

2014-003957
Klamath County, Oregon
04/25/2014 02:26:30 PM
Fee: \$97.00

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

SPACE ABOVE FOR RECORDERS USE

HOUSING AND COMMUNITY SERVICES DEPARTMENT
STATE OF OREGON

9% LOW-INCOME HOUSING TAX CREDIT
DECLARATION OF LAND USE RESTRICTIVE COVENANTS

THIS DECLARATION OF LAND USE RESTRICTIVE COVENANTS, (this "Declaration"), dated as of April 25, 2014, by NORTHWEST HIGH VALLEY ESTATES LLC, an Idaho limited liability company, and its successors and assigns (the "Owner") is given as a condition precedent to the allocation of low-income housing tax credits by the State of Oregon, acting by and through its Housing and Community Services Department, together with any successor to its rights, duties, and obligations, (the "Department").

RECITALS

- A. Owner is or shall be the owner of a thirty-six (36) unit plus one manager unit rental housing development located on lands in the City of Klamath Falls, Oregon, County of Klamath, State of Oregon, more particularly described in **Exhibit A** hereto, known as or to be known as High Valley Estates Apartments (the "Project").
- B. Department has been designated by the Governor of the State of Oregon as the housing credit agency for the State of Oregon for the allocation of 2013 low-income housing tax credit dollars (the "Credit").
- C. Owner has applied to Department and entered into a Reservation and Extended Use Agreement dated October 18, 2012 (the "REUA"), for an allocation of Credit to the Project in an amount not to exceed Three Hundred Twenty-six Thousand, One Hundred and Seven Dollars (\$326,107).
- D. Department has agreed to issue a Form 8609 to the Owner upon the execution and recording of this Declaration, which Declaration constitutes part of the REUA.
- E. Owner has represented to Department in Owner's Credit Application dated February 04, 2014 (the "Application"), *inter alia*, that Owner will lease/rent forty percent (40%) of the units in the Project to individuals or families whose income is sixty percent (60%) or less of the area family adjusted median gross income ("Low-Income Tenants") as determined in accordance with Section 42 of the Internal Revenue Code (the "IRC").
- F. Department has determined that the Project will require a Credit allocation in the amount of Three Hundred Twenty-six Thousand, One Hundred and Seven Dollars (\$326,107) to be financially feasible.
- G. Owner has represented to Department that it will maintain Project rent restrictions as described in the REUA and consistent with the IRC.

H. The IRC requires, as a condition precedent to the allocation of the Credit, that Owner execute, deliver and record this Declaration in the official land deed records of the county in which the Project is located in order to create certain restrictive covenants running with the land for the purpose of enforcing the requirements of IRC Section 42.

I. Department requires, as a condition precedent to the allocation of the Credit, that Owner execute, deliver and record this Declaration in the official land deed records of the county in which the Project is located in order to create certain restrictive covenants pursuant to ORS 456.625(15) and equitable servitudes running with the land for the purposes of enforcing this Declaration, the REUA, the IRC, all applicable rules, rulings, policies, procedures, regulations or other official statements promulgated or proposed and published by the United States Department of the Treasury, the Internal Revenue Service, HUD, or from time to time pertaining to Owner's obligations under the IRC, the REUA, or this Declaration and affecting the Project (the "Regulations"), and applicable Department administrative rules and directives (the foregoing Declaration, REUA, IRC, Regulations, and Department administrative rules and directives are collectively referred to hereinafter as the "Declaration Requirements").

J. Owner is willing, and intends, to execute and record this Declaration memorializing its representations, covenants, agreements and declarations with respect to the Project, the Credit, and the Declaration Requirements, including that the restrictive covenants and equitable servitudes set forth herein governing the use, occupancy, and transfer of the Project shall be and are covenants running with the Project land for the term stated herein, unless otherwise modified in a signed and notarized writing by the Department, and are binding upon all subsequent owners of the Project property for such term, and are not merely personal covenants of the Owner.

