

WHEN RECORDED MAIL TO:
PW Funding Inc.
200 Old Country Road #580
Mineola NY 11501

8983156

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02/20/2004 09:22 AM 38.00
Book - 8947 Pg - 7203-7217
GARY W. OTT
RECORDER, SALT LAKE COUNTY, UTAH
FIRST AMERICAN TITLE
BY: ZJM, DEPUTY - WT 15 P.

ASSUMPTION AND RELEASE AGREEMENT

This Assumption and Release Agreement ("Agreement") is made effective as of January 27, 2004, by and among DRIFTWOOD APARTMENTS, L.L.C., a Utah limited liability company ("Transferor"), MARGARET KIREIEV (the "Original Key Principal"), SHINY NICKEL MANAGEMENT, LLC, a Utah limited liability company ("Transferee"), LLOYD O. RANDALL (the "New Key Principal") and FANNIE MAE.

RECITALS:

A. Fannie Mae is the holder of that certain Multifamily Note (the "Note"), dated as of March 28, 2001, in the original principal amount of \$3,816,000.00 made by the Transferor to PW Funding Inc., a Delaware corporation ("Original Lender"), which Note evidences a loan ("Loan") made by Original Lender to Transferor. To secure the repayment of the Note, Transferor also executed and delivered a Multifamily Deed of Trust, Assignment of Rents and Security Agreement (the "Security Instrument"), dated as of March 28, 2001 and recorded in the Official Records of Salt Lake County, State of Utah on March 29, 2001, in Book 8439 Page 2840, as Entry No. 7855773 of Official Records, that grants a lien on the property described in Exhibit A to this Agreement (the "Property"). The Transferor is liable for the payment and performance of all of Transferor's obligations under the Note, the Security Instrument and all other documents executed in connection with the Loan, as listed on Exhibit B to this Agreement (collectively, the "Loan Documents"). Each of the Loan Documents has been duly assigned or endorsed to Fannie Mae. The current servicer of the Loan is the Original Lender ("Servicer").

B. The Original Key Principal is liable for the obligations of Key Principal under (i) the Acknowledgement and Agreement of Key Principal to Personal Liability for the Exceptions to Non-Recourse Liability attached to the Note and (ii) the Security Instrument (collectively, the "Acknowledgement").

C. New Key Principal desires to assume the obligations of the Original Key Principal with respect to the Acknowledgement.

D. Fannie Mae has been asked to consent to the transfer of the Property to the Transferee and the assumption by the Transferee of the obligations of the Transferor under the Loan Documents.

E. Fannie Mae has been asked to consent to the release of the Original Key Principal from his obligations under the Acknowledgement and to accept the assumption by New Key Principal of the Original Key Principal's obligations under the Acknowledgement.

F. Fannie Mae has agreed to consent to the transfer of the Property by Transferor to Transferee subject to the terms and conditions stated below.

THE TALON GROUP
DU# 47500

In consideration of the foregoing and the mutual covenants and promises set forth in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Fannie Mae, Transferor, Original Key Principal, Transferee and New Key Principal agree as follows:

1. Assumption of Obligations. The Transferee agrees to assume all of the payment and performance obligations of the Transferor set forth in the Note, the Security Instrument and the other Loan Documents in accordance with their respective terms and conditions, as the same may be modified by this Agreement, including without limitation, payment of all sums due under the Note. The Transferee further agrees to abide by and be bound by all of the terms of the Loan Documents, all as though each of the Loan Documents had been made, executed and delivered by the Transferee.

