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2010-007058

Klamath County, Oregon



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AFTER RECORDING, RETURN TO:

James F. Dulcich  
Schwabe, Williamson & Wyatt, P.C.  
1211 S.W. Fifth Avenue, Suites 1500-2000  
Portland, Oregon 97204

06/10/2010 09:58:39 AM

Fee: \$97.00

**ASSIGNMENT AND ASSUMPTION OF LOW-INCOME TAX CREDIT  
RESERVATION AND EXTENDED USE AGREEMENT, DECLARATION OF  
RESTRICTIVE LAND USE COVENANTS, AND PROJECT USE AGREEMENT**

This Assignment and Assumption of Low-Income Tax Credit Reservation and Extended Use Agreement, Declaration of Restrictive Land Use Covenants, and Project Use Agreement (this "Assignment and Assumption Agreement") is entered into as of this 10 day of JUNE, 2010 (the "Effective Date"), between Applegate Trail Apartments Limited Partnership, an Oregon limited partnership ("Seller"), and AGT Apartments LLC, an Oregon limited liability company ("Buyer").

**Recitals**

A. On or about March 3, 2010, Seller on the one hand and Lewis Dodson and Matthew Dodson (the "Dodsons") on the other entered into a Purchase and Sale Agreement dated March 3, 2010 (the "Sale Agreement"), pursuant to which Seller agreed to sell to the Dodsons and the Dodsons agreed to purchase from Seller that certain real property consisting of a 49-unit apartment complex known as the Applegate Trail Apartments and located at 4520 Bristol Avenue, Klamath Falls, Oregon, and described on Exhibit A attached hereto (the "Project"). The Sale Agreement was amended pursuant to a First Amendment to Purchase and Sale Agreement dated April 15, 2010, a Second Amendment to Purchase and Sale Agreement dated May 4, 2010, and a Third Amendment to Purchase and Sale Agreement dated May 12, 2010. The Dodsons assigned to Buyer their right, title, and interest in the Sale Agreement pursuant to an Assignment of Purchase and Sale Agreement dated May 21, 2010.

B. The Project was financed, in part, with low income housing tax credits allocated under Section 42 of the Internal Revenue Code of 1986, as amended (the "Tax Credits").

C. In connection with the allocation of the Tax Credits, Seller and the Oregon Housing and Community Services Department ("OHCS") entered into that certain Oregon Housing and Community Services Department Low-Income Housing Tax Credit Reservation and Extended Use Agreement executed November 12, 1993 (the "Extended Use Agreement"), together with that certain Project Use Agreement dated June 23, 1994 (the "Project Use Agreement") and recorded June 24, 1994, in Volume M94, page 19795, the Microfilm Records of Klamath County, Oregon. In connection with its execution of the Extended Use Agreement, Seller acknowledged and recorded a certain Oregon Housing and Community Services Department Low-Income Housing Tax Credit Declaration of Land Use Restrictive Covenants

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dated as of December 28, 1995 (the "Declaration"), and recorded December 29, 1995, in Volume M95, page 35635, in the Microfilm Records of Klamath County, Oregon.

D. Buyer is willing to undertake, agree to and assume all of Seller's duties and obligations under the Extended Use Agreement, Declaration, and Project Use Agreement and has agreed to enter into this Assignment and Assumption Agreement.

E. Capitalized terms used herein shall have the same meanings ascribed to them in the Sale Agreement unless otherwise specified herein.

### **Agreement**

Now, therefore, for good and valuable consideration (which includes, without limitation, the sale of the Project to Buyer), the receipt and sufficiency of which are hereby acknowledged by Buyer and Seller, Buyer and Seller agree as follows:

1. Assignment and Assumption of Obligations. As of the Effective Date, Seller hereby assigns to Buyer all of Seller's right, title, and interest in the Extended Use Agreement, Declaration, and Project Use Agreement and delegates to Buyer all of Seller's duties and obligations thereunder. Buyer hereby accepts such assignment and hereby fully and unconditionally assumes all the duties and obligations of Seller under the Extended Use Agreement, Declaration, and Project Use Agreement arising after the Effective Date.

