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Rhonda Francis Summit County Recorder

10/30/2020 12:34:51 PM Fee \$40.00

By FIRST AMERICAN TITLE INSURANCE COMPANY - NCS I  
Electronically Recorded

Elk Meadows Assisted Living  
Summit County, Utah  
FHA Project No. 105-22051

Recording requested by:  
Kathleen E. Burtschi, Esq.  
Vorys, Sater, Seymour and Pease LLP  
301 East Fourth Street, Suite 3500  
Great American Tower  
Cincinnati, Ohio 45202

And after recording return to:  
Valarie Duffield  
Vorys, Sater, Seymour and Pease LLP  
301 East Fourth Street, Suite 3500  
Great American Tower  
Cincinnati, Ohio 45202

First American Title -NCS-1001718-OR1

**ASSIGNMENT, ASSUMPTION, MODIFICATION, AND RELEASE AGREEMENT**

This ASSIGNMENT, ASSUMPTION, MODIFICATION, AND RELEASE AGREEMENT (this "**Agreement**") is dated as of the 31st day of October, 2020 (the "**Effective Date**"), by and among **ELK MEADOWS PROPERTY, LLC**, an Oregon limited liability company (the "**Transferor**") having its place of business at 4190 South Highland Drive, Salt Lake City, Utah 84124, **COLINA OAKLEY PROPCO, LLC**, a Utah limited liability company (the "**Transferee**") having its mailing address at 4190 South Highland Drive, Salt Lake City, Utah 84124, **HOUSING & HEALTHCARE FINANCE, LLC**, a Delaware limited liability company, having an office at 5515 Security Lane, Suite 735, North Bethesda, Maryland 20852 ("**Lender**"), and the **SECRETARY OF HOUSING AND URBAN DEVELOPMENT** (the "**Secretary**" or "**HUD**").

WITNESSETH:

WHEREAS, Transferor is the obligor under that certain Mortgage Note held by Lender dated as of May 1, 2013, in the original principal amount of Three Million Two Hundred Fifteen Thousand Eight Hundred and 00/100 Dollars (\$3,215,800.00), (the "**Note**"), secured by that certain Mortgage, dated as of May 1, 2013, and recorded May 28, 2013, in the land records of Summit County, Utah (the "**Recorder's Office**"), in Recording No. 00971149 (the "**Mortgage**") that encumbers the real property described on Exhibit A attached hereto (together with the property encumbered by the Mortgage, "**Mortgaged Property**").

WHEREAS, the Note is insured by HUD under Section 232, pursuant to Section 223(f) of the National Housing Act, as amended, and regulations thereunder promulgated by HUD (the "**HUD Regulations**");

WHEREAS, in connection with the insurance of the Note by HUD, Transferor and HUD entered into that certain Regulatory Agreement for Multifamily Housing Projects dated as of May 1, 2013, and recorded on May 28, 2013, in Recording No. 00971150 in the Recorder's Office (the "**Regulatory Agreement**"); and

WHEREAS, the Note, the Mortgage and Regulatory Agreement were all executed in connection with the financing of an assisted living facility project located in Oakley, Summit County, Utah and commonly known as Elk Meadows Assisted Living, FHA Project No. 105-22051 (the "**Project**");

WHEREAS, Transferee has submitted to HUD an Application for a Change of Ownership and documents in support thereof (hereinafter collectively referred to as the "**TPA Application**") requesting HUD's approval of the proposed conveyance of the Mortgaged Property and Project to Transferee; and

WHEREAS, HUD has approved the conveyance described above and the Transferee's succession in ownership of the Mortgaged Property; and

WHEREAS, in connection with the TPA Application, the Transferee has agreed (i) to assume, on a non-recourse basis, the obligations of Transferor under the Note, Mortgage, and Regulatory Agreement (together, the "**Assumed Documents**"), (ii) to modify such documents as provided in this Agreement, and to be subject to the requirements of the Secretary, and

