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2010-013557

Klamath County, Oregon



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11/24/2010 11:14:50 AM

Fee: \$202.00

This instrument prepared by  
and when recorded, return to:  
Kilpatrick Stockton LLP  
1100 Peachtree Street, Suite 2800  
Atlanta, Georgia 30309  
Attn: Capital Markets Group  
Ref: Berkadia/Eldorado Heights Assisted Living  
Community  
(33979/383801)

ABOVE SPACE FOR RECORDER'S USE

Berkadia Loan No. 99-1091699

#### ASSUMPTION AND RELEASE AGREEMENT

THIS ASSUMPTION AND RELEASE AGREEMENT (this "**Agreement**") is entered into and made effective as of the 19<sup>th</sup> day of November 2010 (the "**Effective Date**"), by and among **ELDORADO HEIGHTS ASSISTED LIVING COMMUNITY, LLC**, an Oregon limited liability company ("**EHALC**"), **SMITH'S ELDORADO HEIGHTS, LLC**, an Oregon limited liability company ("**Smith's**"), **HOWARD'S ELDORADO HEIGHTS, LLC**, an Oregon limited liability company ("**Howard's**"), **RINI WECTAWSKI LLC**, an Oregon limited liability company ("**Rini**," Rini together with EHALC, Smith's, Howard's are referred to herein collectively as "**Borrower**"), **BRE/SW ELDORADO HEIGHTS LLC**, a Delaware limited liability company ("**New Borrower**"), **BRE/SW HOLDINGS LLC**, a Delaware limited liability company ("**New Guarantor**" together with the New Borrower, the "**New Indemnitors**") **BANK OF NEW YORK MELLON TRUST COMPANY, N.A.** (successor in interest to Chase Bank of Texas, National Association), as Trustee for the Bondholders of Commercial Capital Access One, Inc. Commercial Mortgage Bonds, Series 3, pursuant to that certain Series Supplement dated December 1, 1998 to an indenture dated November 1, 1993 ("**Lender**"), and for purposes of acknowledging the terms and conditions of this Agreement, **STAYTON SW ASSISTED LIVING, L.L.C.**, an Oregon limited liability company ("**Equitable Title Holder**"),

#### RECITALS:

##### NOTE TO CLERK:

Pursuant to Order Confirming Receiver's, CRO's And Debtor's Second Amended Joint Plan Of Reorganization As Modified By The First Modification To The Second Amended Joint Plan Of Reorganization given Docket Entry Number 37428 on 7/19/10 in the United States District Court, District of Oregon, in case entitled In re: Stayton SW Assisted Living, LLC, Case Number 09-cv-6082-HO (the "Order"), "each recorder of deeds or similar official for any city, county or governmental unit in which any instrument is to be recorded is ordered and directed to accept such instrument without requiring the payment of any documentary, recording tax, stamp tax, conveyance fee, sales tax, mortgage tax, filing or recording fee, deed stamp, transfer tax, intangibles tax or similar tax, or similar tax or fee."

Eldorado Heights Assisted Living Community  
Loan Number: 99-1091699

Assumption and Release Agreement  
US2008 1615381.18

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The following recitals are a material part of this Agreement:

A. On August 31, 1998, Dynex Commercial, Inc. ("**Original Lender**"), made a real estate loan in the original principal amount of \$4,000,000.00 (the "**Loan**") to Eldorado Heights, L.L.C., an Oregon limited liability company ("**First Borrower**"), which Loan is evidenced by that certain Promissory Note, dated August 31, 1998, from First Borrower to Original Lender (together with all addenda, modifications, amendments, riders, exhibits and supplements thereto, the "**Note**"). The Loan and the Loan Documents (as defined below) were assigned to Lender. On or about October 15, 2002, Borrower and Jon M. Harder, an individual ("**Guarantor**"), assumed all of the obligations of First Borrower, and Prestige Care Inc., a Washington corporation ("**Prestige**"), Phillip G. Fogg, an individual ("**Fogg**"), Richard B. Delamarter, an individual ("**R. Delamarter**"), Harold G. Delamarter, an individual ("**H. Delamarter**"), Gregory Vislocky, an individual ("**Vislocky**," Vislocky together with Prestige, Fogg, R. Delamarter, H. Delamarter are collectively referred to herein as "**First Guarantor**"), respectively, pursuant to the terms of that certain Assignment and Assumption Agreement dated October 15, 2002, recorded with the Klamath County, Oregon mortgage records (the "**Recorder's Office**"), on October 15, 2002, in Volume M02, on Page 58714 and re-recorded on October 29, 2002, in Volume M02, on Page 61714 (the "**2002 Assumption Agreement**"). The Loan is evidenced, governed and/or secured by the following agreements, instruments and documents:

