

2012-014388

Klamath County, Oregon

12/27/2012 12:27:13 PM

Fee: \$107.00

1st 1963339

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

Davis Wright Tremaine LLP
Attn: Anthony T. Caso
1201 Third Avenue, Suite 2200
Seattle, WA 98101-3045
(206) 622-3150

THIS SPACE FOR RECORDER'S USE ONLY

PRIORITY AND SUBORDINATION AGREEMENT

**NOTICE: THIS SUBORDINATION AGREEMENT RESULTS IN YOUR INTEREST
IN THE PROPERTY BECOMING SUBJECT TO AND OF LOWER PRIORITY
THAN THE LIEN OF SOME OTHER OR LATER INSTRUMENT.**

This Priority and Subordination Agreement (this "Agreement") is entered into as of December 21, 2012, by and among NORTHWEST HIGH VALLEY ESTATES LLC, an Idaho limited liability company ("Borrower"); STATE OF OREGON ACTING BY AND THROUGH ITS HOUSING AND COMMUNITY SERVICES DEPARTMENT ("OHCS"); NORTHWEST REAL ESTATE CAPITAL CORP, an Idaho nonprofit corporation ("Sponsor"); and JPMORGAN CHASE BANK, N.A. ("Chase"). The parties to this Agreement are referred to as the "Parties."

RECITALS

A. Chase Interests. Borrower has executed a Deed of Trust, Security Agreement, Assignment of Leases and Rents and Fixture Filing (the "Chase Security Instrument") dated the date of this Agreement for the benefit of Chase, to secure obligations under a Construction and Permanent Loan Agreement and a Fixed Rate Note ("Fixed Rate Note") dated the date of this Agreement, in the principal amount of \$977,000 payable to the order of Chase; and a Variable Rate Note ("Variable Rate Note" and, collectively with the Fixed Rate Note, the "Note") dated the date of this Agreement in the principal amount of \$3,012,354. The Chase Security Instrument encumbers, among other things, the real property more particularly described in Exhibit A attached to this Agreement (the "Land") and is recorded under recording no. 2012-014374 in the real property records of the county where the Land is located (the "Recording Office"). The Land, together with all improvements now or hereafter located on the Land and all fixtures and personal property located on the Land and

encumbered by any of the Recorded Items (as defined below) are referred to, collectively, as the "Property."

B. Sponsor Interests. Borrower has executed a Deed of Trust Assignment of Rents, Security Agreement and Fixture Filing (the "Sponsor Security Instrument"), securing a promissory note in the amount of \$246,626 in favor of Sponsor. The Sponsor Security Instrument is recorded under recording no. 2012-014378 in the Recording Office. Sponsor also holds an Purchase Option and Right of First Refusal to purchase the Property pursuant to Borrower's Amended and Restated Operating Agreement dated December 21, 2012, (the "Sponsor Option").

C. OHCS Interests.

(i) Sponsor executed a Housing Development Grant Program Grant Agreement, Declaration of Restrictive Covenants and Equitable Servitudes (the "OHCS HDGP Agreement") dated as of December 21, 2012, in favor of OHCS. The OHCS HDGP Agreement is recorded under recording no. 2012-014377 in the Recording Office.

(ii) Borrower, Sponsor and OHCS executed a Housing Development Grant Program Assignment and Assumption Agreement, Declaration of Restrictive Covenants and Equitable Servitudes (the "OHCS HDGP Assignment and Assumption") dated December 21, 2012, in favor of OHCS. The OHCS HDGP Assignment and Assumption is recorded under recording no. 2012-014377 in the Recording Office.

(iii) Sponsor executed a Low Income Weatherization Program Grant Agreement, Declaration of Restrictive Covenants and Equitable Servitudes (the "Low-Income Weatherization Program Agreement") dated as of December 21, 2012, in favor of OHCS in connection with OHCS's Low Income Weatherization Grant Program. The Low-Income Weatherization Agreement is recorded under recording no. 2012-014376 in the Recording Office.

(iv) Borrower, Sponsor and OHCS executed a Low-Income Weatherization Program Assignment and Assumption Agreement, Declaration of Restrictive Covenants and Equitable Servitudes (the "Low-Income Weatherization Program Assignment and Assumption") dated December 21, 2012, in favor of OHCS. The Low-Income Weatherization Program Assignment and Assumption is recorded under recording no. 2012-014376 in the Recording Office.

(v) Oregon Affordable Housing Tax Credit Program Declaration of Land Use Restrictive Covenants (the "OAHTC Declaration") dated December 21, 2012, in favor of OHCS in favor of OHCS in connection with the state tax credits allocated to the Property pursuant to OHCS's Oregon Affordable Housing Tax Credit Program. The OAHTC Declaration is recorded under recording no. 2012-014375 in the Recording Office.

D. Recorded Items. The Chase Security Instrument, the Sponsor Security Instrument, the Sponsor Option, the OHCS HDGP Agreement, the OHCS HDGP Assignment and Assumption, Low-Income Weatherization Program Agreement, Low-Income Weatherization Program Assignment and Assumption and OAHTC Declaration are referred to as the "Recorded Items." All references to a Recorded Item in this Agreement includes any and all Uniform Commercial Code financing statements and all fixture filings filed or recorded in connection with such Recorded Item.

