

2008-016033

Klamath County, Oregon



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COVER SHEET

ORS: 205.234

12/02/2008 03:33:39 PM

Fee: \$86.00

This cover sheet has been prepared by the persons presenting the attached instrument for recording. Any errors in this cover sheet DO NOT affect the transaction(s) contained in the instrument itself.

151 1183678

After recording, return to:

Thomas A. Hauser, Esquire
Ballard Spahr Andrews & Ingersoll, LLP
300 East Lombard St. 18th Floor
Baltimore, Maryland 21202

The date of the instrument attached is November 4 2008.

1) NAMES(S) OF THE INSTRUMENT(S) required by ORS 205.234(a)

Consent to Transfer & Release
Agreement

2) PARTY(IES)/GRANTOR, required by ORS 205.125(1)(b) and ORS 205.160:

Pelican Pointe Assisted Living

3) PARTY(IES)/GRANTEE, required by ORS 205.125(1)(b) and ORS 205.160

Fannie Mae

4) TRUE and ACTUAL CONSIDERATION (if any), ORS 93.030

\$ _____

5) FULL OR PARTIAL SATISFACTION ORDER or WARRANT FILED IN THE COUNTY CLERK'S LIEN RECORDS, ORS 205.121(1)(c)

6) RE-RECORDED to correct: _____

Previously recorded as: _____

FA

CONSENT TO TRANSFER AND RELEASE AGREEMENT

This Consent to Transfer and Release Agreement ("Agreement") is made effective as of ~~October~~ Nov. 4, 2008 by and among JON M. HARDER ("Transferor"), TLC CAPITAL LLC, an Oregon limited liability company ("Transferee"), PELICAN POINTE ASSISTED LIVING, LLC, an Oregon limited liability company ("Borrower"), DALE L. BURGHARDT and JULIE M. BURGHARDT ("Other Key Principals"), and FANNIE MAE, a corporation organized and existing under the laws of the United States of America pursuant to the Federal National Mortgage Association Charter Act, 12 U.S.C. §1716, et seq. ("Fannie Mae").

RECITALS:

A. Fannie Mae is the holder of that certain Multifamily Note (including any schedules thereto, the "Note"), dated April 29, 2002, in the original principal amount of \$6,225,000.00 made by Borrower to Red Mortgage Capital, Inc., an Ohio corporation ("Original Lender"), which Note evidences a loan ("Loan") made by Original Lender to Borrower. To secure the repayment of the Note, Borrower also executed and delivered a Multifamily Deed of Trust, Assignment of Rents and Security Agreement, including any riders and exhibits thereto (the "Security Instrument"), dated April 29, 2002, recorded in the official records of Klamath County, State of Oregon on April 29, 2002, in Vol. No. M02, Page 25110 that grants a lien on the property described in Exhibit A to this Agreement (the "Property"). Borrower is liable for the payment and performance of all of Borrower'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 Original Lender ("Servicer").

B. Transferor and Other Key Principals are liable for the obligations under the Exceptions to Non-Recourse Guaranty dated April 29, 2002 (the "Guaranty").

C. Fannie Mae has been asked to consent to the transfer of Transferor's ownership interest in Borrower to Transferee (the "Key Principal Transfer") and the assumption by Transferee of the obligations of Transferor under the Guaranty.

D. Fannie Mae has also been asked to consent to the transfer of the management of the Property (the "Management Transfer") to Good Neighbor Care Centers, LLC, an Oregon limited liability company (the "Manager") pursuant to that certain Management Agreement effective as of November 1, 2008 by and between Borrower and Manager (the "Management Agreement"). (The Key Principal Transfer and the Management Transfer are hereinafter collectively referred to as the "Transfers").

E. Fannie Mae has agreed to consent to the Transfers subject to the terms and conditions stated below.

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, Transferor, Transferee, Borrower, Other Key Principals, and Fannie Mae agree as follows:

1. Assumption by Transferee of Liability for the Exceptions to Non-Recourse. Transferee hereby assumes all liability under the provisions of the Guaranty.
2. Consent to Transfers. Fannie Mae hereby consents to the Transfers and to the assumption by Transferee of all of the obligations of Transferor under the Guaranty, subject to the terms and conditions set forth in this Agreement. Fannie Mae's consent to the Transfers is not intended to be and shall not be construed as a consent to any subsequent transfer which requires Lender's consent pursuant to the terms of the Security Instrument.
3. Release of Transferor. Fannie Mae hereby releases Transferor from all of its obligations under the Guaranty, provided, however, that Transferor is not released from any liability pursuant to this Agreement.
4. Liability of Other Key Principals. Nothing set forth herein shall release or change the liability of Other Key Principals or of Borrower or any other party who may now be or after the date of this Agreement, become liable, primarily or secondarily, under the Guaranty and the other Loan Documents. Except as expressly modified hereby, the Note, the Security Instrument, the Guaranty and the other Loan Documents shall remain in full force and effect.
5. Costs. Transferee and 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 Transfers and a transfer fee of \$55,259.92 in consideration of the consent to the Transfers.
6. Financial Information. Transferee represents and warrants to Fannie Mae that all financial information and information regarding the management capability of Transferee 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.
7. Management Agreement. As a condition to Fannie Mae consenting to the Transfers, Fannie Mae hereby consents to Borrower and Manager entering into the Management Agreement, provided, however that the Management Agreement

shall be and remain subordinate at all times to Fannie Mae's rights under the Security Instrument and that the Manager, by entering into that certain Subordination, Assignment and Security Agreement dated as of even date herewith, among Borrower, Manager, and Fannie Mae, shall assign to Fannie Mae, among other things, (i) its rights under the Management Agreement, and (ii) its right, title and interest to and in all Licenses required for the operation of the Property as a Seniors Housing Facility. Nothing contained herein shall be construed to modify, waive, impair or affect any of the terms, covenants or conditions contained in the Security Instrument or any other document securing Borrower's obligations under the Note and all such terms, covenants and conditions contained in the Security Instrument and such other documents shall remain in full force and effect.

8. Addresses. Transferee's address for notice hereunder and under the Loan Documents is:

TLC Capital LLC
2481 South Shore Blvd.
Lake Oswego, OR 97034
Attn: Dale L. Burghardt, Manager

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

Jon M. Harder
3723 Fairview Industrial Drive SE
Salem, OR 97302

9. Complete Release. Transferee, Transferor, Other Key Principals and Borrower jointly and severally as between Transferor, Transferee, Other Key Principals and Borrower, 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 and the Transfers. Notwithstanding the foregoing, Transferor shall not be responsible for any claims arising from the action or inaction of Transferee, and Transferee shall not be responsible for any claims arising from the action or inaction of Transferor. 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 Borrower or Transferor or any of their respective partners, members, officers, agents or employees, or Other Key Principals 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, Transferee, Other Key Principals and Borrower agree that Fannie Mae and Original Lender have no fiduciary or similar obligations to Transferor or Transferee and that the relationship between Borrower and Fannie Mae 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, Transferee, Other Key Principal(s) and Borrower 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.

10. Miscellaneous.

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

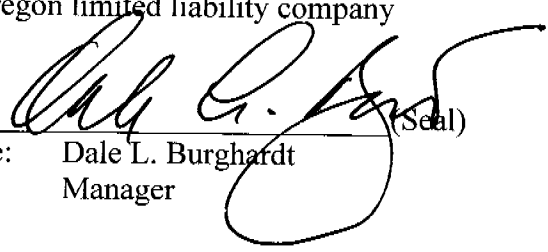
(b) If any provision of this Agreement is adjudicated to be invalid, illegal or unenforceable, in whole or in part, it will be deemed omitted to that extent and all other provisions of this Agreement will remain in full force and effect.

- (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) All capitalized terms not herein defined shall have the meaning set forth in the Security Instrument.
- (h) 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.

BORROWER:

PELICAN POINTE ASSISTED LIVING, LLC,
an Oregon limited liability company


By:  (Seal)

Name: Dale L. Burghardt

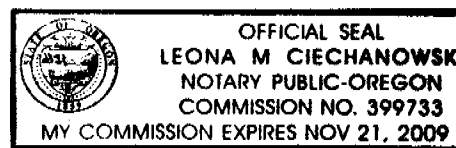
Title: Manager

STATE OF OREGON)
) SS:
County of WASHINGTON)

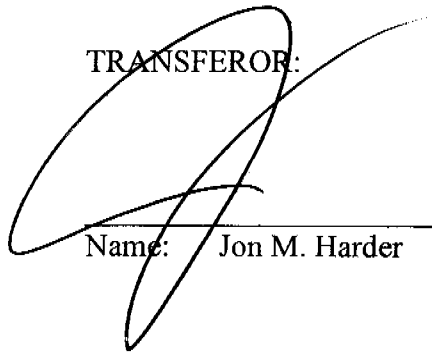
This instrument was acknowledged before me on 10/29, 2008, by Dale L. Burghardt, as the Manager of PELICAN POINTE ASSISTED LIVING, LLC, an Oregon limited liability company.