2. Transferor's and Original Key Principal's Representations and Warranties. The Transferor and the Original Key Principal represent and warrant to Fannie Mae as of the date of this Agreement that:
 - (a) The Note has an unpaid principal balance of \$3,709,979.15, and prior to default bears interest at the rate of Six and Eighty Hundredths percent (6.80%) per annum;
 - (b) The Note requires that monthly payments of principal and interest in the amount of \$24,877.47 be made on or before the first (1st) day of each month, continuing to and including May 1, 2011, when all sums due under the Loan Documents will be immediately due and payable in full;
 - (c) The Security Instrument is a valid first lien on the Property for the full unpaid principal amount of the Loan and all other amounts as stated in the Security Instrument;
 - (d) There are no defenses, offsets or counterclaims to the Note, the Security Instrument or the other Loan Documents;
 - (e) There are no defaults by the Transferor under the provisions of the Note, the Security Instrument or the other Loan Documents;
 - (f) All provisions of the Note, the Deed of Trust and other Loan Documents are in full force and effect;
 - (g) There are no subordinate liens of any kind covering or relating to the Property, nor are there any mechanics' liens or liens for unpaid taxes or

assessments encumbering the Property, nor has notice of a lien or notice of intent to file a lien been received; and

The Transferor and Original Key Principal understand and intend that Fannie Mae will rely on the representations and warranties contained herein.

3. Transferee's and the New Key Principal's Representations and Warranties. The Transferee and the New Key Principal represent and warrant to Fannie Mae as of the date of this Agreement that neither Transferee nor the New Key Principal has any knowledge that any of the representations made by Transferor and Original Key Principal in Paragraph 2 above are not true and correct.
4. Consent to Transfer. Fannie Mae hereby consents to the transfer of the Property and to the assumption by the Transferee of all of the obligations of the Transferor under the Loan Documents, subject to the terms and conditions set forth in this Agreement. Fannie Mae's consent to the transfer of the Property to the Transferee is not intended to be and shall not be construed as a consent to any subsequent transfer which requires the Lender's consent pursuant to the terms of the Security Instrument.
5. Assumption of Liability by the New Key Principal. The New Key Principal hereby assumes all liability under the provisions of the Acknowledgement.
6. Release of Transferor and Original Key Principal. In reliance on the Transferor's and the Original Key Principal and the Transferee's representations and warranties in this Agreement, Fannie Mae releases Transferor and the Original Key Principal from all of their respective obligations under the Loan Documents, provided, however, that the Transferor is not released from any liability pursuant to this Agreement or Section 18 of the Security Instrument. If any material element of the representations and warranties made by the Transferor and Original Key Principal contained herein is false as of the date of this Agreement, then the release set forth in this Paragraph 6 will be cancelled as of the date of this Agreement and the Transferor and Original Key Principal will remain obligated under the Loan Documents as though there had been no such release.
7. Priority/Modification. This Agreement embodies and constitutes the entire understanding among the parties with respect to the transactions contemplated herein, and all prior or contemporaneous agreements, understandings, representations, and statements, oral or written, are merged into this Agreement. Neither this Agreement nor any provision hereof may be waived, modified, amended, discharged, or terminated except by an instrument in writing signed by the party against which the enforcement of such waiver, modification, amendment, discharge, or termination is sought, and then only to the extent set forth in such instrument. Except as expressly

modified hereby, the Note, Security Instrument and other Loan Documents shall remain in full force and effect and this Agreement shall have no effect on the priority or validity of the liens set forth in the Security Instrument or the Loan Documents, which are incorporated herein by reference. Transferor and the Original Key Principal hereby ratify/ratifies the agreements made by it/them to Fannie Mae in connection with the Loan and agree(s) that, except to the extent modified hereby, all of such agreements remain in full force and effect.

8. No Impairment of Lien. Nothing set forth herein shall affect the priority or extent of the lien of any of the Loan Documents, nor, except as expressly set forth herein, release or change the liability of any party who may now be or after the date of this Agreement, become liable, primarily or secondarily, under the Loan Documents.
9. Costs. The Transferee and the Transferor agree to pay all fees and costs (including attorneys' fees) incurred by Fannie Mae and the Servicer in connection with Fannie Mae's consent to and approval of the transfer of the Property and a transfer fee of \$37,099.79 in consideration of the consent to that transfer.
10. Financial Information. The Transferee and New Key Principal represent and warrant to Fannie Mae that all financial information and information regarding the management capability of Transferee and New Key Principal provided to the Servicer or Fannie Mae was true and correct as of the date provided to the Servicer or Fannie Mae and remains materially true and correct as of the date of this Agreement.
11. Addresses. Transferee's address for notice hereunder and under the Loan Documents is:

