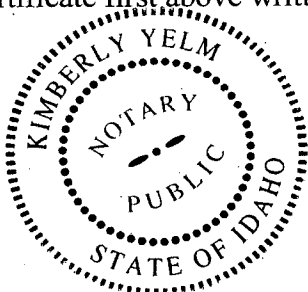


Kimberly Yelm
Notary Public for Idaho
Residing at Meridian, ID
My commission expires 6/15/2013

STATE OF IDAHO)
) ss.
County of Ada)

On this 20th day of December, 2012, before me, the undersigned, a Notary Public in and for said State, personally appeared [Brad A. Elg], known or identified to me to be the [President] of Northwest Real Estate Capital Corp., an Idaho corporation ("NWRECC"), which NWRECC is the manager of **COMMUNITY DEVELOPMENT OF OREGON IV LLC**, an Idaho limited liability company (the "LLC"), or the person who executed the above instrument on behalf of said NWRECC, and acknowledged to me that such NWRECC executed the same in its managerial capacity, and on behalf of and in the name of the LLC, and that such LLC executed the same.

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

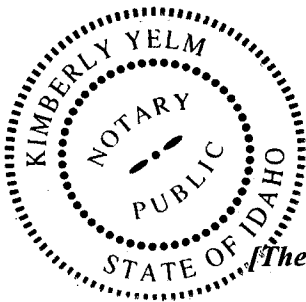


Kimberly Yelm
Notary Public for Idaho
Residing at Meridian, ID
My commission expires 6/15/2013

STATE OF IDAHO)
) ss.
County of Ada)

On this 20th day of December, 2012, before me, a Notary Public in and for said State, personally appeared Brad A. Elg, known or identified to me to be the President of **NORTHWEST REAL ESTATE CAPITAL CORP.**, an Idaho nonprofit corporation, and the corporation that executed the within instrument or the person who executed the instrument on behalf of said corporation, and acknowledged to me that such corporation executed the same.

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



Kimberly Yelm
Notary Public for Idaho
Residing at Meridian, ID
My commission expires 6/15/2013

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