

2021-003044

Klamath County, Oregon

03/01/2021 02:59:03 PM

Fee: \$147.00

After Recording Return to:

Housing and Community Services
Attn: Portfolio Administration Section
725 Summer Street NE, Suite B
Salem, Oregon 97301-1266

SPACE ABOVE THIS LINE FOR RECORDER'S USE

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

9% LOW-INCOME HOUSING TAX CREDIT PROGRAM

**SECOND CONSENT TO TRANSFER, ASSIGNMENT, AND ASSUMPTION
DECLARATION OF LAND USE RESTRICTIVE COVENANTS**

THIS 9% Low-Income Housing Tax Credit Program Second Consent to Transfer, Assignment, and Assumption Declaration of Land Use Restrictive Covenants (this "**Assignment**") is made and entered into this 1 day of March 2021 by and among **AGT Apartments LLC**, an Oregon limited liability company (the "**Owner**"), **Applegate Trail LLC**, an Oregon limited liability company (the "**Successor Owner**"), and the State of Oregon, acting by and through its **Housing and Community Services Department**, together with its successors and assigns ("**OHCS**").

RECITALS

A. The Owner is or was the owner of a **five (5)** building **forty-nine (49)** unit, low-income multifamily residential housing development (collectively, the "**Improvements**"), located on certain real property in the City of Klamath Falls, County of Klamath, State of Oregon, as more particularly described in Exhibit A hereto (the "**Property**"). The Property, the Improvements, as well as other real and personal property on the Property are collectively referred to herein as the "**Project**" and is known as "**Applegate Trail Apartments**".

B. Applegate Trail Apartments Limited Partnership, an Oregon limited partnership (the "**Original Owner**") received a Low-Income Housing Tax Credit ("**LIHTC**") allocation from OHCS with respect to the development and operation of the Project in a final not-to-exceed amount of Two Hundred Thirty-Two Thousand Nine Hundred Fifty-Four Dollars (\$232,954) (the "**Tax Credits**" or "**Credits**") from OHCS.

C. The Tax Credits are evidenced by that certain 9% Low-Income Housing Tax Credit Reservation and Extended Use Agreement executed between Original Owner and OHCS and dated on or about November 12, 1993 the ("**REUA**").

D. Certain performance obligations with respect to the Project arising under the Credits were made in that certain Low-Income Housing Tax Credit Declaration of Land Use Restrictive Covenants executed by the Original Owner in favor of OHCS on or about December 28, 1995 and recorded December 29, 1995 in the official records of Klamath County, Oregon, in Volume M95, Page 35635 (the **"Original Declaration"**). The Declaration was assigned, assumed and modified by that certain Low-Income Tax Credit Consent to Assignment, Transfer, Assumption and Modification Agreement by and between the Original Owner, Owner and OHCS on or about June 10, 2010 and recorded June 10, 2010 in the official records of Klamath County, Oregon, as Instrument No. 2010-007060 (the **"First Declaration Assignment"**). The Declaration as modified by the First Declaration Assignment is hereinafter referred to as the **"Declaration"**.

E. The REUA and the Declaration are collectively referred to herein as the **"Tax Credit Documents."**

F. The terms and conditions of this Assignment, the Tax Credit Documents, all applicable rules, rulings, policies, procedures, regulations or other official statements promulgated or proposed and published by the United States Department of the Treasury or its Internal Revenue Service (the **"IRS"**), applicable provisions of the United States Internal Revenue Code of 1986, as amended (the **"IRC"** or **"Code"**), applicable OHCS administrative rules, orders, and directives, OHCS manuals, and other applicable law, including local codes and ordinances, all as may be amended from time to time, are collectively referred to herein as the **"Credit Requirements"**.

G. The Owner has conveyed its interest in the Project to the Successor Owner by deed, dated and recorded on or about the date hereof, in the official records of Klamath County, Oregon.

H. Because the Tax Credit Documents are recorded against and run with the Project, the Tax Credit Documents are binding on owners of the Project, including the Owner, the Successor Owner and their successors and assigns.