DECLARATION

NOW, THEREFORE, in consideration of the Credit, the promises and covenants hereinafter set forth, and of other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Owner agrees, covenants, and declares as follows:

SECTION 1 - INCORPORATIONS; DEFINITIONS

- (a) The foregoing Recitals and the documents referenced therein are incorporated in this Declaration by reference to the same extent and with the same force and effect as if fully set forth herein, provided, however, that the Recitals shall not be deemed to modify the express provisions hereinafter set forth.
- (b) All the words and phrases used in this Declaration shall have the meanings given herein or as used in the Regulations and other Declaration Requirements unless the context requires otherwise.

SECTION 2 - RECORDING AND FILING; COVENANTS TO RUN WITH THE LAND

- (a) Upon execution of this Declaration, the Owner shall cause this Declaration and all amendments hereto to be recorded and filed in the official public land deed records of the county in which the Project is located, and shall pay all fees and charges incurred in connection therewith. Upon recording, the Owner shall immediately transmit to Department an executed original or certified copy of the recorded Declaration showing the date, deed book and page numbers of record. The Owner understands and agrees that Department will not issue the Internal Revenue Service Form 8609 constituting final allocation of the

Credit unless and until Department has received the recorded executed original of this Declaration.

- (b) The Owner intends, declares, and covenants, on behalf of itself and all future owners and operators of the Project, that this Declaration and the covenants and restrictions set forth in this Declaration regulating and restricting the use, occupancy and transfer of the Project (I) shall be and are covenants and equitable servitudes running with the Project land and encumbering the Project for the sixty (60) year term of this Declaration (or until January 1, 2074, whichever is later) (the "Affordability Period") binding upon the Owner's successors in title and all subsequent Owners and Operators of the Project (II) are not merely personal covenants of the Owner, and (III) shall bind the Owner and the benefits shall inure to Department (and, as herein limited, to any past, present or prospective qualified tenant of the Project) and its respective successors and assigns during the Affordability Period. The Owner hereby agrees that any and all requirements of the laws of the State of Oregon to be satisfied in order for the provisions of this Declaration to constitute deed restrictions and covenants running with the land shall be deemed to be satisfied in full and that equitable servitudes have been created to insure that these restrictions and equitable servitudes run with the Project. Throughout the Affordability Period, each and every contract, deed or other instrument hereafter executed conveying the Project or portion thereof shall expressly provide that such conveyance is subject to this Declaration, provided, however, the covenants and equitable servitudes contained or created herein shall survive and be effective regardless of whether such contract, deed, or other instrument hereafter executed conveying the Project or portion thereof provides that such conveyance is subject to this Declaration.
- (c) The Owner covenants to obtain the consent of any prior recorded lienholder on the Project to this Declaration and such consent shall be a condition precedent to the issuance of Internal Revenue Service Form 8609 constituting final allocation of the Credit.
- (d) Notwithstanding any interests hereunder or in the REUA inuring to the benefit of past, present or prospective tenants of the Project pursuant to Section 2(b) above or otherwise, Department may compromise, waive, amend or modify this Declaration with the written consent of Owner while the Project remains in the Low-Income Housing Tax Credit Program (the "Program") or at its sole discretion should the Project be removed from the Program, as it so determines to be to the benefit of Department, the Project, the Program, or Department efforts to provide or maintain safe and affordable housing in the State of Oregon. To be effective, any compromise, waiver, amendment or modification of this Declaration must be in writing, signed by an authorized Department representative.
- (e) Third-party beneficiaries under this Declaration shall have no claim, cause of action or other right of recourse against Department with respect to any action or lack of action taken by Department with respect to this Declaration, the REUA, the Credit, or the Project, arising from their rights under this Declaration, the REUA, or the other Declaration Requirements.