WHEREAS, in connection with the TPA Application, Colina Oakley Opco, LLC (the "**Operator**") is signing a new Healthcare Regulatory Agreement-Operator, Operator Security Agreement, Assignment of Leases and Rents, Operator Lease Addendum, and such other required HUD Loan Documents (collectively the "**Operator HUD Documents**"). The Operator HUD Documents are all on HUD forms version 06/2019, while the Assumed Documents are all on older HUD forms;

NOW, THEREFORE, in consideration of the consent of the Secretary to the transfer of the Project from Transferor to Transferee, and in order to comply with the, regulations, rules, and requirements of the Secretary, the parties hereto hereby agree as follows:

Section 1. Effective as of the Effective Date, except as limited below, the Transferee hereby assumes and agrees to be bound by and to perform, keep and observe all of the obligations, duties, liabilities, covenants and agreements of the Transferor arising after the Effective Date under and pursuant to the Assumed Documents, and all other documents pertaining to the Loan (collectively, the "**Loan Documents**").

The Transferee shall not assume personal liability for payments due under the Assumed Documents, or for matters not under its control, provided that the Transferee shall be personally liable only with respect to the matters hereinafter stated, namely:

- (i) for funds or property of the Project coming into its hands which, by the provisions of the Regulatory Agreement, it is not entitled to retain;
- (ii) for authorizing the conveyance, assignment, transfer, pledge, encumbrance, or other disposition of the Mortgaged Property or any interest therein in violation of the Regulatory Agreement without the prior written approval of HUD; and
- (iii) for its own acts and deeds, or acts and deeds of others, which it has authorized in violation of the provisions of the Regulatory Agreement.

The Transferee is to be bound by the Assumed Documents and the other Loan Documents, subject to the foregoing limitation of personal liability, from the Effective Date to the same extent as if it had been an original party to said instruments. The Operator is to be bound by the Operator HUD Documents. In the event of any conflict between any provision in the Assumed Documents and any provision in the Operator HUD Documents, the provisions in the Operator HUD Documents shall govern and control.

Section 2. Effective as of the Effective Date, by its execution hereof, Lender and HUD agree that, except as limited herein, the Transferor shall be, and Transferor hereby is, released from any further obligations, duties, responsibilities, covenants and agreements under the Assumed Documents and the other Loan Documents. Notwithstanding the foregoing, (a) each of the Lender and HUD shall retain all security interests granted to it under the Loan Documents, and (b) the Transferor, its members and managers, shall remain liable for the following matters:

- (i) for funds or property of the Project coming into their hands which, by the provisions hereof, they are not entitled to retain;
- (ii) for authorizing the conveyance, assignment, transfer, pledge, encumbrance, or other disposition of the Mortgaged Property or any interest therein in violation of the Regulatory Agreement without the prior written approval of HUD; and
- (iii) for their own acts and deeds or acts and deeds of others which they have authorized in violation of the provisions of the Regulatory Agreement.

Section 3. Transferee represents and warrants that (a) Transferee is a limited liability company, duly organized and validly existing under the laws of Utah, has all necessary

licenses, authorizations, registrations and/or approvals, and full power and authority to enter into this Agreement and to own, operate and/or lease the Property, and (b) this Agreement and, upon the due execution and delivery of this Agreement, the Loan Documents shall constitute the legal, valid and binding agreements of Transferee, enforceable against Transferee in accordance with their respective terms, subject only to (i) the effect of any bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditor's rights generally, and (ii) general principles of equity.

Section 4. The Assumed Documents, and all other Loan Documents are hereby modified to reflect the transfer provided for herein, and from and after the Effective Date, all references therein to Transferor shall be deemed to mean and refer to Transferee. Except as expressly modified by this Agreement, the terms and conditions of the Loan Documents remain unchanged and are reaffirmed, ratified and confirmed by all of the parties hereto, and remain in full force and effect. Transferee acknowledges that, as of the date hereof, it has no defenses, rights of set off or counterclaims of any type to the Assumed Documents and/or the other Loan Documents.