I. The parties desire to execute this Assignment to, among other things, evidence the terms by which OHCS consents to the transfer of the Project to the Successor Owner, the assumption by Successor Owner of the rights, interests, and obligations of Owner in and with respect to the Project, the Tax Credit Documents, the Credit Requirements, and the commitment herein that Successor Owner will operate the Project in conformance with the Credit Requirements, including but not limited to the Tax Credit Documents and this Assignment.

J. The Owner is willing to document the transfer of the Project and its rights, interests, and obligations in the Tax Credit Documents to Successor Owner, and Successor Owner is willing to document its assumption of the rights, interests, and obligations of Owner in and with respect to the Project and the Tax Credit Documents from Owner. Successor Owner also is willing to commit to operate the Project in conformance with the Credit Requirements, including the Tax Credit Documents and this Assignment. OHCS is willing to consent to the transfer in ownership of the Project and to allow the assumption of the Tax Credit Documents and Credit Requirements as described above, consistent with the terms and conditions of this Assignment.

K. The parties also desire that this Assignment be recorded in the relevant county records at Owner's or the Successor Owner's cost and that certain terms herein constitute restrictive covenants and equitable servitudes running with the Property and governing, among other things, the maintenance, monitoring, and operation of the Project.

AGREEMENT

NOW, THEREFORE, for good and sufficient consideration, including the agreements and covenants herein contained, Owner and Successor Owner hereby agree with OHCS as follows:

1. **Incorporation of Recitals and Documents.** The foregoing Recitals, Tax Credit Documents and Exhibits are incorporated herein by reference. Notwithstanding this incorporation, the Recitals and Exhibits do not modify the express terms of this Assignment.
2. **Definitions.** Capitalized terms used herein without definition have the meaning ascribed to such term in the Tax Credit Documents or the Credit Requirements unless the context clearly requires otherwise.
3. **Conveyance to Successor Owner; Assignment.** Owner has conveyed its interests in and to the Project to Successor Owner in the manner described in this Assignment, in the applicable deed and in other purchase documents. Owner hereby assigns its interests in and to the Tax Credit Documents and in and to the Project to Successor Owner.
4. **Assumption.** Successor Owner hereby unconditionally assumes the interests, rights, and obligations of Owner in and with respect to the Project, the Tax Credit Documents (including as modified herein), and other applicable Credit Requirements. Successor Owner also hereby unconditionally agrees, covenants and warrants that it will operate the Project and perform all obligations arising under the Tax Credit Documents, or otherwise arising under applicable Credit Requirements. OHCS may 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 Project or the Successor Owner and its assigns or successors in interest, whether such rights arise under the Tax Credit Documents, under this Assignment, under other Credit Requirements, or otherwise. Successor Owner will execute and deliver to OHCS such other documents requested by OHCS to effect, exercise, enforce, or maintain its rights under the Tax Credit Documents, this Assignment, or otherwise with respect to the Project, the Credits, or other Credit Requirements.
5. **Consent.** OHCS hereby consents to and approves of the described transfer of the Project to Successor Owner. OHCS also consents to and approves of Successor Owner's assumption of all the rights, interests, and obligations of Owner in and with respect to the Tax Credit Documents, and other applicable Credit Requirements without affecting in any manner the restrictions and requirements of such Tax Credit Documents, this Assignment, or other Credit Requirements with respect to any further or additional transfer of ownership of the Project. This consent and approval by OHCS is conditioned, however, upon prior execution and recording of subordination agreements acceptable to OHCS by any and all current lien holders with respect to the Project.
6. **Limited Release.** OHCS hereby releases Owner from any obligations, claims, demands, or causes of action arising out of or by virtue of the Tax Credit Documents or Credit Requirements that are based upon facts and circumstances occurring after the date of this Assignment. OHCS expressly does not release Owner from any obligations, claims, demands, or causes of action arising out of or by virtue of the Tax Credit Documents or other Credit Requirements that are based on facts or circumstances occurring before the date of this Assignment. Owner's remaining liability will not be diminished or affected in any manner by Successor Owner's assumption of the obligations and liabilities of Owner under the Tax Credit Documents, as amended, or under this Assignment. OHCS further agrees that the Successor Owner shall only be obligated with regard to any obligations, claims, demands, or causes of action arising out of or by virtue of the Tax Credit Documents or Credit Requirements that are based upon facts or circumstances occurring after the date of this Assignment.
7. **Notice to OHCS.** Successor Owner will promptly notify OHCS in writing of (i) any material adverse change in the financial condition of Successor Owner, or (ii) any suit, governmental action, claim or other proceeding pending or threatened in writing which may have a material adverse effect on Successor Owner or their business operations, condition (financial or otherwise) or involving the Project. Successor