SECTION 3 - REPRESENTATIONS, COVENANTS AND WARRANTIES OF THE OWNER

The Owner hereby represents, covenants, and warrants as follows:

- (a) The Owner (I) is a limited liability company, is duly organized under the laws of the State of Idaho, and is qualified to transact business related to the development and operation of the Project under the laws of the State of Oregon, (II) has the power and authority to own its properties and assets and to carry on its business as now being conducted, and (III) has the full legal right, power and authority to execute and deliver this Declaration.

- (b) The execution and performance of this Declaration by the Owner (I) will not violate or, as applicable, has not violated any provision of law, rule or regulation, or any order of any court or other agency or governmental body, (II) will not violate or, as applicable, has not violated any provision of any indenture, agreement, mortgage, mortgage note, or other instrument to which the Owner is a party or by which it or the Project is bound, and (III) will not result in the creation or imposition of any prohibited encumbrance of any nature.
- (c) The Owner will, at the time of execution and delivery of this Declaration, have good and marketable title to the premises constituting the Project free and clear of any lien or encumbrance (subject to encumbrances created pursuant to this Declaration and any duly subordinated Loan Documents relating to the Project or other permitted encumbrances).
- (d) There is no action, suit, or proceeding at law or in equity, or by or before any governmental instrumentality or other agency now pending, or, to the knowledge of the Owner, threatened against or affecting it, or any of its properties or rights, which if adversely determined, would materially impair its right to carry on business substantially as now conducted (and as now contemplated by this Declaration) or would materially adversely affect its financial condition.
- (e) The Project constitutes or will constitute a qualified low-income building or qualified low-income project, as applicable, as defined in IRC Section 42 and applicable regulations.
- (f) Each unit in the Project contains complete facilities for living, sleeping, eating, cooking, sanitation and satisfies any other applicable criterion in IRC §42(i)(3)(B), including that such units are to be used on other than a transient basis (unless the Project qualifies as a single-room occupancy project or transitional housing for the homeless in a manner consistent with IRC §42(i)(3)(B)(iii)).
- (g) During the Affordability Period, all units subject to the Credit consistent with the applicable fraction identified below shall be leased, rented or made available to members of the general public who qualify as Low-Income Tenants (or otherwise qualify for occupancy of the low-income units) under the applicable election specified in Section 42(g) of the IRC.
- (h) The Owner agrees that the Department, qualified tenants, and appropriate third parties will be eligible to enforce the IRC entitlements with respect to the Project for the Affordability Period as provided by the Fair Housing Act, as amended.
- (i) During the Affordability Period, the Owner covenants, agrees and warrants that each low-income unit is and will remain habitable and that the Project is and will be maintained in a safe, sanitary, and appropriate condition, all satisfactory to the Department.
- (j) Subject to this Declaration and the other Declaration Requirements, including as amended, a limited partner or limited member of Owner that has provided Credit equity to assist in Project development may transfer its interest in Owner to an affiliate entity within one year of the date of this Declaration with written notice satisfactory to the Department. Subject to prior written notice to the Department and receipt of written approval by the Department, which the Department may give or withhold at its reasonable discretion, Owner may sell, transfer, or exchange the Project so long as (I) Owner shall notify in writing and obtain the agreement of any buyer or successor or other person acquiring the Project or any interest therein that such acquisition is subject to this Declaration and the other Declaration Requirements, (II)

Owner shall pay a transfer charge to the Department as provided by Department administrative rule or directive. Transfers of any limited partner or limited member interest in Owner other than the one-time transfer to an affiliate entity provided above also shall be subject to such limited partner or limited member complying in advance with the terms of the immediately preceding sentence. This provision shall not act to waive any other restriction on sale, transfer, or exchange of the Project or any low-income portion of the Project. The Owner agrees that Department may, in addition to the exercise of other remedies, void any sale, transfer, or exchange of the Project not in compliance with the terms of this subsection. Notwithstanding the foregoing, the Owner shall not dispose of any portion of a building which constitutes a portion of the Project and to which this Declaration applies unless the entire building is disposed of to such person.