2. Buyer's Indemnification. Buyer shall indemnify (i) Seller and (ii) Seller's general partners and limited partners, and their respective shareholders, partners, officers, employees, and agents (collectively, the "Seller Parties") for, hold Seller and the Seller Parties harmless from, and defend Seller and the Seller Parties against all claims, liabilities, losses, damages, costs or expenses (including without limitation attorney fees and related costs and any federal or state income tax and related interest, penalty, or addition to tax), including without limitation any such claims, liabilities, losses, damages, costs, or expenses relating to the recapture of tax credits, arising or resulting from the failure by Buyer or any successor owner of the Project to comply, on or after the Effective Date, with (a) the terms and conditions of the Extended Use Agreement, (b) the Declaration, (c) the Project Use Agreement, (d) Section 42 of the Internal Revenue Code of 1986, as amended (the "Code"), and all Treasury Regulations and IRS guidance with respect to Section 42 of the Code, and/or (e) other applicable statutes or regulations. The Seller Parties are each intended as third-party beneficiaries of the above-described obligation of Buyer to indemnify, hold harmless, and defend, and each such third-party beneficiary may take such actions and institute such proceedings, in law or in equity, as may be necessary or appropriate to enforce the obligations of Buyer under this Assignment and Assumption Agreement and/or seek money damages for the breach by Buyer of its duties and obligations hereunder. The above-described obligation of Buyer to indemnify, hold harmless, and defend shall apply notwithstanding any approval that may be given by Seller or Seller's Agent pursuant to Section 3 below. If at any time OHCS requires the repayment of the Grant (as such term is defined in the Project Use Agreement) as the result of the use of the Project on or after the Effective Date, Buyer shall promptly make such payment to OHCS and shall hold Seller and the Seller Parties harmless from any such payment obligation.

3. Management Obligations.

(a) In the event the property management agreement between Buyer and Bowen Property Management Co. is terminated prior to January 1, 2011, Buyer (and any successors of Buyer in ownership of the Project) shall be obligated to manage the Project prior to January 1, 2011, as follows:

(i) No tenant will be allowed to occupy any residential unit in the Project prior to review and written approval by Seller's designated agent ("Seller's Agent") of the new tenant documentation relating to the tenant, and no tenant lease may be renewed prior to review and written approval by Seller's Agent of tenant's annual income re-certification and such other documentation as it relates to a renewing tenant. The new and renewing tenant documentation must include all documents required for compliance with the Regulatory Agreements, as well as all documents required for the availability of tax credits under Section 42 of the Code, and all Treasury Regulations and IRS guidance with respect to Section 42, together with all other documents reasonably determined by Seller's Agent to be necessary or appropriate for compliance with the Regulatory Agreements. New and renewing tenant documentation must be faxed or emailed to Seller's Agent using the contact information for Seller's Agent specified in accordance with Section 6 below. If Seller's Agent has not responded to Buyer, either (a) with approval of the submitted tenant documentation or (b) with a written statement identifying deficiencies in such submitted documentation, within two (2) business days following the date of Seller's submission to Buyer of such documentation, the new and renewing tenant documentation will be regarded as approved by Seller's Agent.

(ii) No tenant will be allowed to continue to occupy a residential unit in the Project without Seller's Agent's written approval of the annual re-certification documentation for the tenant. All tenant annual re-certification documentation must be faxed or emailed to Seller's Agent using the contact information for Seller's Agent specified in accordance with Section 5 below. If Seller's Agent has not responded to Buyer, within two (2) business days after all required annual re-certification documentation has been submitted to Seller, either (a) with approval of the submitted annual re-certification documentation or (b) with a written statement identifying deficiencies in such submitted documentation, the annual re-certification documentation will be regarded as approved by Seller's Agent.

(iii) Each lease of a residential unit in the Project must incorporate the Section 42 Addendum to Lease Agreement, the text of which is included in Section 6 below.

(iv) Each agreement engaging a property manager for the Project must contain provisions requiring the property manager to manage the Project in a manner which satisfies Buyer's obligations under this Section 3 and providing for termination of the property manager within fifteen (15) days following notice to Buyer from Seller of Seller's election to terminate the property manager in the event of any breach of Buyer's obligations under this Section 3.

(v) Buyer waives any and all claims against Seller and Seller's Agent arising from or relating to any approval given by Seller or Seller's Agent pursuant to this Section 3.

