

NTC 84112

2010-007060

Klamath County, Oregon



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06/10/2010 10:02:00 AM

Fee: \$87.00

**Return to:**

Housing and Community Services  
Attn: Multifamily Housing Section  
725 Summer St. NE, Suite B  
Salem, Oregon 97301-1266

SPACE ABOVE THIS LINE FOR RECORDER'S USE

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

**CONSENT TO ASSIGNMENT, TRANSFER, ASSUMPTION AND MODIFICATION AGREEMENT  
LOW-INCOME HOUSING TAX CREDIT**

THIS CONSENT TO ASSIGNMENT, TRANSFER, ASSUMPTION AND MODIFICATION AGREEMENT (this "Agreement") is entered into and made this 10 day of June, 2010, among:

**PARTIES:**

**Recipient:**

APPLEGATE TRAIL APARTMENTS LP,  
an Oregon limited partnership

**New Obligor:**

AGT APARTMENTS LLC,  
an Oregon limited liability company

**Grantor (herein "Department"):**

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

**RECITALS**

A. Recipient is the owner of the real property described in Exhibit A and of any improvements thereon and of any personal property related thereto (collectively hereinafter, the "Project" or "Property"). Exhibit A is attached hereto. Recipient received a low-income housing tax credit allocation by the Department with respect to the development and operation of the Project in a final amount not to exceed **Two hundred thirty-two thousand nine hundred fifty-four dollars (\$232,954.00)** (the "Tax Credit"). The documents giving effect to the Tax Credit (the "Tax Credit Documents") are more fully described below.

B. Recipient conveyed its interest in the Property to AGT Apartments LLC (the "New Obligor") pursuant to that certain Statutory Warranty Deed dated as of May 24, 2010 (the "Deed").

C. Recipient and New Obligor are willing to document the transfer of the Project and New Obligor's assumption of Recipient's interests and obligations with respect to the Property and with respect to the Tax Credits from the Department and to commit to operate the Project in conformance with the Tax Credit Documents and this Agreement. The Department is willing to consent to the transfer in ownership of the Property and to allow the assumption of the Tax Credit Documents consistent with the terms and conditions of this Agreement.

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D. The Tax Credits are evidenced by a Reservation and Extended Use Agreement, Project No. OR93-505, executed between the Recipient and the Department and dated on or about November 12, 1993 (the "Tax Credit Agreement"). Certain performance obligations with respect to the Project arising under the Tax Credits were made in a Declaration of Land Use Restrictive Covenants, executed by the Recipient in favor of the Department on or about December 28, 1995, and recorded December 29, 1995, as Instrument No. 11306, Volume M95, Page 35635, Records of Klamath County, Oregon (the "Declaration"). The Tax Credit Agreement and the Declaration are collectively referred to herein as the "Tax Credit Documents."

## AGREEMENT

NOW, THEREFORE, for good and sufficient consideration, including the agreements and covenants herein contained, Recipient and New Obligor hereby agree with the Department as follows:

1. **Incorporation of Recitals and Documents.** The foregoing Recitals, Exhibit A and the Tax Credit Documents are incorporated herein by reference.
2. **Conveyance to New Obligor; Assignment.** Recipient has conveyed or is conveying its interests in the Property to New Obligor in the manner described in this Agreement, in the Deed and in other purchase documents. Recipient hereby assigns his interests in the Tax Credit Documents and in the Property to New Obligor.
3. **Assumption.** New Obligor hereby unconditionally assumes the interests and obligations of Recipient in the Property and under the Tax Credit Documents as modified herein. New Obligor also hereby unconditionally agrees, covenants and warrants that it shall perform all obligations arising under this Agreement or otherwise owed to the Department under the Tax Credit Documents. The Department shall have the right to resort to, proceed against, or otherwise exercise its rights with respect to any and all remedies, restrictive covenants or equitable servitudes with respect to the Property or the New Obligor and its assigns or successors in interest, whether such rights arise under the Tax Credit Documents, this Agreement, or are otherwise now or subsequently available at law. New Obligor will execute and deliver to the Department such other documents reasonably requested by the Department to effect, exercise or maintain its rights under the Tax Credit Documents, this Agreement or otherwise with respect to the Project.
4. **Consent.** The Department hereby consents to and approves of the described transfer of the Property to New Obligor. The Department also consents to and approves of New Obligor's assumption of all the rights of Recipient and all obligations owed to the Department under the Tax Credit Documents, as further modified herein, without affecting in any manner the restrictions and requirements of such Tax Credit Documents with respect to any further or additional transfer of ownership of the Project. This consent and approval by the Department is conditioned, however, upon prior execution and recording of subordination agreements acceptable to the Department by any and all current lien holders with respect to the Property.
5. **Limited Release.** Recipient is hereby released by the Department from any obligation arising prospectively under the Tax Credit Documents except that Recipient is not released from any liability of any nature arising under the Tax Credit Documents before the date of this Agreement. Recipient's remaining