- (k) The Owner will provide certified financial documentation acceptable to Department to satisfy the calculation of a qualified contract and to begin the one-year period for finding a buyer in accordance with IRC Section 42(h)(6) if desired. Notwithstanding any other provision of this Declaration or otherwise, absent the express written agreement of the Department (which the Department may give or withhold at its sole discretion) any one-year period applicable to the Department for finding a buyer for the Project in accordance with IRC Section 42(h)(6) shall not commence until the first day of the last year of the Affordability Period.
- (l) The Owner shall not demolish any part of the Project, substantially subtract from any real or personal property of the Project, or permit the use of any residential rental unit for any purpose other than rental housing during the term of this Declaration unless required by law or unless the Department has given its prior written consent.
- (m) If the Project, or any part thereof, shall be damaged, destroyed, condemned, or acquired for public use, the Owner will, subject to the rights of any mortgagee, repair and restore the Project to substantially the same condition as existed prior to the events causing such damage or destruction, or to relieve the condemnation, and thereafter to operate the Project in accordance with the terms of this Declaration.
- (n) The Owner has not and will not execute any other declaration, instrument, or other agreement with provisions contradictory to, or in opposition to, the provisions hereof, and that in any event, this Declaration and the other Declaration Requirements, including as amended, are paramount and controlling as to the rights and obligations herein set forth and supersede any other requirements in conflict herewith.
- (o) Notwithstanding anything to the contrary herein or in the REUA, the applicable fraction for each building of the Project during the term of this Agreement shall not be less than the applicable fraction specified in the REUA, which is one hundred percent (100%) of the Project units (the "Applicable Fraction"). [See IRC Section 42(h)(6)(B)] Each such unit comprising the Applicable Fraction within the Project (the "Qualified Units") and related common areas of the Project are subject to the terms, conditions, covenants, and equitable servitudes of this Declaration and the other Declaration Requirements, including as amended, throughout the Affordability Period and as additionally provided herein.
- (p) In addition to the enforcement of applicable IRC rent limits, the Department may require the Owner to additionally reduce rents charged for Qualified Units if property taxes imposed upon the Project are reduced because of a change in Oregon law. Any such reduction in rent required by the Department will not exceed the reduction in property taxes, taking into account any replacement taxes or equivalent charges.

- (q) The Owner will not refuse to lease to a holder of a voucher or certificate of eligibility under Section 8 of the United States Housing Act of 1937 because of the status of the prospective tenant as such a holder.
- (r) The Owner shall, satisfactory to the Department, complete and sign Part II of the Form 8609 for the first year of the Credit period and timely return a copy of same to the Department.
- (s) The Department may charge, and Owner shall pay to the Department, periodic amounts for Department monitoring activities with respect to the Project as determined by the Department in accordance with its applicable administrative rules and directives, including as amended.

SECTION 4 –MINIMUM IRC INCOME RESTRICTIONS; RENTAL RESTRICTIONS

To verify minimum compliance with IRC requirements, the Owner represents, warrants, and covenants that from and after initial occupancy and throughout the remainder of the Affordability Period, in addition to its other obligations under this Declaration, that:

- (a) Choose one of the below:
 - (1) At least 20 percent or more of the residential units in the Project will be both rent-restricted and occupied by individuals whose income is 50 percent or less of family adjusted area median income.
 - (2) X At least 40 percent or more of the residential units in the Project will be both rent-restricted and occupied by individuals whose income is 60 percent or less of family adjusted area median income.
- (b) Department may require that the determination of whether a tenant meets the low-income requirement be made by the Owner or his designated agent at least annually on the basis of the current income of such Low-Income Tenant.