SHINY NICKEL MANAGEMENT
3380 NW South Road
Portland, OR 97229

Transferor's address for notice hereunder and under the Loan Documents is:

DRIFTWOOD APARTMENTS, L.L.C.
5492 Walker Woods Lane
Salt Lake City, Utah 84117

12. Complete Release. Transferee and Transferor and the Original Key Principal and the New Key Principal, jointly and severally as between Transferee and New Key Principal, unconditionally and irrevocably release and forever discharge Original Lender, Fannie Mae, and their respective successors, assigns, agents, directors,

officers, employees, and attorneys, and each current or substitute trustee under the Security Instrument (collectively, the "Indemnitees") from all Claims, as defined below, and jointly and severally agree to indemnify Indemnitees, and hold them harmless from any and all claims, losses, causes of action, costs and expenses of every kind or character in connection with the Claims or the transfer of the Property. Notwithstanding the foregoing, Transferor shall not be responsible for any Claims arising from the action or inaction of Transferee and New Key Principal, and Transferee and New Key Principal shall not be responsible for any Claims arising from the action or inaction of Transferor or the Original Key Principal. As used in this Agreement, the term "Claims" shall mean any and all possible claims, demands, actions, costs, expenses and liabilities whatsoever, known or unknown, at law or in equity, originating in whole or in part, on or before the date of this Agreement, which the Transferor, Original Key Principal, or any of their respective partners, members, officers, agents or employees, may now or hereafter have against the Indemnitees, if any and irrespective of whether any such Claims arise out of contract, tort, violation of laws, or regulations, or otherwise in connection with any of the Loan Documents, including, without limitation, any contracting for, charging, taking, reserving, collecting or receiving interest in excess of the highest lawful rate applicable thereto and any loss, cost or damage, of any kind or character, arising out of or in any way connected with or in any way resulting from the acts, actions or omissions of Indemnitees, including any requirement that the Loan Documents be modified as a condition to the transactions contemplated by this Agreement, any charging, collecting or contracting for prepayment premiums, transfer fees, or assumption fees, any breach of fiduciary duty, breach of any duty of fair dealing, breach of confidence, breach of funding commitment, undue influence, duress, economic coercion, violation of any federal or state securities or Blue Sky laws or regulations, conflict of interest, NEGLIGENCE, bad faith, malpractice, violations of the Racketeer Influenced and Corrupt Organizations Act, intentional or negligent infliction of mental distress, tortious interference with contractual relations, tortious interference with corporate governance or prospective business advantage, breach of contract, deceptive trade practices, libel, slander, conspiracy or any claim for wrongfully accelerating the Note or wrongfully attempting to foreclose on any collateral relating to the Note, but in each case only to the extent permitted by applicable law. Transferor and Transferee agree that Fannie Mae and Original Lender have no fiduciary or similar obligations to Transferor or Transferee and that their relationship is strictly that of creditor and debtor. This release is accepted by Fannie Mae and Original Lender pursuant to this Agreement and shall not be construed as an admission of liability on the part of either. Transferor and Transferee and the Original Key Principal and New Key Principal hereby represent and warrant that they are the current legal and beneficial owners of all Claims, if any, released hereby and have not assigned, pledged or contracted to assign or pledge any such Claim to any other person.

13. Miscellaneous.

(a) This Agreement shall be construed according to and governed by the laws of the jurisdiction in which the Property is located without regard to its conflicts of law principles.

(b) If any provision of this Agreement is adjudicated to be invalid, illegal or unenforceable, in whole or in part, it will be deemed omitted to that extent and all other provisions of this Agreement will remain in full force and effect.

(c) No change or modification of this Agreement shall be valid unless the same is in writing and signed by all parties hereto.

(d) The captions contained in this Agreement are for convenience of reference only and in no event define, describe or limit the scope or intent of this Agreement or any of the provisions or terms hereof.

(e) This Agreement shall be binding upon and inure to the benefit of the parties and their respective heirs, legal representatives, successors and assigns.