Notary Public for Oregon

My Commission Expires: 11/21/2009



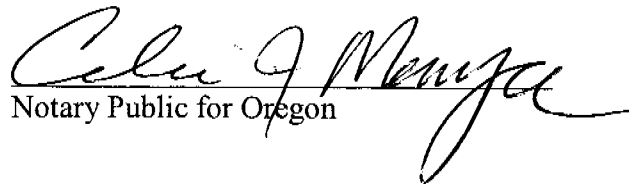
TRANSFEROR:



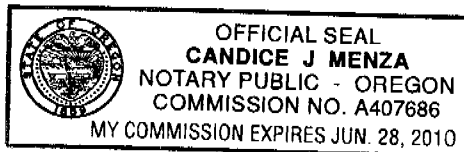
Name: Jon M. Harder (Seal)

STATE OF)
County of) SS:
)

This instrument was acknowledged before me on October 29, 2008, by
JON M. HARDER.


Notary Public for Oregon

My Commission Expires: 6/28/10



TRANSFeree:

TLC CAPITAL, LLC,
an Oregon limited liability company

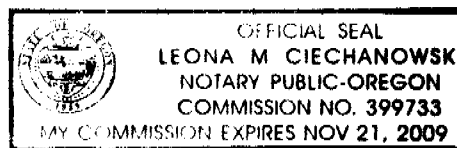
By: [Signature] (Seal)
Name: Dale L. Burghardt
Title: Manager

STATE OF OREGON)
) SS:
County of WASHINGTON)

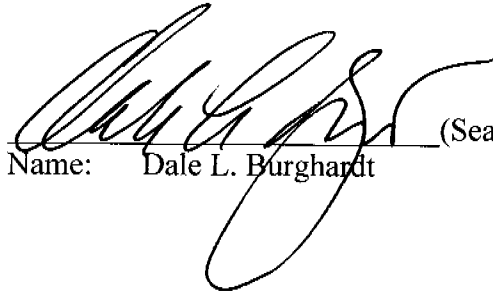
This instrument was acknowledged before me on 10/29, 2008, by
Dale L. Burghardt, as the Manager of TLC CAPITAL, LLC, an Oregon limited liability
company.

[Signature]
Notary Public for Oregon

My Commission Expires: 11/21/2009



OTHER KEY PRINCIPALS:

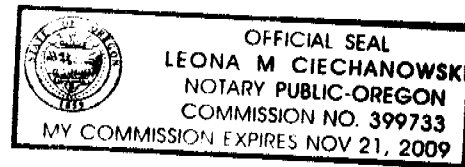
 (Seal)
Name: Dale L. Burghardt

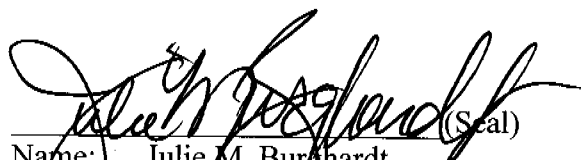
STATE OF OREGON)
County of WASHINGTON) SS:
)

This instrument was acknowledged before me on 10/29, 2008, by
DALE L. BURGHARDT.


Notary Public for Oregon


My Commission Expires: 11/21/2009



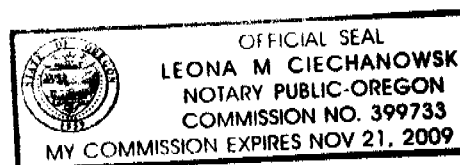

Name: Julie M. Burghardt (Seal)

STATE OF OREGON)
County of WASHINGTON) SS:

This instrument was acknowledged before me on 10/29, 2008, by
JULIE M. BURGHARDT.


Notary Public for Oregon

My Commission Expires: 11/21/2009



FANNIE MAE:

RED MORTGAGE CAPITAL, INC.,
an Ohio corporation, as Attorney-In-Fact
for Fannie Mae

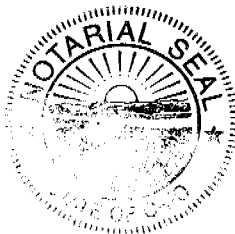
By:  (Seal)
Name: R. Barth Kallmerten
Title: Senior Managing Director

STATE OF OHIO)
) SS:
County of Franklin)

This instrument was acknowledged before me on October 29 2008, by R. Barth Kallmerten, as a Senior Managing Director of Red Mortgage Capital, Inc., an Ohio corporation, as Attorney-In-Fact for FANNIE MAE.