SECTION 5 - ADDITIONAL COMPLIANCE REQUIREMENTS, INCLUDING OCCUPANCY, RENT AND USE RESTRICTIONS

The Owner represents, warrants and covenants that throughout the Affordability Period:

- (a) The terms, conditions, and covenants of this Declaration apply to the Owner and all Qualified Units and related common areas of the Project for the full term of the Affordability Period and as additionally provided in this Declaration. All Qualified Units are subject to and shall be maintained in accordance with the income and rent restrictions of Section 4 as well as all other provisions of this Declaration.
- (b) The Owner shall continuously comply with all habitability, maintenance, disclosure and other Declaration Requirements with respect to the Project, including but not limited to all income, rent, and use restrictions applicable to the Project, arising under this Declaration and the other Declaration Requirements, including as amended, for the full term of the Affordability Period and as additionally provided herein. These obligations are in addition to the minimum IRC restrictions of Section 4 and in excess of the required 15-year IRC Compliance Period.

- (c) In no event shall Qualified Unit rents exceed gross rents allowable under the Declaration Requirements, including as amended.
- (d) Regardless of any provision in this Declaration to the contrary, the Project occupancy, rent and use restrictions, and other terms and conditions, of this Declaration shall remain in effect throughout the Affordability Period, except in the event of a written, signed and notarized modification, waiver, or release of all or part of such restrictions, terms or conditions by the Department or pursuant to Section 6(b)(1), but subject to the three-year safe harbor requirements of the IRC and Section 6(c) of this Declaration.
- (e) The Owner may terminate the tenancy of a Project tenant only for: (i) material noncompliance of lease terms including, but not limited to substantial lease violations, fraud, repeated minor violations and nonpayment of rent; (ii) drug abuse or other criminal activity; (iii) material failure to carry out obligations under Oregon's landlord and tenant act, ORS chapter 90; or (iv) other good cause..
- (f) Consistent with Section 3(k), the earliest date upon which the Owner may request the Department to assist it in procuring a qualified contract for the acquisition of the low-income portion of the Project is on the first day of the last year of the Affordability Period.
- (g) The Owner ___ does/ X does not covenant and agree that operating reserves of the Project, when released from restricted use, shall be wholly used to subsidize tenant rents consistent with guidelines prescribed by the Department.

SECTION 6 - TERM OF DECLARATION

- (a) Except as hereinafter provided, the income, affordability, and use restrictions of this Declaration shall commence upon the first day in the Project period on which any building which is part of the Project is placed in service and shall endure for the entire 15-year Compliance Period and for the remaining balance of the Affordability Period and as additionally provided herein subject to earlier termination under Sections 5(c) and 6(b)(1). All other covenants, terms, and conditions herein shall commence upon execution of this Declaration by Owner and shall endure for the Affordability Period and as additionally provided herein subject to earlier termination under Sections 5(c) and 6(b)(1). Termination of the Affordability Period or this Declaration shall not extinguish remedies available to the Department arising under this Declaration or the REUA.
- (b) The Owner shall comply with the terms, conditions, and covenants of this Declaration and other Declaration Requirements, including as amended, for the entire Affordability Period and as additionally provided herein; provided, however, this Declaration and the Affordability Period for any building which is part of this Project shall terminate:
 - (1) On the date the building is acquired by foreclosure or instrument in lieu of foreclosure; or
 - (2) On the last day of the one-year period specified in IRC Section 42(h)(6)(I) commencing on the first day of the last year of the Affordability Period, if the Owner has properly requested in accordance with IRC Section 42 that Department assist it in procuring a qualified contract for the acquisition of the low-income portion of any building which is a part of the Project, Department and the Owner have agreed upon the terms of sale as specified in Section 3(l) of this Declaration, and Department is unable to present a qualified contract within one year of reaching written

agreement regarding the terms of sale.

- (c) Notwithstanding subsection (b) above, IRC and Declaration rent limitations shall continue for a period of three years following the termination of the Affordability Period pursuant to the procedures specified in subsection (b) above for tenants of the Project as of the date of termination. During such three-year period, the Owner shall not evict or terminate the tenancy of an existing tenant of any of the Qualified Units other than for good cause and shall not increase gross rents above the maximum allowed under this Declaration and the other Declaration Requirements, including as amended, with respect to such Qualified Units.