(f) This Agreement may be executed in any number of counterparts with the same effect as if all parties hereto had signed the same document. All such counterparts shall be construed together and shall constitute one instrument, but in making proof hereof it shall only be necessary to produce one such counterpart.

(g) THIS WRITTEN AGREEMENT AND THE OTHER LOAN DOCUMENTS, AS AMENDED, REPRESENT THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.

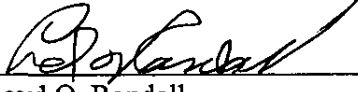
IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

TRANSFeree:

SHINY NICKEL MANAGEMENT, LLC, a Utah
limited liability company

By: 
Name: Lloyd O. Randall
Its: Managing Member

NEW KEY PRINCIPAL:

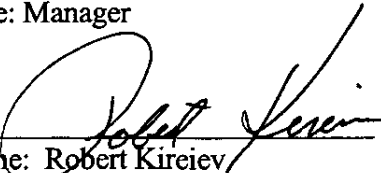

Lloyd O. Randall

Address: 3380 NW South Road
Portland, OR 97229


TRANSFEROR:

DRIFTWOOD APARTMENTS, L.L.C., a Utah
limited liability company


By: 
Name: Margaret Kireiev
Title: Manager

By: 
Name: Robert Kireiev
Title: Manager

ORIGINAL KEY PRINCIPAL:


Margaret Kireiev
Address: 5492 Walker Woods Lane
Salt Lake City, Utah 84117

FANNIE MAE

By:  (Seal)
Name: Michael W. Dick
Title: Assistant Vice President

[Signature Page to Assumption and Release Agreement for Driftwood Apartments, Salt Lake County, Utah]

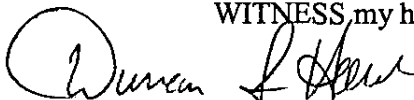
CERTIFICATE OF ACKNOWLEDGMENT

State of ~~Utah~~ ^{Oregon} }

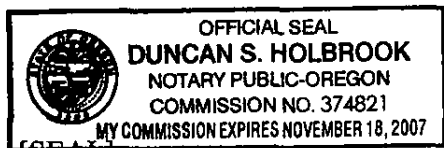
County of ~~Salt Lake~~ ^{WASHINGTON} } ss.

I, the undersigned, a Notary Public in and for the aforesaid jurisdiction, do hereby certify that on ~~February~~ ^{January} 4, 2004, personally appeared before me Lloyd O. Randall, whose name is signed to the annexed instrument and acknowledged said instrument to be the act and deed of Lloyd O. Randall for purposes therein contained.

WITNESS my hand and official seal:



Notary Public



[SEAL]

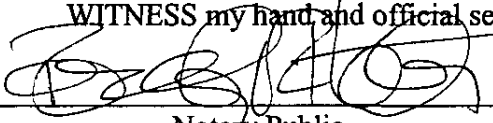
My Commission Expires: Nov. 18 2007

CERTIFICATE OF ACKNOWLEDGMENT

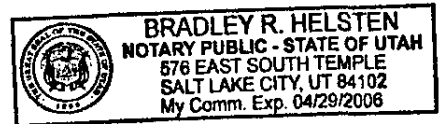
State of Utah }
County of Salt Lake } ss.

I, the undersigned, a Notary Public in and for the aforesaid jurisdiction, do hereby certify that on January 30, 2004, personally appeared before me Margaret LIVELEY, known to me (or satisfactorily proven) to be the Manager of DRIFTWOOD APARTMENTS, L.L.C., a Utah limited liability company, whose name is signed to the annexed instrument and acknowledged said instrument to be the act and deed of DRIFTWOOD APARTMENTS, L.L.C. for purposes therein contained.

WITNESS my hand and official seal:



Notary Public




[SEAL]
My Commission Expires: _____

CERTIFICATE OF ACKNOWLEDGMENT

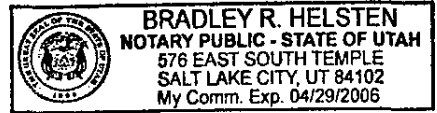
State of Utah }
County of Salt Lake } ss.