1. the Note; and
2. that certain Deed of Trust and Security Agreement, dated August 31, 1998, and recorded with the Recorder's Office on September 1, 1998, in Volume M98, on Page 32191, and that certain Corrected Deed of Trust and Security Agreement dated August 31, 1998, and recorded with the Recorder's Office on February 24, 1999, in Volume M99, on Page 6292 amending **Section 4.5** governing the disposition of debt service reserve and tax and insurance reserves (collectively and together with all addenda, modifications, amendments, riders, exhibits and supplements thereto, the "**Security Instrument**"), encumbering the real property described on **Exhibit A** attached hereto and by this reference incorporated herein (together with all other property, real and personal, encumbered by the Security Instrument, the "**Property**"), as assigned to Lender pursuant to the terms of that certain Assignment of Loan and Loan Documents recorded with the Recorder's Office on September 6, 2002, in Volume M02 on Page 50792 (the "**Lender Assignment**"), as assumed by Borrower pursuant to the 2002 Assumption Agreement; and
3. that certain Assignment of Leases and Rents dated August 31, 1998, and recorded with the Recorder's Office on October 1, 1998, in Volume M98, Page 32254 (together with all addenda, modifications, amendments, riders, exhibits and supplements thereto, the "**Assignment of Leases**"; and
4. that certain Assignment of Agreements, Permits and Contracts dated August 31, 1998, executed by First Borrower in favor of Original Lender (together with all addenda, modifications, amendments, riders, exhibits and supplements thereto, the "**Assignment Agreements**"; and
5. that certain Replacement Reserve and Security Agreement dated August 31, 1998, executed by First Borrower and Original Lender (the "**Replacement Reserve Agreement**").

B. In connection with the Loan, First Borrower and/or First Guarantor and/or Borrower and/or Guarantor and/or Sunwest Management, Inc., an Oregon corporation ("**Current Property Manager**") in connection with the 2002 Assumption Agreement also executed and delivered, or caused to be executed and delivered, the following agreements and documents for the benefit of Original Lender:

1. those certain UCC Financing Statements naming Borrower as debtor therein, and Lender as secured party therein, and filed in the Recorder's Office and in the public records of the Secretary of State of Oregon; and

2. that certain Environmental Indemnity Agreement dated August 31, 1998, executed by First Borrower and First Guarantor in favor of Original Lender (the "**Original Environmental Indemnity**"); and

3. that certain Guaranty of Obligations of Borrower dated August 31, 1998, executed by First Guarantor in favor of Original Lender (the "**Original Guaranty**"); and

4. that certain Certificate of Borrower dated August 31, 1998, executed by First Borrower; and

5. that certain Assignment of Management Agreement and Subordination of Management Agreement dated October \_\_, 2002 [original undated], by Borrower and Current Property Manager in favor of Lender.

The agreements and documents set forth in **Recital A** and **Recital B** above are hereinafter referred to collectively as the "**Original Borrower's Loan Documents.**"

C. Upon the Effective Date, New Borrower is executing (if applicable) and delivering, or causing to be executed (if applicable) and delivered, the documents listed in clauses 1, 2, 4, and 5 below, all of which are dated as of the Effective Date, and New Guarantor is executing and delivering, or are causing to be delivered, to Lender the documents listed in clauses 2, 3 and 5 below, all of which are dated as of the Effective Date:

1. those certain UCC Financing Statements naming New Borrower as debtor therein, and naming Lender, as secured party therein, to be filed in the Recorder's Office and the public records of the Secretary of State of Delaware (the "**UCC Statements**");

2. that certain Environmental Indemnity Agreement from New Indemnitors in favor of Lender (the "**New Environmental Indemnity**");

3. that certain Guaranty of Obligations of Borrower (the "**New Guaranty**"), executed and delivered by New Guarantor in favor of Lender;

4. that certain Manager's Consent and Subordination of Management Agreement executed by Emeritus Corporation, a Washington corporation ("**New Property Manager**") for the benefit of Lender (the "**Manager Consent**"); and

5. this Agreement.

The Note, Security Instrument, Assignment of Lease, Assignment of Agreements, UCC Statements, New Environmental Indemnity, New Guaranty, Manager Consent and this Agreement, and all other

documents, agreements and instruments securing, evidencing, guaranteeing or otherwise relating to the Loan (other than the documents, agreements and instruments set forth in **Recital B**) are hereinafter referred to collectively as the "**Loan Documents**," and individually as a "**Loan Document**."

D. Original Lender assigned, sold and transferred its interest in the Loan and the Original Borrower's Loan Documents to Lender pursuant to certain assignment documents including, without limitation, that certain Lender Assignment, and Lender is the current holder of all of Original Lender's interest in the Loan and Original Borrower's Loan Documents.