SECTION 7 - ENFORCEMENT OF DECLARATION REQUIREMENTS

- (a) Owner shall permit, during normal business hours and upon reasonable notice, any duly authorized representative of the Department, to inspect and copy any books and records of the Owner regarding the Project, including but not limited to the incomes of Low-Income Tenants and Owner compliance with this Declaration and other Declaration Requirements, including as amended.
- (b) Owner shall cooperate with any inspection or copying of its books or records regarding the Project and shall maintain such books and records for a period not less than three (3) years after the completion of the Affordability Period or until the completion of any claim, suit or action with respect to the Project, whichever is later.
- (c) Owner shall permit and cooperate with the Department in any physical inspection of the Project, including appropriate inspection of Qualified Units in conformance with applicable law.
- (d) The Owner shall submit any other information, documents, or certifications requested by Department to substantiate the Owner's continuing compliance with the provisions of this Declaration, the REUA, the IRC, applicable IRC regulations, and applicable Department administrative rules or directives.
- (e) Owner covenants that it will not knowingly take or permit any action that would result in a violation of this Declaration or other Declaration Requirements. Moreover, Owner covenants to take any lawful action (including amendment of this Declaration as may be necessary, in the opinion of Department) to comply fully with this Declaration or other Declaration Requirements.
- (f) Owner acknowledges that a primary purpose for requiring compliance by the Owner with this Declaration is to assure compliance of the Project and the Owner with IRC Section 42 and Regulations, AND BY REASON THEREOF, THE OWNER IN CONSIDERATION FOR RECEIVING LOW-INCOME HOUSING TAX CREDITS FOR THIS PROJECT HEREBY AGREES AND CONSENTS THAT DEPARTMENT AND ANY INDIVIDUAL WHO MEETS THE INCOME LIMITATION APPLICABLE UNDER SECTION 42 (WHETHER PROSPECTIVE, PRESENT OR FORMER OCCUPANT) SHALL BE ENTITLED, FOR ANY BREACH OF THE PROVISIONS HEREOF, AND IN ADDITION TO ALL OTHER REMEDIES PROVIDED BY LAW OR IN EQUITY, TO ENFORCE SPECIFIC PERFORMANCE BY THE OWNER OF ITS OBLIGATIONS UNDER THIS DECLARATION IN A STATE COURT OF COMPETENT JURISDICTION. The Owner hereby further specifically acknowledges that the beneficiaries of the Owner's obligations hereunder cannot be adequately compensated by monetary damages in the event of any default hereunder.
- (g) The declarations, representations, covenants, and warranties of Owner set forth herein may be relied upon

by the Department and all third parties under this Declaration.

- (h) Owner shall take any and all actions reasonably required by Department to substantiate the Owner's compliance with this Declaration and other Declaration Requirements, including as amended, and shall pay all charges to Department provided herein as required by the Department. Charges not paid by Owner to the Department as required shall incur a late payment fee of 2% per month until fully paid.
- (i) This Declaration and the other Declaration Requirements, including as amended, may be enforced by the Department or its designee through an action for specific performance, or pursuant to any other remedies allowed at law or provided herein. In addition, this Declaration shall be deemed a contract enforceable by one or more Tenants as third-party beneficiaries of the Declaration subject to any and all limitations in this Declaration or the REUA with respect to such third-party beneficiary interests and rights.
- (j) The Department also may exercise such other remedies with respect to this Declaration as may be permitted or authorized under the REUA.

SECTION 8 - FUTURE TRANSFER OF OWNERSHIP, QUALIFIED CONTRACT

This Section will not apply to the Project.