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

9. **Notices.** The parties hereby designate the following contacts for notices under the Declaration.

To the Successor Owner: Applegate Trail LLC
Attn: Nimeh Daibes
2820 Biehn St.,
Klamath Falls, OR 97601

10. Restrictive Covenants and Equitable Servitudes to Run with the Property.

9% LIHTC Declaration - Second Assignment
Applegate Trail Apartments
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10.2 Covenants; Equitable Servitudes.

- (1) The parties hereby declare their express intent that throughout the Affordability Period described in the Tax Credit Documents, the covenants, restrictions, charges and easements set forth herein will be deemed covenants running with the Property of the Project and will create equitable servitudes running with the Property of the Project, and will pass to and be binding upon OHCS' and the Successor 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.
- (2) 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) will 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 will 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.
- (3) Any and all legal requirements for the provisions of this Assignment to constitute restrictive covenants running with the Property of the Project and applying to the Project as a whole, or to create equitable servitudes with respect to same in favor of OHCS, are deemed satisfied in full.
- (4) The consent of any recorded prior lien holder on the Project, including the Property, is not required in connection with recording this Assignment, or if required, such consent has been or will be obtained by the Successor Owner.

10.3 Burden and Benefit.

- (1) The Successor Owner hereby declares its understanding and intent that the burdens of the covenants and equitable servitudes set forth herein touch and concern the Property of the Project, and the Project as a whole, in that the Successor Owner's legal interest in the Project is rendered less valuable thereby.
- (2) The Successor Owner hereby further declares its understanding and intent that the benefits of such covenants and equitable servitudes touch and concern the Property of the Project, and the Project as a whole, by enhancing and increasing the enjoyment and use of the Project by tenants, intended beneficiaries (in addition to OHCS) of such covenants, reservations and restrictions, and by furthering the public purposes for which the allocation of Tax Credits was issued.

10.4 Right of Modification. OHCS may compromise, waive, amend or modify the terms of this Assignment including, but not limited to the incorporated documents and the restrictive covenants and equitable servitudes created hereby, with the written consent of Successor Owner or subsequent Project owners, as it so determines to be to the benefit of OHCS, the Project, the Program, or OHCS' efforts to provide or maintain safe, sanitary, and affordable housing in the State of Oregon. To be effective, any compromise, waiver, amendment or modification of this Assignment must be in writing, signed by an authorized OHCS representative.