liability shall be joint and several with New Obligor and shall not be diminished or affected in any manner by New Obligor's assumption of the obligations and liabilities of Recipient under the Tax Credit Documents.

**6. Modification of Tax Credit Documents.**

**6.1** The Declaration is hereby amended to include the following:

**COVENANTS TO RUN WITH THE LAND; EQUITABLE SERVITUDES.**

(a) The term "Owner" means the owner of the Project or Property and shall be construed to include the terms "Recipient" and "New Obligor" or "Owner" as appropriate.

(b) The Owner intends, declares, and covenants, on behalf of itself and all future owners and operators of the Project or Property during the term of this agreement, that the covenants, reservations, restrictions and equitable servitudes set forth in this agreement regulating and restricting the use, occupancy and transfer of the Project (1) shall be and are, until January 1, 2046, covenants running with the real property of the Project and do further constitute equitable servitudes with respect to the real property in favor of the Department and any tenant of this Project or Property, do encumber the Project until January 1, 2046, are binding upon the Owner's successors in title and all subsequent owners and operators of the Project, (2) are not merely personal covenants of the Owner, (3) shall bind the Owner and the Owner's successors and assigns until January 1, 2046, and (4) shall inure to the benefit of the Department and any tenant of the Project. The Owner hereby agrees that any and all Oregon state law requirements for the provisions of this agreement to constitute covenants running with the land or real property or to constitute equitable servitudes with respect to the real property in favor of the Department and any tenant of this Project or Property, shall be deemed satisfied in full. No transfer of any interest in the Project or Property shall be valid without the prior written consent of the Department. Until January 1, 2046, each and every contract, deed or other instrument hereafter executed conveying the Project or a portion thereof shall expressly provide that such conveyance is subject to this agreement, provided, however, the covenants contained 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 agreement.

(c) The Owner covenants that the consent of any recorded prior lien holder on the Project or Property is not required in connection with recording this agreement, or if required, such consent has been or will be obtained by the Owner.

**BURDEN AND BENEFIT.**

The Owner hereby declares its understanding and intent that the burdens of the covenants, reservations, restrictions and equitable servitudes set forth herein touch and concern the land of the Project or Property in that the Owner's legal interest in the Project or Property is rendered less valuable thereby. The Owner hereby further declares its understanding and intent that the benefits of such covenants, reservations, restrictions and equitable servitudes touch and concern the land by enhancing and increasing the enjoyment and use of the Project or Property by tenants therein, the intended beneficiaries of such covenants, reservations, restrictions or equitable servitudes, and by furthering the public purposes for which tax credit assistance was provided by the Department for the Project or Property.