Section 5. Nothing herein shall in anyway impair the Note or the security now held for said indebtedness, or alter, waive, annul, vary or affect any provision, condition or covenant therein, nor affect or impair any rights, powers or remedies under the Assumed Documents or other Loan Documents, it being the intent of the parties hereto that the terms and provisions of the Assumed Documents and other Loan Documents shall continue in full force and effect, except as modified hereby.

Section 6. Nothing in this Agreement shall waive, compromise, impair or prejudice any right HUD may have to seek judicial recourse of any breach of the Regulatory Agreement, which breach may have occurred prior to or may occur subsequent to the Effective Date. In the event that HUD initiates an action for breach of such Regulatory Agreement and recovers funds, either on HUD's own behalf or on behalf of the Project, Transferor or Transferee, those funds may be applied, at HUD's discretion, to payment of the delinquent amounts due under the Note or Mortgage or as a partial prepayment of the Note.

Section 7. This Agreement may be executed in counterparts, each of which when so executed and delivered shall be an original, but all of which together shall constitute one and the same instrument.

Section 8. All of the terms, covenants, conditions and agreements hereof shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and assigns.

*[See following pages for signatures]*

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals as of the day and year hereinabove first written.

**TRANSFEROR:**

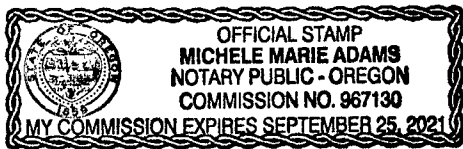
**ELK MEADOWS PROPERTY, LLC,**  
an Oregon limited liability company

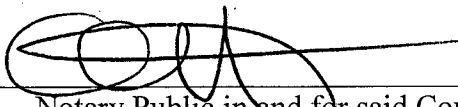
By:   
Eric Jacobsen, Member Manager

STATE OF OREGON )  
 ) ss:  
COUNTY OF CLACKAMAS )

On this 8<sup>th</sup> day of October 2020, before me, the undersigned, a Notary Public in and for said County and State, duly commissioned and sworn, personally appeared Eric Jacobsen known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person or the entity on behalf of which the person acted, executed the instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this Certificate first above written.



  
Notary Public in and for said County and State

My commission expires 9-25-2021.

{Signatures and Acknowledgments continue on Next Page}

**TRANSFeree:**

**COLINA OAKLEY PROPCO, LLC**  
a Utah limited liability company

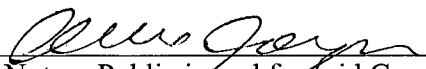
By: Colina Oakley Holdings, LLC  
Its: Manager

By: Colina Development Partners, LLC  
Its: Manager

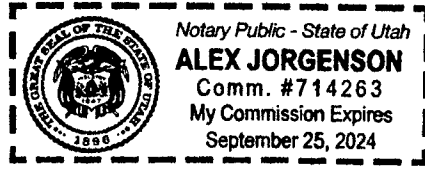
By:   
\_\_\_\_\_  
Zachary Beynon  
Manager

STATE OF UTAH )  
 ) ss:  
COUNTY OF SALT LAKE )

On this 7 day of October, 2020, before me personally appeared Zachary Beynon, personally known or satisfactorily proved to me on the basis of satisfactory evidence, and who by me duly sworn or affirmed, did say that he is the Manager of Colina Development Partners, LLC, which is the Manager of Colina Oakley Holdings, LLC, which is the Manager of Colina Oakley PropCo, LLC, and that said document was signed by him on behalf of said entity by authority of its Operating Agreement, and acknowledged to me that said entity executed the same.