- 10.5 No Third-Party Beneficiaries.** OHCS, Owner, and Successor Owner are the only parties to this Assignment and are the only parties entitled to enforce its terms. Nothing in this Assignment gives, is intended to give, or will be construed to give or provide any benefit or right, whether directly, indirectly, or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Assignment.
- 10.6 No Third Party Right of Action or Claim.** Third persons to this Assignment (including incorporated documents), including but not limited to Tenants, have no claim, cause of action or other right of recourse against OHCS with respect to any action or lack of action taken by OHCS with respect to this Assignment (including incorporated documents and the described restrictive covenants and equitable servitudes), the Credits, or the Project arising from their rights, if any, under this Assignment or otherwise.
- 10.7 No Third Party Attorney Fees.** Third parties to this Assignment (including incorporated documents), including but not limited to Tenants, have no right to attorney fees under this Assignment (including incorporated documents) or otherwise for claims asserted as third persons nor will parties hereto have a right to attorney fees against Tenants and other third parties.
- 11. General Provisions.**
- 11.1 Representations of Successor Owner.** Successor Owner hereby ratifies, affirms, reaffirms, acknowledges, confirms and agrees that: (i) the Tax Credit Documents and this Assignment represent the legal, valid, binding and enforceable obligations of Successor Owner; (ii) there are no existing claims, defenses, personal or otherwise, or right of set-off whatsoever available to Successor Owner with respect to any of such Tax Credit Documents or this Assignment; (iii) Successor Owner is duly organized and validly existing under the laws of **Oregon**, is authorized to do business in Oregon, and has the power and authority to transact the business in which it is engaged and to enter into and perform this Assignment; and (iv) to the best of Successor Owner's knowledge, no event has occurred and no condition exists which would constitute a default under such Tax Credit Documents or this Assignment, either with or without notice or lapse of time, or both.
- 11.2 Survival; Ratification.** Except as specifically modified pursuant to this Assignment, all the terms and provisions of the Tax Credit Documents remain in full force and effect. As modified by this Assignment, the Tax Credit Documents are approved and hereby ratified and reaffirmed.
- 11.3 No Relinquishment of Covenants.** This Assignment will 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 Project protecting OHCS' ability to enforce operation of the Project consistent with the terms of the Tax Credit Documents except as expressly released or modified in this Assignment. The Covenants are hereby ratified, and confirmed in all respects.
- 11.4 Full Force and Effect.** This Assignment and the Tax Credit Documents, as amended, are in full force and effect and nothing contained in this Assignment will be construed as modifying such documents, except as specifically provided pursuant to this Assignment.
- 11.5 Severability.** A determination that any term or provision of this Assignment is invalid or otherwise not enforceable will not affect the validity of the remaining terms and provisions of this Assignment which will remain in full force and effect.

- 11.6 **Indemnity.** Owner will save, hold harmless, indemnify and (subject to ORS chapter 180) defend the State of Oregon, OHCS, 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 and resulting from or arising out of its breach, neglect or misconduct or the breach, neglect or misconduct of Owner's subcontractors, agents, or employees arising under the Tax Credit Documents, this Assignment, or the other Credit Requirements, to the extent such breach, neglect or misconduct occurred during Owner's period of ownership of the Project. Successor Owner will save, hold harmless, indemnify and (subject to ORS chapter 180) defend the State of Oregon, OHCS, 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 and resulting from or arising out of its breach, neglect or misconduct or the breach, neglect or misconduct of Successor Owner's subcontractors, agents, or employees arising under the Tax Credit Documents, this Assignment, or the other Credit Requirements, to the extent such breach, neglect or misconduct occurred during Successor Owner's period of ownership of the Project.
- 11.7 **Time of the Essence.** Time is of the essence in the performance of any and all obligations under this Assignment.
- 11.8 **Attorney Fees.** Subject to the limitations of Article XI, Section 7 of the Oregon Constitution and the Oregon Tort Claims Act, in the event a lawsuit is instituted among one or more of the parties regarding this Assignment (including the incorporated documents or other Credit Requirements), the prevailing party will, to the extent permitted by law, be entitled to recover from the other(s) its reasonable attorney fees. Reasonable attorney fees will not exceed the rate charged OHCS by its attorneys.
- 11.9 **Governing Law; Venue: Consent to Jurisdiction.** This Assignment will 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") between any parties hereto related to this Assignment (including incorporated documents) will be conducted exclusively within the Circuit Court of Marion County, Oregon (unless Oregon law requires that it be brought and conducted where the Property is located) or, if necessary, the United States District Court for the District of Oregon. In no event will 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. OWNER AND SUCCESSOR OWNER BY EXECUTION OF THIS ASSIGNMENT, HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS.
- 11.10 **Waiver.** Notwithstanding any interests hereunder or otherwise inuring to the benefit of past, present or prospective tenants of the Project, OHCS may compromise, waive, amend or modify this Assignment, the Tax Credit Documents or other Credit Requirements with the written consent of Successor Owner as OHCS determines to be to the benefit of OHCS, the Project, Credit Requirements, or OHCS 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 Assignment must be in writing, signed by an authorized OHCS representative.
- 11.11 **Construction.** The parties to this Assignment acknowledge that each party and its counsel have participated in the drafting and revision of this Assignment. Accordingly, the parties agree that any rule of construction to the effect that ambiguities are to be resolved against the drafting party will not apply in the interpretation of this Assignment or any amendment, modification, supplementation or restatement of the foregoing or of any exhibit to this Assignment.