4. Breach of Management Obligations.

(a) In the event that Buyer breaches any of the management obligations specified in Section 3 above, Seller may require Buyer to terminate the current property manager for the Project and engage Seller's Agent as substitute property manager, with such substitution to occur within fifteen (15) days following Seller's notice to Buyer of Seller's election to make the substitution. The terms and conditions of payment for the services of Seller's Agent as substituted property manager will be those terms and conditions specified in Seller's Agent's standard form of property management agreement. All costs associated with the property management services of Seller's Agent will be payable by Buyer, and Seller will have no responsibility for such costs.

(b) Seller's election to substitute Seller's agent as property manager in accordance with this Section 4 will not constitute an election of remedies, and Seller may pursue all other legal and equitable remedies available to it in addition to requiring the replacement.

5. Seller's Agent.

(a) Seller's Agent is initially designated as Bowen Property Management Co. Contact information for Seller's Agent is as follows:

Address:	Bowen Property Management Co. 1800 S.W. First Avenue, Suite 180 Portland, Oregon 97223 Attention: Ms. Pat Youngren
Telephone:	(503) 595-3070
Facsimile:	_____
E-mail:	_____

(b) Seller's Agent may designate new or supplemental contact information applicable to Seller's Agent by providing notice of such information to Seller and Buyer in accordance with the notice requirements for the Sale Agreement.

(c) Seller may designate a different Seller's Agent as any time by notice of the identity and contact information for the new designee.

6. Section 42 Addendum to Lease Agreement. The following is the text of the Section 42 Addendum to Lease Agreement, which shall be signed by all residents and the manager as agent for the owner:

"This apartment community provides residential rental units under the federal Housing Tax Credit Program administered by the Oregon Housing and Community Services Department pursuant to Section 42 of the Code of the Internal Revenue. Under the program, the owner may qualify for federal tax credits and other financial assistance in exchange for renting to households at 60% or less of the area gross median income level adjusted for household size, as well as additional restrictions that may be imposed.

"To ensure that the apartments are being rented to persons qualified under these programs, all income and assets must be documented and verified. The management staff will provide the forms each applicant will be required to prepare and submit. These forms must be completed accurately and honestly. The information on these forms must be verified through a third party.

"If, as a result of misrepresentation or error (whether or not intentional) it is discovered that Lessee fails to qualify under the programs then upon notice to Lessee from Lessor of such material misrepresentation or error the lease shall terminate and Lessee hereby consents to immediately surrender possession of the apartment.

"The Housing Tax Credit Program also requires annual re-certification for all participating residents. This means that a new set of these same forms must be completed annually. Again, all information will be verified and documented. Once a new resident is qualified, he/she continues to be qualified. NOTE: some communities have units that qualify at lower income levels. Special rules may apply if the income of the household residing in those increase to a level greater than 140% of applicable income limit in effect at the time of certification.

"The re-certification process is initiated 120 days prior to annual certification date to ensure that all documentation may be obtained in a timely manner. Failure to cooperate in the re-certification process will result in termination of the Rental Agreement.

"The Federal Housing Tax Credit Program contains special restrictions for households comprised entirely of full-time students. If, at any time after taking possession of the apartment, the household becomes entirely comprised of full-time students, household is no longer eligible for Section 42 Housing unless that household meets one of the Student Rule exceptions. Failure to meet any of the Student Rule Exceptions will result in termination of the tenancy. Students will be denied occupancy if we are unable to obtain verification directly from the school, using BPMC standard Student Status Verification (SSV), AND if the documentation that is provided in lieu of the standard SSV shows the applicant/tenant to have been a full-time student for any part of five months during the current calendar year. This only applies if the household is comprised entirely of full-time students who do not meet an exception.

"Additional household members may not be added to the lease during the first six months of residency if the addition of the new member affects eligibility under the tax credit program. Exceptions may be made in the case of a Reasonable Accommodation Request.

"Under the Federal Housing Tax Credit Program each resident and potential resident who meets the income criteria of the program is given certain rights to ensure the owner's compliance with the applicable unit restrictions. Residents who meet the income requirements, who reside in a rent restricted unit, and who pay rent

to the Owner in excess of the amount allowed under the Housing Tax Credit Program are entitled to seek recovery of the excess amount of rent paid, if any.

"If you have questions, please call the management office."