6.2 The Declaration is further amended by replacing Section 9 thereof with the following language:

SECTION 9 - FUTURE TRANSFER OF OWNERSHIP, QUALIFIED CONTRACT

This Section (choose one of the below)

☐ Will apply to the Project described herein:

☒ Will not apply to the Project described herein:

- a) For the purpose of ensuring the Project will continue to be used as affordable housing, Owner hereby agrees to transfer the Project to a "qualified nonprofit organization" [as defined in IRC 42(h)(5)(C)] acceptable to the Owner, Department and the mortgage lender after the end of the calendar year falling 19 years after the issuance of the Forms 8609 for the Project, or as soon thereafter as the transfer can be consummated, on the following terms:
  - 1) The consideration for the transfer shall be in accordance with the formula in IRC Section 42(h)(6)(F) in an amount equal to the sum of (a) the principal amount of outstanding indebtedness secured by the Project, (b) the adjusted investor equity in the building, and (c) other capital contributions not reflected in the amounts described above, reduced by cash distributions from (or available for distribution from) the project.
  - 2) Owner shall be under no obligation to transfer the project to a qualified organization in the event that no acceptable qualified organization agrees in writing to accept title and assume Owner's obligations before the end of the calendar year falling 19 years after the issuance of the Forms 8609 for the project.
  - 3) In making the determination of the transferee qualified nonprofit organization, first right of refusal shall be given to N/A.
  - 4) Any controversy related to the selection of the transferee qualified organization shall be settled by arbitration pursuant to the rules of the American Arbitration Association.
- b) Owner further covenants to use its reasonable best efforts to assure, at the time of the transfer: (i) the Project is generating sufficient cash flow to service Project debt and pay Project operating expenses; and (ii) the Project is in reasonably good physical condition (for a multi-family apartment project of its age and quality).
- c) No provision of this section shall prevent any lender loaning funds secured by the Project from foreclosing on the property or otherwise exercising its full rights as a lender. In the event of a bonafide foreclosure or transfer of the Project to a lender by a deed in lieu of foreclosure, the foreclosing lender shall take the project free and clear of any obligation to transfer the Project to a nonprofit organization or to operate the project as affordable housing except as provided for in IRC Section 42. Department or its assigns shall have the right to cure any default to avoid foreclosure and assure transfer as stated above.

6.3 The Tax Credit Documents are each further modified to include, and to incorporate by this reference, Subsections 10.6 and 10.7 of this Agreement.

7. **Governing Law; Venue; Consent to Jurisdiction.** Recipient, New Obligor and each person now or at any time hereafter liable, whether primarily or secondarily, hereby agree that this Agreement and each of the Tax Credit Documents shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or other proceeding (collectively "Claim") arising out of or related in any way to this Agreement shall be brought and conducted solely and exclusively within an appropriate Circuit Court for the State of Oregon; provided, however, if a Claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. The Recipient and the New Obligor hereby consent to the *in personam* jurisdiction of said courts. In no event shall this Section 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.

8. **Notice to the Department.** New Obligor shall promptly notify the Department in writing of (i) any material adverse change in the financial condition of New Obligor, or (ii) any suit, governmental action, claim or other proceeding pending or threatened in writing which may have a material adverse effect on New Obligor or their business operations, condition (financial or otherwise) or involving the Project. New Obligor shall promptly provide to the Department on request such credit reports, current financial statements and information, prepared by certified public accountant and certified by New Obligor, and other documents and information pertaining to the financial condition and obligations of New Obligor, in reasonable detail and certified where appropriate, as the Department may reasonably require from time to time, including a detailed statement of income and expenditures (including debt service obligations) and supporting schedules, and updated financial statements.

9. **Further Documentation and Assurance.** New Obligor shall execute upon request of the Department such additional instruments and provide such further assurances as the Department may consider reasonably desirable or necessary to evidence or carry out the parties' intent and agreement under this Agreement or to complete, perfect, continue and preserve the obligations, restrictive covenants and equitable servitudes created under the Tax Credit Documents and/or this Agreement. New Obligor shall be responsible for all costs incurred in this transaction, including the cost of obtaining a title insurance endorsement acceptable to the Department, if requested, insuring that the restrictive covenants and equitable servitudes arising under the Tax Credit Documents and this Agreement continue as valid encumbrances, in their original priority, against the Property and are not impaired by execution of this Agreement.

10.1 **Representations of New Obligor.** New Obligor hereby affirms, acknowledges, and agrees that: (i) the Tax Credit Documents (as modified by this Agreement) represent the legal, valid, binding and enforceable obligations of New Obligor; (ii) there are no existing claims, defenses, personal or otherwise, or right of set-off whatsoever available to New Obligor with respect to any of such Tax Credit Documents; and (iii) no event has occurred and no condition exists which would constitute a default under such Tax Credit Documents or this Agreement, either with or without notice or lapse of time, or both.