I, the undersigned, a Notary Public in and for the aforesaid jurisdiction, do hereby certify that on January 30, 2004, personally appeared before me Robert KIRKIEV, known to me (or satisfactorily proven) to be the Manager of DRIFTWOOD APARTMENTS, L.L.C., a Utah limited liability company, whose name is signed to the annexed instrument and acknowledged said instrument to be the act and deed of DRIFTWOOD APARTMENTS, L.L.C. for purposes therein contained.

WITNESS my hand and official seal:



Notary Public



[SEAL]
My Commission Expires: _____

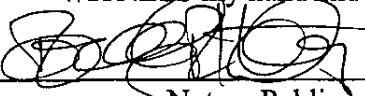
CERTIFICATE OF ACKNOWLEDGMENT

State of Utah }

County of Salt Lake } ss.

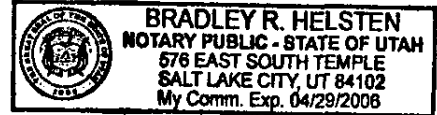
I, the undersigned, a Notary Public in and for the aforesaid jurisdiction, do hereby certify that on January 22, 2004, personally appeared before me Margaret Kireiev, whose name is signed to the annexed instrument and acknowledged said instrument to be the act and deed of Margaret Kireiev for purposes therein contained.

WITNESS my hand and official seal:



Notary Public

[SEAL]
My Commission Expires: _____

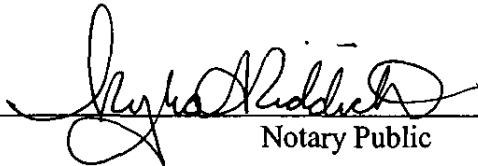


CERTIFICATE OF ACKNOWLEDGMENT

State of Maryland }
County of Montgomery } ss.

~~February~~ I, the undersigned, a Notary Public in and for the aforesaid jurisdiction, do hereby certify that on ~~January~~ 11th, 2004, personally appeared before me Michael W. Dick, known to me (or satisfactorily proven) to be the Assistant Vice President of FANNIE MAE, a corporation organized and existing under the laws of the United States of America, whose name is signed to the annexed instrument and acknowledged said instrument to be the act and deed of FANNIE MAE for purposes therein contained.

WITNESS my hand and official seal:



Notary Public

[SEAL]

My Commission Expires: 10/30/2007



EXHIBIT A
to
ASSUMPTION AND RELEASE AGREEMENT

[insert Property description used in the Security Agreement]

TAX Parcel No 15-35-400-015

Commencing at a point 68.4 rods North (1127.54 feet measured) from the Southeast corner of Section 35, Township 1 South, Range 1 West, Salt Lake Base and Meridian, same said point of commencement begin South 00°02'30" East 630.96 feet North 89°57'30" East 206.67 feet from a county monument located in the intersection of 700 West Street and 3900 South Street, and running thence West 173.67 feet to the Easterly right-of-way line of 700 West Street; thence North 00°02'30" West along said Easterly right-of-way line 574.22 feet to the new Southerly right-of-way line of 3900 South Street; thence along said Southerly right-of-way line South 89°54'15" East 288.91 feet; thence South 565.18 feet; thence North 89°03'00" West 114.85 feet to the point of beginning.

Said property is also known by the street address of:
3945 South 700 West, Salt Lake City, UT 84123

EXHIBIT B
to
ASSUMPTION AND RELEASE AGREEMENT

1. Multifamily Note dated as of March 28, 2001, by Transferor to Original Lender, as endorsed to Fannie Mae.
2. Multifamily Deed of Trust, Assignment of Rents and Security Agreement, dated as of March 28, 2001, by Transferor for the benefit of Original Lender, as subsequently assigned to Fannie Mae and as amended by this Agreement.
3. Replacement Reserve and Security Agreement dated as of March 28, 2001 by and between Transferor and Original Lender.
4. Certificate of Borrower dated as of March 28, 2001 by Transferor.