7. Attorney Fees. In the event that any party to this Assignment and Assumption Agreement institutes a suit, action, arbitration, or other legal proceeding of any nature whatsoever, relating to this Assignment and Assumption Agreement or to the rights or obligations of the parties with respect thereto, the prevailing party shall be entitled to recover from the losing party its reasonable attorney, paralegal, accountant, expert witness (whether or not called to testify at trial or other proceeding) and other professional fees and all other fees, costs, and expenses actually incurred and reasonably necessary in connection therewith, including but not limited to deposition transcript and court reporter costs, as determined by the judge or arbitrator at trial or other proceeding, and including such fees, costs and expenses incurred in any appellate or review proceeding, or in collecting any judgment or award, or in enforcing any decree rendered with respect thereto, in addition to all other amounts provided for by law. This cost and attorney fees provision shall apply with respect to any litigation or other proceedings in bankruptcy court, including litigation or proceedings related to issues unique to bankruptcy law.

8. Counterparts. This Assignment and Assumption Agreement may be executed by the parties in separate counterparts, each of which when executed and delivered shall be an original, but all of which together shall constitute one and the same instrument.

9. Notices. Any notices given by Seller to Buyer or by Buyer to Seller shall be given in accordance with Section 22 of the Sale Agreement.

10. Successors and Assigns. This Assignment and Assumption Agreement shall be binding on Buyer's successors in ownership of the Project; provided, however, that Buyer's sale or other transfer of ownership of the Project shall not release Buyer from their obligations under Section 2 above.

11. Representation. The initial draft of this Assignment and Assumption Agreement was prepared by Schwabe, Williamson & Wyatt, P.C., which represents Seller. Buyer acknowledges that it has consulted with separate legal counsel prior to executing this Assignment and Assumption Agreement. Seller and Buyer waive any claim that any term or condition of this Assignment and Assumption Agreement should be construed against the drafter. This Assignment and Assumption Agreement will be construed as if it had been prepared by both parties.

12. Entire Agreement. This Assignment and Assumption Agreement (including any exhibits attached to it) is the final expression of, and contains the entire agreement between the parties with respect to the subject matter of this Assignment and Assumption Agreement and supersedes any letters of interest and all prior understandings with respect to the subject matter of this Assignment and Assumption Agreement. This Assignment and Assumption Agreement may not be modified, changed, supplemented, or terminated, nor may any obligations under it be

waived, except by written instrument signed by the party to be charged or by its agent duly authorized in writing or as otherwise expressly permitted herein.

13. Construction. Headings at the beginning of each section and subsection of this Assignment and Assumption Agreement are solely for the convenience of the parties and are not a part of this Agreement. Whenever required by the context of this Assignment and Assumption Agreement, the singular shall include the plural, and the male gender shall include the female gender and neuter, and vice versa. Unless otherwise indicated, all references to sections are to this Assignment and Assumption Agreement. Unless otherwise specified, in computing any period of time described in this Assignment and Assumption Agreement, the day of the act or event after which the designated period of time begins to run is not to be included and the last day of the period so computed is to be included, unless the last day is a Saturday, Sunday, or legal holiday, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday, nor legal holiday. As used in this Assignment and Assumption Agreement, "business day" means a day other than a Saturday, Sunday or legal holiday.

14. Governing Law. The parties expressly agree that this Assignment and Assumption Agreement shall be governed by, interpreted under, and construed and enforced in accordance with the laws of the State of Oregon.

**SELLER:**

APPLEGATE TRAIL APARTMENTS  
LIMITED PARTNERSHIP, an Oregon limited  
partnership

By: Northwest Affordable Housing Partners  
Limited Partnership, an Oregon limited  
partnership, its general partner

By: Northwest Affordable Housing,  
Inc., an Oregon corporation, its  
general partner

By:   
Walter C. Bowen, President

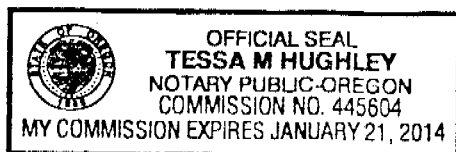
**BUYER:**

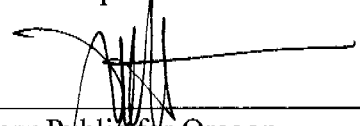
AGT APARTMENTS LLC, an Oregon limited  
liability company

By: \_\_\_\_\_  
Matthew Dodson, Manager

STATE OF OREGON                     )  
  )ss.  
COUNTY OF MULTNOMAH        )

The foregoing instrument was acknowledged before me on May 24<sup>th</sup>, 2010, by  
Walter C. Bowen, as president of Northwest Affordable Housing, Inc., an Oregon corporation,  
general partner of Northwest Affordable Housing Partners Limited Partnership, an Oregon  
limited partnership, general partner of Applegate Trail Apartments Limited Partnership, an  
Oregon limited partnership.