E. Post-Closing Recordings. After the recording of this Agreement, the Parties contemplate that the Low-Income Housing Tax Credit Program Declaration of Land Use Restrictive Covenants in favor of OHCS (the "LIHTC Declaration") will be recorded against the Property:

F. Order of Priority of Recorded Items. It is the intent of the Parties that the order of priority of the Recorded Items as liens on or charges against the Property be as follows:

1. Chase Security Instrument
2. OAHTC Declaration
3. Low-Income Weatherization Program Agreement
4. Low-Income Weatherization Program Assignment and Assumption
5. OHCS HDGP Agreement
6. OHCS HDGP Assignment and Assumption
7. Sponsor Security Instrument
8. Sponsor Option

G. It is a condition precedent to the respective obligations of each Party under the Recorded Items to which it is a party that such Recorded Item unconditionally be and remain at all times a lien or charge on the Property, having priority with respect to the other Recorded Items in the order set forth above, and that each Party specifically and unconditionally subordinate the lien or charge of each of the Recorded Items to which it is a party as necessary in order that the Recorded Items have the relative priority set forth above, subject to the provisions of this Agreement with regard to the LIHTC Declaration and its priority.

In consideration of the mutual benefits accruing to the Parties and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and in order to induce each Party to enter into the Recorded Items to which it is a party, the Parties agree as follows:

AGREEMENT

1. Priority and Subordination.

- 3 -

(a) Each Recorded Item, and any and all renewals and extensions thereof, shall unconditionally be and remain at all times a lien or charge on the Property, having the relative priority with respect to the other Recorded Items as set forth above. Each Party intentionally and unconditionally subordinates the lien or charge of the Recorded Items to which it is a party in favor of the lien or charge upon the Property of the other Recorded Items to the extent necessary so that the Recorded Items shall have the relative priority set forth above.

(b) Each Party acknowledges that it has been offered a satisfactory opportunity to review each of the Recorded Items and related documents to the extent that it wishes to review them.

2. **Reliance.** The Parties would not enter into, and permit the recording of, the Recorded Items to which they are parties without this Agreement.

3. **Recording.** Each Party consents to the recording of each of the Recorded Items, the LIHTC Declaration and this Agreement.

4. **No Obligation.** No lender party to this Agreement is under any obligation to any other Party to, nor has any such lender represented that it will, see to the application of any proceeds of any loan secured by any of the Recorded Items or the LIHTC Declaration except as may otherwise be set forth in a written agreement (other than this Agreement) executed by the lender sought to be charged with such an obligation and then any such obligation shall run only to the person or entity expressly named as a beneficiary of such obligation in such other agreement.

5. **Notice of Default; Opportunity to Cure.** Each Party shall give each of the other Parties notice of default under each Recorded Item in favor of such Party prior to enforcing remedies for such default against Borrower or the Property and each of the other Parties shall have the right to cure such default at any time that Borrower would have a right to cure it.

6. **Actions by Chase; Certain Waivers.** Chase, without the consent of or notice to any other Party, may enter into amendments of the Chase Security Instrument and the documents and obligations secured thereby (collectively, the "Chase Loan Documents") in any manner, may release any or all persons or entities liable for any obligation secured by the Chase Loan Documents, and may release any or all security for the obligations secured by the Chase Loan Documents, all without affecting the subordination under this Agreement. Each Party waives any right to require marshaling of assets or to require Chase to proceed against or exhaust any specific security for the obligations secured by the Chase Loan Documents,

and waives any and all defenses arising out of the loss or impairment of any right of subrogation to the lien of the Chase Loan Documents.

7. **LIHTC Declaration.** The Parties acknowledge that Borrower will be required to enter into the LIHTC Declaration, which LIHTC Declaration will be on OHCS's standard form. Each Party will consent to, and subordinate the lien or charge of the Recorded Items in its favor to, the LIHTC Declaration, provided that the LIHTC Declaration includes provisions for termination thereof not later than three years after foreclosure (or deed in lieu of foreclosure) of the Chase Security Instrument.

8. **Miscellaneous.**

(a) **Entire Agreement.** This Agreement constitutes the entire agreement among the Parties with respect to the priority of the lien and charge of the Recorded Items and the LIHTC Declaration against the Property and all prior understandings and agreements on that subject, if any, are superseded and replaced by this Agreement.

(b) **Applicable Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon.

(c) **Successors; Assignment.** The heirs, administrators, assigns and successors-in-interest of the Parties shall be bound by this Agreement. This Agreement may be assigned by a Party only as a part of an assignment of such Party's interest in the Property.

(d) **Amendment.** This Agreement may be amended only by a writing signed by the Parties, but this clause shall not impair the validity of any further agreements among fewer than all of the Parties as among themselves.

