

NOT 84112

2010-007059
Klamath County, Oregon

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



06/10/2010 09:59:39 AM

Fee: \$87.00

SPACE ABOVE FOR RECORDERS USE

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

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

THIS Assignment, Assumption and Modification Agreement, Declaration of Restrictive Covenants and Equitable Servitudes (this "Agreement") is made this 12 day of June, 2010, among:

PARTIES:

Grantee: **APPLEGATE TRAIL APARTMENTS LP,**
an Oregon limited partnership,
together with its successors and assigns,

Owner: **AGT APARTMENTS LLC,**
an Oregon limited liability company,
together with its successors and assigns, and

Department: **THE 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 (the "Grant") from the Department as described in a Grant Agreement, Declaration of Restrictive Covenants and Equitable Servitudes (Project Use Agreement) executed between itself and the Department dated June 23, 1994, (the "Grant Agreement"), for the purpose of partially reimbursing the financing and construction costs of a **forty nine (49)** unit low-income housing project in Klamath County, Oregon, known as Applegate Trails 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 June 23, 1994 and recorded on June 24, 1994, in the real property records of Klamath County, Oregon, in Volume M94, page 19795. 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.

ASSIGNMENT, ASSUMPTION AND MODIFICATION AGREEMENT - HDGP

Applegate Trails Apartments - OR93-505

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AGREEMENT

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

1. Modification of Grant Documents.

The Housing Development Grant Project Use Agreement is hereby modified to include, and to incorporate by this reference, Exhibit A of this Agreement as the property description of the Project to which those documents apply. Exhibit A, as hereby incorporated into the Housing Development Grant Project Use Agreement, shall displace and be in lieu of the property description originally attached to said document as Exhibit "A" and recorded therewith.

2. 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.

3. 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.

4. 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, 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 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.

5. 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.

6. 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 of their subcontractors, agents, or employees under this Agreement or related to the Project.

7. Time of the Essence. Time is of the essence in the performance of this Agreement.

8. 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 Low Income Weatherization Program 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.

9. 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.
10. 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.
11. 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.
12. 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.
13. 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.
14. 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.

15. 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**

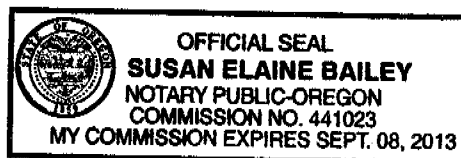
By: _____

David W. Summers, Manager
Multifamily Housing Section

STATE OF OREGON)

County of Marion)

The foregoing instrument was acknowledged before me this 7 day of June 2010
by David W. Summers, who is the Manager of the Multifamily Housing Section, Housing and Community
Services Department, on behalf of the Department.




Susan Elaine Bailey
NOTARY PUBLIC FOR OREGON
My Commission Expires: 9/8/13

GRANTEE:

Applegate Trail Apartments LP,
an Oregon limited partnership

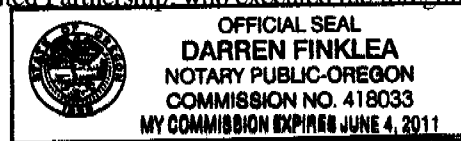
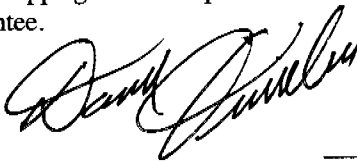
By: Northwest Affordable Housing Partners LP,
an Oregon limited partnership,
its general partner

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

By: 
Walter C. Bowen, President

STATE OF OREGON)
 : ss
County of WASHINGTON

The foregoing instrument was acknowledged before me this 7th day of June, 2010 by Walter C. Bowen as President of Northwest Affordable Housing, Inc, general partner of Northwest Affordable Housing Partners Limited Partners, general partner of Applegate Trail Apartments Limited Partnership, who executed the foregoing instrument for on behalf of the Grantee.



NOTARY PUBLIC FOR OREGON
My Commission Expires: 6/4/11

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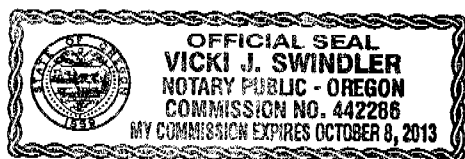
OWNER:

AGT Apartments LLC,
an Oregon limited liability company

By: Matthew L. Dodson
Matthew L. Dodson, Manager

STATE OF OREGON)
 : ss
County of Klamath)

The foregoing instrument was acknowledged before me this 8th day of June, 2010 by Matthew L. Dodson, Manager, who executed the foregoing instrument for on behalf of the Owner.



Vicki Swindler
NOTARY PUBLIC FOR OREGON
My Commission Expires: 10.8.2013

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EXHIBIT A

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

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.