10.2 **Survival; Ratification.** Except as specifically modified pursuant to this Agreement, all the terms and provisions of the Tax Credit Documents remain in full force and effect. As modified by this Agreement, the Tax Credit Documents are approved and hereby ratified.

**10.3 No Relinquishment of Covenants.** This Agreement shall in no way act as a release or relinquishment of the restrictive covenants, equitable servitudes and encumbrances (collectively called the "Covenants") recorded with respect to the Property protecting the Department's ability to enforce operation of the Project consistent with the terms of the Tax Credit Documents except as expressly released or modified in this Agreement. The Covenants, as modified, are hereby ratified, and confirmed in all respects.

**10.4 Full Force and Effect.** This Agreement, and the Tax Credit Documents are in full force and effect and nothing contained in this Agreement shall be construed as modifying such documents, except as specifically provided pursuant to this Agreement.

**10.5 Defined Terms.** Capitalized terms shall have the defined meanings provided in this Agreement or in the Tax Credit Documents.

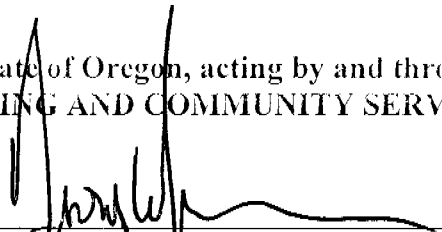
**10.6 Severability.** A determination that any term or provision of this Agreement is invalid or otherwise not enforceable shall not affect the validity of the remaining terms and provisions of this Agreement which shall remain in full force and effect.

**10.7 Time of the Essence.** Time is of the essence in the performance of any and all obligations under this Agreement.

IN WITNESS WHEREOF, this instrument has been duly executed as of the date and year first above written.

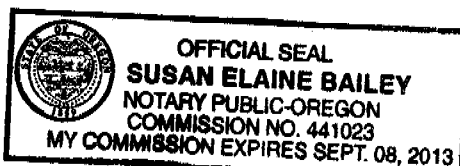
DEPARTMENT:

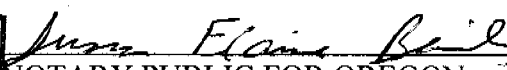
The State of Oregon, acting by and through its  
HOUSING AND COMMUNITY SERVICES DEPARTMENT

By:   
David H. Summers, Manager  
Multifamily Housing Section

STATE OF OREGON )  
: ss  
County of Marion )

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



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


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**RECIPIENT:**

**Applegate Trail Apartments LP,**  
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

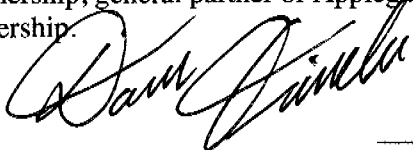
  
\_\_\_\_\_  
Walter C. Bowen, President

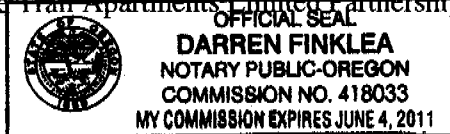
STATE OF OREGON )

: ss

County of Washington )

The foregoing instrument was acknowledged before me this 7<sup>th</sup> day of June, 2010, by Walter C. Bowen, President of Northwest Affordable Housing, Inc., general partner of Northwest Affordable Housing Partners Limited Partnership, general partner of Applegate Trail Apartments Limited Partnership, on behalf of said limited partnership.





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

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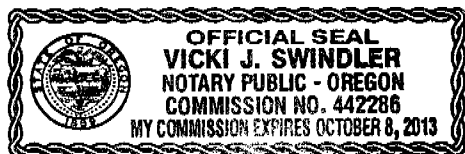
OWNER:

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 8<sup>th</sup> day of June, 2010, Matthew L. Dodson, Manager of AGT Apartments LLC, 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.