

Y2Y004 AM
AmeriTitle
After Recording Return to:
Housing and Community Services
Attn: Portfolio Administration Section
725 Summer Street NE, Suite B
Salem, Oregon 97301-1266

2021-003045
Klamath County, Oregon
03/01/2021 02:59:03 PM
Fee: \$102.00

SPACE ABOVE THIS LINE FOR RECORDER'S USE

STATE OF OREGON
HOUSING AND COMMUNITY SERVICES DEPARTMENT
9% LOW-INCOME HOUSING TAX CREDIT PROGRAM

FIRST AMENDMENT TO
DECLARATION OF LAND USE RESTRICTIVE COVENANTS

THIS 9% Low-Income Housing Tax Credit Program First Amendment to the Declaration of Land Use Restrictive Covenants (this "**Amendment**") is made and entered into this 1 day of March, 2021 by and among **Applegate Trail LLC**, an Oregon limited liability company ("**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 Original 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 Original Declaration as modified by the First Declaration Assignment are collectively hereinafter referred to as the "**Declaration**".

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(5)

- E. The REUA and the Declaration, are collectively referred to herein as the “**Tax Credit Documents.**”
- F. The terms and conditions of 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 Internal Revenue Code of 1986, as amended (the “**Code**”), applicable OHCS administrative rules, orders, and directives, OHCS manuals, and other applicable law, including local codes and ordinances, are (including as amended from time to time) hereinafter collectively referred to as the “**Credit Requirements.**”
- G. The parties desire to amend the Declaration by executing this Amendment to reflect updates to the Credit Requirements as required by OHCS within its sole discretion.
- H. The parties also desire that this Amendment to the Declaration be recorded in the relevant county records at 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 OHCS agree as follows:

1. **Incorporation of Recitals and Documents.** The foregoing Recitals, Tax Credit Documents and Exhibits are incorporated herein by reference.
2. **Modification of the Declaration.**
 - 2.1 SECTION 3(l) OF THE DECLARATION is hereby deleted in its entirety.
 - 2.2 SECTION 5(d) OF THE DECLARATION is hereby deleted in its entirety.
 - 2.3 SECTION 6(b)(2) OF THE DECLARATION is hereby deleted in its entirety.
 - 2.4 SECTION 9 OF THE DECLARATION ENTITLED “EXTENDED LOW-INCOME HUSING COMMITMENT” is hereby deleted in its entirety and replaced with the following:

“9. NO QUALIFIED CONTRACT RIGHT.

OHCS herein denies, and Owner irrevocable waives and releases, any right by Owner or its successors to request a Qualified Contract (as defined in IRC Section 42(h)(6)(F)) as provided under IRC Section 42(h)(6)(E) or otherwise with respect to the Project.”

3. Except as expressly amended herein, all other terms and conditions of the Tax Credit Documents remain in full force and effect and will retain their lien priority based upon the recordings in the county records reflected above.

[Signature Pages to Follow]

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

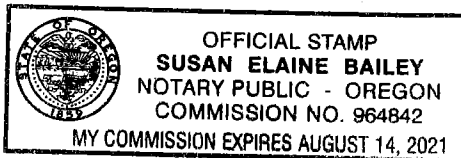
OHCS:

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:

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

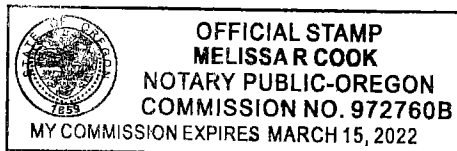
By: 

Nimeh I Daibes, Member

STATE OF OREGON)

County of Clatsop) : 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.





NOTARY PUBLIC FOR OREGON

My Commission Expires: 3/15/22

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°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.