Notary Public for Ohio

My Commission Expires: 3/6/2011



CHERIE B. HARTSOUGH
Notary Public, State of Ohio
My Commission Expires 03-06-11

EXHIBIT A
to
CONSENT TO TRANSFER AND RELEASE AGREEMENT

THAT PORTION OF TRACT 40B LYING SOUTH AND WESTERLY OF THE U.S.B.R. "A" CANAL AND EASTERLY OF WASHBURN WAY AND ALL OF TRACT 40C, ENTERPRISE TRACTS, IN THE COUNTY OF KLAMATH, STATE OF OREGON.

EXCEPTING THEREFROM THAT PORTION DEEDED TO KLAMATH COUNTY IN VOLUME 335, PAGE 87, AND PARCEL DEEDED TO UNITED STATE OF AMERICA FOR CANALS AND LATERALS RECORDED JUNE 25, 1909 IN VOLUME 27, PAGE 236 AND IN VOLUME 38, PAGES 209 AND 210, ALL DEED RECORDS OF KLAMATH COUNTY, OREGON, AND THAT PORTION OF TRACT 40C DESCRIBED AS FOLLOWS:

BEGINNING AT A ONE-HALF INCH IRON PIN ON THE EAST RIGHT OF WAY LINE OF WASHBURN WAY, SAID POINT BEING NORTH 00° 20' 00" EAST ALONG THE CENTERLINE OF WASHBURN WAY AND ALONG THE WEST LINE OF SECTION 34 A DISTANCE OF 332.19 FEET AND SOUTH 89° 33' 03" EAST A DISTANCE OF 30.00 FEET FROM THE 5/8 INCH IRON PIN MARKING THE WEST ONE-QUARTER CORNER OF SECTION 34; THENCE NORTH 00° 20' 00" EAST ALONG THE EAST RIGHT OF WAY LINE OF WASHBURN WAY A DISTANCE OF 285.00 FEET TO A ONE-HALF INCH IRON PIN; THENCE SOUTH 89° 33' 03" EAST PARALLEL WITH THE NORTH LINE OF "MILLS GARDEN" SUBDIVISION A DISTANCE OF 472.43 FEET TO A ONE-HALF INCH IRON PIN; THENCE CONTINUING SOUTH 89° 33' 03" EAST A DISTANCE OF 29 FEET MORE OR LESS, TO THE WESTERLY RIGHT OF WAY LINE OF THE U.S.B.R. "A" CANAL; THENCE SOUTHEASTERLY ALONG SAID WESTERLY LINE IN THE NORTH LINE OF "MILLS GARDEN" SUBDIVISION; THENCE NORTH 89° 33' 03" WEST ALONG THE NORTH LINE OF "MILLS GARDEN" (SOUTH 89° 45' WEST BY SAID SUBDIVISION PLAT) A DISTANCE OF 20.96 FEET, MORE OR LESS, TO A TWO-INCH IRON PIPE; THENCE CONTINUING NORTH 89° 33' 03" WEST ALONG SAID SUBDIVISION LINE A DISTANCE OF 606.40 FEET TO THE POINT OF BEGINNING.

ALSO EXCEPTING THEREFROM ANY PORTION LYING WITHIN THE BOUNDARIES OF WASHBURN WAY.

EXHIBIT B
to
CONSENT TO TRANSFER AND RELEASE AGREEMENT

1. Multifamily Note, dated April 29, 2002, by Borrower for the benefit of Original Lender.
2. Multifamily Deed of Trust, Assignment of Rents and Security Agreement, including all riders and exhibits thereto, dated April 29, 2002, by Borrower for the benefit of Original Lender, as recorded in the official records of Klamath County, State of Oregon on April 29, 2002, in Vol. No. M02, Page 25110.
3. Assignment of Contracts, dated April 29, 2002, by and between Original Lender and Borrower.
4. Agreement to Amend or Comply, dated April 29, 2002, by Borrower.
5. Replacement Reserve and Security Agreement, dated April 29, 2002, by and between Original Lender and Borrower.
6. Subordination, Assignment and Security Agreement, dated October 31, 2008, by and among Fannie Mae, Borrower, and Manager.
7. Certificate of Borrower, dated April 29, 2002, by Borrower.
8. Exceptions to Non-Recourse Guaranty, dated April 29, 2002, by Jon M. Harder, Dale L. Burghardt, and Julie M. Burghardt.

All capitalized terms not herein defined shall have the meaning set forth in the Consent to Transfer and Release Agreement that precedes this Exhibit.