(e) **Notices.** All notices to be given pursuant to this Agreement shall be in writing and shall be deemed given when hand-delivered, or two business days after deposit in the U.S. mail, postage prepaid, to the Parties at the addresses set forth below, or to such other place as a Party may from time to time designate for itself by notice to the other Parties. No successor or assign of a Party shall be entitled to notices or opportunity to cure defaults hereunder unless notice of the transfer is given in accordance with this subsection.

(f) **Counterparts.** This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument and whether or not all Parties execute each counterpart.

(g) **Completion of Recording Information.** If this Agreement is signed without completion of certain recording information called for above, any Party or any escrow

agent or title insurance company acting on the instructions of any Party is hereby authorized to insert such information prior to recording this Agreement.

NOTICE: THIS SUBORDINATION AGREEMENT RESULTS IN YOUR INTEREST IN THE PROPERTY BECOMING SUBJECT TO AND OF LOWER PRIORITY THAN THE LIEN OR CHARGE OF SOME OTHER OR LATER INSTRUMENT.

(Remainder of page intentionally left blank)

DATED as of the date first set forth above.

BORROWER:

NORTHWEST HIGH VALLEY ESTATES LLC

By: Community Development of Oregon IV LLC
Its Managing Member

By: Northwest Real Estate Capital Corp.
Its Manager

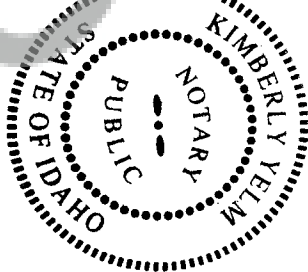
By: Brad A. Elg
Brad A. Elg, President

Address: Northwest High Valley Estates LLC
c/o Northwest Real Estate Capital Corp.
210 West Mallard Drive, Suite A
Boise, ID 83706

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 nonprofit corporation, which corporation is the managing member of Community Development of Oregon IV LLC, an Idaho limited liability company, which limited liability company is the manager 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

Signature Page to
Priority and Subordination Agreement
S-1

DATED as of the date first set forth above.

CHASE:

JPMORGAN CHASE BANK, N.A.

By: Chuck Weinstock
Chuck Weinstock, Vice President

Address: 201 North Central Avenue, 14th Floor
Phoenix, AZ 85004
Attn: Commercial Real Estate Loan Admin

STATE OF Washington
COUNTY OF King | SS.

I certify that I know or have satisfactory evidence that Chuck Weinstock is the person who appeared before me, and said person acknowledged that said person signed this instrument, on oath stated that said person was authorized to execute the instrument and acknowledged it as a Vice President of JPMORGAN CHASE BANK, N.A., the corporation that executed the within and foregoing instrument, to be the free and voluntary act of such corporation for the uses and purposes mentioned in the instrument.

Dated this 14th day of December, 2012.

Brian D. Hulbe
(Signature of Notary)

Brian D. Hulbe
(Legibly Print or Stamp Name of Notary)

Notary public in and for the State of
Washington, residing at Seattle
My appointment expires 6/29/15



DATED as of the date first set forth above.

OHCS:

STATE OF OREGON ACTING BY AND
THROUGH ITS HOUSING AND
COMMUNITY SERVICES DEPARTMENT

By Heather Pate
Its Section Manager

Address: 725 Summer Street N.E., Suite B
Salem, OR 97301-1266

STATE OF OREGON

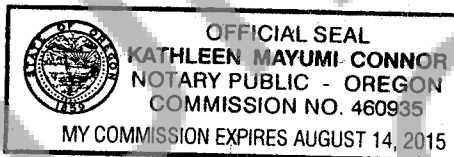
COUNTY OF Marion

ss.

I certify that I know or have satisfactory evidence that Heather Pate is the person who appeared before me, and said person acknowledged that said person signed this instrument, on oath stated that said person was authorized to execute the instrument and acknowledged it as Manager of the Multifamily of STATE OF OREGON ACTING BY AND THROUGH ITS HOUSING AND COMMUNITY SERVICES DEPARTMENT, the governmental entity that executed the within and foregoing instrument, to be its free and voluntary act for the uses and purposes mentioned in the instrument.

* Housing Section

Dated this 18th day of December, 2012.



Kathleen Connor

(Signature of Notary)

Kathleen Mayumi Connor

(Legibly Print or Stamp Name of Notary)

Notary public in and for the State of Oregon,
residing at Dallas

My appointment expires August 14, 2015

Signature Page to
Priority and Subordination Agreement

S-3

DATED as of the date first set forth above.

SPONSOR:

NORTHWEST REAL ESTATE CAPITAL
CORP.

By: 
Brad A. Elg, President

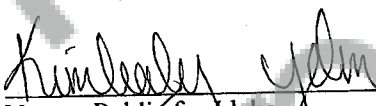
Address: c/o Northwest Real Estate Capital Corporation
210 West Mallard Drive, Suite A
Boise, ID 83706

STATE OF IDAHO)
) ss.
County of Ada)

On this 20 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 nonprofit corporation, or the person who executed the above instrument on behalf of said corporation, in each of the aforesaid capacities, and on behalf of and in the name of the corporation, and 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.




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

Signature Page to
Priority and Subordination Agreement
S-4

EXHIBIT A
Legal Description

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

EXHIBIT A