  
Notary Public for Oregon  
My Commission Expires: January 21, 2014

STATE OF OREGON                     )  
  )ss.  
COUNTY OF \_\_\_\_\_        )

The foregoing instrument was acknowledged before me on \_\_\_\_\_, 2010, by  
Matthew Dodson, as Manager of AGT Apartments LLC, an Oregon limited liability company.

\_\_\_\_\_  
Notary Public for Oregon  
My Commission Expires: \_\_\_\_\_



**SELLER:**

APPLEGATE TRAIL APARTMENTS  
LIMITED PARTNERSHIP, an Oregon limited  
partnership

By: Northwest Affordable Housing Partners  
Limited Partnership, an Oregon limited  
partnership, its general partner

By: Northwest Affordable Housing,  
Inc., an Oregon corporation, its  
general partner

By: \_\_\_\_\_  
Walter C. Bowen, President

STATE OF OREGON                    )  
  )ss.  
COUNTY OF MULTNOMAH        )

The foregoing instrument was acknowledged before me on \_\_\_\_\_, 2010, by  
Walter C. Bowen, as president of Northwest Affordable Housing, Inc., an Oregon corporation,  
general partner of Northwest Affordable Housing Partners Limited Partnership, an Oregon  
limited partnership, general partner of Applegate Trail Apartments Limited Partnership, an  
Oregon limited partnership.

\_\_\_\_\_  
Notary Public for Oregon  
My Commission Expires: \_\_\_\_\_

STATE OF OREGON                    )  
  )ss.  
COUNTY OF Klamath            )

The foregoing instrument was acknowledged before me on May 26, 2010, by  
Matthew Dodson, as Manager of AGT Apartments LLC, an Oregon limited liability company.

Vicki Swindler  
\_\_\_\_\_  
Notary Public for Oregon  
My Commission Expires: 10-8-2013



## **EXHIBIT A**

### **(Legal Description)**

A tract of land situated in the SW1/4 of Section 11, Township 39 South, Range 9 East of the Willamette Meridian, Klamath County, Oregon, more particularly described as follows:

Beginning at the initial point on the South right of way line of Bristol Avenue, from which the Northwest corner of Tract No. 1026 bears North 89 degrees 32' 55" East 520.00 feet and S-N-S 1/256 corner bears South 89 degrees 38' West 916.15 feet and North 30.00 feet by Deed; thence North 89 degrees 32' 55" East along said right of way, 260.00 feet, to the Northwest corner of that tract of land described in Volume M87, page 14676, Microfilm Records of Klamath County, Oregon; thence, along the boundaries of said tract and that tract described in Volume M96, page 19616, Microfilm Records of Klamath County, Oregon, South 00 degrees 27' 05" East 295.00 feet and North 89 degrees 32' 55" East 150.00 feet; thence South 00 degrees 27' 05" East 120.00 feet; thence North 89 degrees 32' 55" East 126.30 feet, to the Westerly boundary of Tract 1026 – THE MEADOWS, a duly recorded subdivision; thence along said boundary South 22 degrees 42' 12" East 79.24 feet and South 37 degrees 56' 58" East 89.06 feet; thence along the Northerly right of way line of the U.S.B.R. 1-C-3-B Drain, South 47 degrees 42' 00" West 152.16 feet; thence along the Northerly right of way of the U.S.B.R. F-7 (A-3-C) Lateral, North 59 degrees 30' 00" West 811.30 feet to the Westerly line of that property described in Deed Volume 284, page 485, Deed Records of Klamath County, Oregon; thence following said Westerly line; North 00 degrees 27' 05" West 61.45 feet, North 67 degrees 54' 55" East 202.89 feet and North 00 degrees 27' 05" West 107.00 feet to the point of beginning.

TOGETHER WITH an easement as evidenced by Warranty Deed dated June 14, 1976, recorded June 28, 1976, in Volume M76, page 9724, Microfilm Records of Klamath County, Oregon, and an easement as evidenced by Warranty Deed dated November 6, 1978, recorded November 20, 1978, in Volume M78, page 26188, Microfilm Records of Klamath County, Oregon.