SECTION 9 - MISCELLANEOUS

- (a) Severability. The invalidity of any clause, part, or provision of this Declaration shall not affect the validity of the remaining portions thereof.
- (b) Notices. All notices to be given pursuant to this Declaration shall be in writing and shall be deemed given when mailed by certified or registered mail, return receipt requested, to the parties hereto at the addresses set forth below, or to such other place as a party may from time to time designate in writing.

To the Department: Oregon Housing and Community Services Department
Attn: LIHTC Program Manager
725 Summer Street NE, Suite B
Salem, Oregon 97301-1266

To the Owner: Northwest High Valley Estates LLC
Attn: Director, Corporate Development Group
210 W. Mallard Dr., Suite A
Boise, Idaho 83706
TIN #: 27-1517815

Department, and the Owner, may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent.

- (c) Amendment. The Owner agrees that it will take all actions necessary to effect amendment of this Declaration as the Department may deem necessary to comply with the IRC or other Declaration Requirements. Department, together with Owner, may execute and record any amendment or modification to this Declaration and such amendment or modification shall be binding on third-parties

granted rights under this Declaration.

- (d) Subordination of Declaration. This Declaration and the restrictions hereunder are subordinate to the permanent loan and loan documents on the Project in an original principal amount not to exceed \$1,074,700, except insofar as IRC Section 42 (h)(6)(E) otherwise requires. Department may subordinate this Declaration to other financing, in its sole discretion and such subordination shall be binding on all third-parties granted rights under this Declaration.
- (e) Governing Law. This Declaration shall be governed by the laws of the State of Oregon without regard to principles of conflicts of law and, where applicable, the laws of the United States of America.
- (f) Survival of Obligations. The obligations of the Owner as set forth herein and in the Application shall survive the allocation of the Credit and shall not be deemed to terminate or merge with the awarding of the allocation.
- (g) Certifications.
 - (1) Owner hereby certifies that all information pertinent to Section 42 of the Internal Revenue Code, as amended, has been considered by it in the determination of eligible basis for the Project. This consideration includes but is not limited to any rule changes, Private Letter Rulings, Technical Assistance Memoranda, considerations, IRS guidance, etc.
 - (2) Owner further certifies that its project accounting and legal professionals/representatives have also considered the above in their advice to and review of the Project.
- (h) Attorney Fees. In the event a lawsuit is instituted regarding this Declaration, the prevailing party in any dispute arising under this Declaration 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. Notwithstanding any other provision in this Declaration or incorporated documents, reasonable fees shall not exceed the rate charged the Department by its attorneys.
- (i) Venue: Consent to Jurisdiction. 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 in the circuit court 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 or any other provision in this Declaration 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. OWNER, BY EXECUTION OF THIS DECLARATION, HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS.
- (j) Time of the Essence. Time is of the essence in the performance of this Declaration.

IN WITNESS WHEREOF, the Owner has caused this Declaration to be signed by its duly authorized representatives, as of the day and year first written above.

OWNER: NORTHWEST HIGH VALLEY ESTATES LLC
TIN: 27-1517815

By: Community Development of Oregon IV LLC
Its Manager

By: Northwest Real Estate Capital Corp.
Its Manager

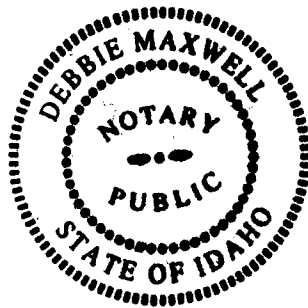
By: 
Brad A. Elg, President

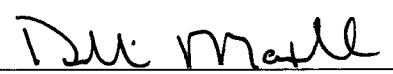
STATE OF Idaho)

: ss

County of Ada)

The foregoing instrument was acknowledged before me this 25th day of April, 2014, by Brad A. Elg, President of Northwest Real Estate Capital Corp., an Idaho nonprofit corporation, which corporation is the manager 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"), who executed the foregoing instrument for on behalf of the owner.




NOTARY PUBLIC FOR IDAHO
My Commission Expires: July 28, 2016

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EXHIBIT A
[Property Description]

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