  
\_\_\_\_\_  
Notary Public in and for said County and State

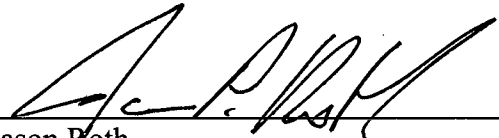
My commission expires 9/25/2024



{Signatures and Acknowledgments continue on Next Page}

**SECRETARY:**

**U.S. DEPARTMENT OF HOUSING AND  
URBAN DEVELOPMENT, acting by and through  
the Secretary:**

By:   
Jason Roth  
Authorized Agent  
Office of Residential Care Facilities

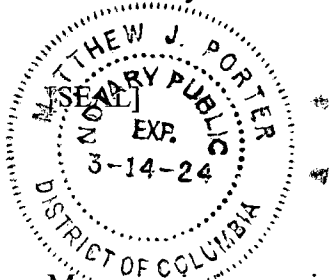
**ACKNOWLEDGEMENT**

CITY OF WASHINGTON

DISTRICT OF COLUMBIA

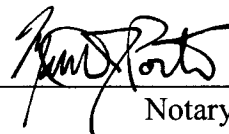
On this 14<sup>th</sup> day of October, 2020, before me, the undersigned, a notary public in and for the jurisdiction aforesaid, personally appeared Jason Roth, who acknowledged that he is the Authorized Agent of the U.S. Department of Housing and Urban Development, acting by and through the Secretary, and a Supervisory Account Executive in the Office of Residential Care Facilities, U.S. Department of Housing and Urban Development, and that he, being authorized to do so by virtue of such office, executed the foregoing instrument on behalf of the Secretary of the U.S. Department of Housing and Urban Development.

Witness my hand and official seal.



**MATTHEW J. PORTER**  
NOTARY PUBLIC DISTRICT OF COLUMBIA  
My Commission Expires March 14, 2024

My commission expires: \_\_\_\_\_

  
Notary Public  
Matthew J. Porter  
(Print Name)

The Lender joins in the execution of this Agreement to evidence its consent to the assignment of the Assumed Documents by Transferor to Transferee, the assumption and modification of said Assumed Documents by Transferee from Transferor, and the release of Transferor to the extent provided in this Agreement. All undefined capitalized terms have the meanings ascribed thereto in the attached Agreement.

**LENDER:**

**HOUSING & HEALTHCARE FINANCE, LLC,**  
a Delaware limited liability company

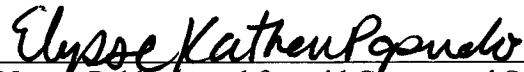
By:   
Susana Araoz, Authorized Signatory

STATE OF MARYLAND )  
 ) ss:  
COUNTY OF MONTGOMERY )

On this 12<sup>th</sup> day of October, 2020, before me, a Notary Public in and for said County and State, duly commissioned and sworn, personally appeared SUSANA ARAOZ, known to me or acknowledged to me to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her authorized capacity, and that by her signature on the instrument the person or the entity on behalf of which the person acted, executed the instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this Certificate first above written.

-[SEAL]

  
Notary Public in and for said County and State

My commission expires 8.6.23.

ELYSSE KATHERINE PAPUCHIS  
NOTARY PUBLIC  
MONTGOMERY COUNTY  
MARYLAND  
MY COMMISSION EXPIRES AUGUST 06, 2023



**EXHIBIT "A"**

**Legal Description**

Real property in the County of Summit, State of Utah, described as follows:

LOTS 5 AND 9, RIVER VIEW WEST AMENDED SUBDIVISION, ACCORDING TO THE OFFICIAL PLAT THEREOF ON FILE AND OF RECORD IN THE SUMMIT COUNTY RECORDER'S OFFICE.

Said property is also known by the street addresses and tax parcel numbers of:

Lot 5: 400 West 4200 North, Oakley, Utah 84055  
Tax Parcel No. RVW-5-AM.

Lot 9: 410 West 4200 North, Oakley, Utah 84055  
Tax Parcel No. RVW-9-AM.