- 11.12 No Impairment of Governmental Powers.** Nothing in this Assignment is intended, nor will it be construed, to in any way limit the actions of OHCS or State of Oregon in the exercise of their governmental powers. It is the express intention of the parties hereto that OHCS and State of Oregon will retain the full right and ability to exercise their governmental powers with respect to the Owner, the Successor Owner, the Credit, the Project, and the transactions contemplated by this Assignment (including incorporated documents) to the same extent as if OHCS were not a party to this Assignment (including incorporated documents) or the transactions contemplated thereby, and in no event will OHCS or the State of Oregon have any liability in contract arising under this Assignment by virtue of any exercise of their governmental powers.
- 11.13 Preservation.** Successor Owner acknowledges and agrees that the Project is a “participating property” as defined in ORS 456.250 and, as such, is subject to the requirements, among other things, of ORS 456.250 through 456.265. The Successor Owner and any successors or assigns to it are bound by and will comply with the terms of ORS 456.250 through 456.265 and other related Credit Requirements with respect to the Project.

[Signature Pages to Follow.]

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

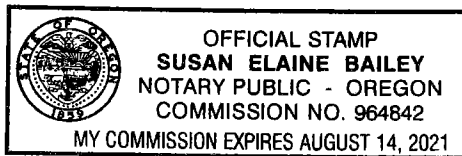
OHCS:

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

By: Roberto Franco
Roberto Franco, Assistant Director
Development Resources and Production, ARH Division

STATE OF OREGON)
 : ss
County of Marion)

The foregoing instrument was acknowledged before me this 24th day of February, 2021 by Roberto Franco, Assistant Director Development Resources and Production, ARH Division, Housing and Community Services Department, for and on behalf of OHCS.



Susan Elaine Bailey
NOTARY PUBLIC FOR OREGON
My Commission Expires: 8-14-21

OWNER:

AGT APARTMENTS LLC,
an Oregon limited liability company
EIN #: 27-2427214

By: Matthew Dodson
Matthew L. Dodson, Manager

STATE OF OREGON)

County of Clatsop : ss.

The foregoing instrument was acknowledged before me this 26th day of February 2021 by Matthew L. Dodson, Manager of AGT Apartments LLC, who executed the foregoing instrument for and on behalf of the Owner.



M Cook
NOTARY PUBLIC FOR OREGON
My Commission Expires: 3/15/22

SUCCESSOR OWNER:

APPLEGATE TRAIL LLC,
an Oregon limited liability company
EIN #: 85-3911898

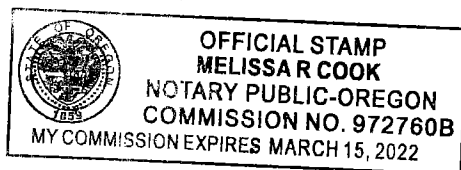
By: _____

Nimeh I. Daibes, Member

STATE OF OREGON)

County of Klamath : ss.

The foregoing instrument was acknowledged before me this 26th day of February, 2021 by Nimeh I. Daibes, Member of Applegate Trail LLC, who executed the foregoing instrument for and on behalf of the Owner.



M Cook

NOTARY PUBLIC FOR OREGON

My Commission Expires: 3/15/22

Exhibit A

(Legal Description of the Property)

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°32'55" East 520.00 feet and S-N-S 1/256 corner bears South 89°38' West 916.15 feet and North 30.00 feet by Deed; thence North 89°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°27'05" East 295.00 feet and North 89°32'55" East 150.00 feet; thence South 00°27'05" East 120.00 feet; thence North 89°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°42'12" East 79.24 feet and South 37°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°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°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°27'05" West 61.45 feet, North 67°54'55" East 202.89 feet and North 00°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.