E. Borrower is a Receivership Entity as that term is defined in that certain Order Granting Preliminary Injunction and Appointing Receiver entered by the United States District Court for the District of Oregon (the "**District Court**") in case no. 09-6056 (the "**SEC Proceeding**") on March 10, 2009 (the "**Receiver Order**") and is also subject to a bankruptcy case known as In re Stayton SW Assisted Living, case no. 08-36637 (in which the reference of the case to the bankruptcy court was subsequently withdrawn and is in the District Court as case no. 09-6082) (the "**Bankruptcy Proceeding**"). On October 2, 2009, the District Court entered an order in the SEC Proceeding (the "**Approval Order**") approving the Distribution Plan of Receiver and Chief Restructuring Officer for the Sunwest Enterprise (the "**Distribution Plan**") that found that certain entities (the "**Receivership Entities**") were operated as a "unitary enterprise" and ordered that the assets and liabilities of the Receivership Entities, including Borrower, be consolidated and reorganized in the Bankruptcy Proceeding. The Approval Order provides that the "unitary enterprise" known as Stayton SW Assisted Living, L.L.C. holds equitable title to the Property, although Borrower retains legal title to the Property. On December 16, 2009, the District Court entered an order (the "**Consolidation Order**") in the Bankruptcy Proceeding granting the Joint Motion of Debtor, the Tenants-in-Common Committee, and the Unsecured Creditors' Committee for Substantive Consolidation of Assets and Liabilities of Sunwest Related Entities which motion sought an order under Section 105(a) of the Bankruptcy Code substantively consolidating the assets and liabilities of the Receivership Entities. The "unitary enterprise" known as Stayton SW Assisted Living, L.L.C. and the substantively consolidated entity created under the Consolidation Order in the Bankruptcy Proceeding are referred to collectively herein as "**Stayton**".

F. Lender, as the holder of the Note and beneficiary under the Security Instrument, has been asked to consent to the transfer of the Property to New Borrower (the "**Transfer**"), the assumption by New Borrower of the obligations of Borrower under the Loan Documents and the addition of New Guarantor to Loan Documents (but solely in New Guarantor's capacity as guarantor under the New Guaranty and indemnitor under the New Environmental Indemnity) (the "**Assumption**"), and certain modifications to the Loan Documents (the "**Modifications**," the Modifications together with the Transfer and the Assumption are collectively referred to herein as the "**Transaction**").

G. Lender, acting by and through its servicer Berkadia Commercial Mortgage LLC, has agreed to consent to the Transaction subject to the terms and conditions stated below, including, without limitation, the execution and delivery of the agreements and documents set forth in **Recital C** above and such other documents and instruments as may be reasonably required by Lender prior to the Effective Date (subject to **Section 25** of this Agreement).

H. Unless the context requires otherwise, references in this Agreement to Original Borrower's Loan Documents shall be deemed to refer to such documents as amended by this Agreement, and as such documents and the other Loan Documents may be further amended, modified, extended or replaced from time to time.

## CONTRACTUAL PROVISIONS:

NOW, THEREFORE, in consideration of the Recitals, which are incorporated herein as if set forth below in full as a substantive, contractual part of this Agreement, and the mutual promises contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

### 1. Acknowledgement of Debt.

(a) Borrower and New Borrower confirm and acknowledge that the outstanding principal balance under the Note as of the Effective Date is **\$2,907,824.60**, the balances of all reserve and escrow accounts required under the Loan Documents are set forth on **Schedule 1**, attached hereto and made a part hereof, and the Applicable Interest Rate (as defined in the Note) is 7.40% per annum. New Borrower declares and acknowledges, for the specific reliance and benefit of Lender, that (i) New Borrower has no right, claim, defense or right of offset of any kind or in any amount with respect to the Note, the Security Instrument or any of the other Loan Documents, and (ii) no amounts paid by New Borrower or Borrower to Lender pursuant to or in connection with the execution and delivery of this Agreement shall be applied to or set off against the principal balance of the Note.

(b) New Borrower hereby acknowledges and agrees that Lender shall continue to hold the balances in the escrow and reserve accounts set forth on **Schedule 1**, attached hereto and made a part hereof, if any, in accordance with the terms of the Loan Documents (as modified by the terms of this Agreement). Lender shall have no further duty or obligation of any nature to Borrower relating to such escrow and/or reserve balances, all of which are assigned, transferred and conveyed to New Borrower. All escrow and reserve balances held by Lender in connection with the Loan Documents shall, from and after the Effective Date, be for the account of New Borrower.

### 2. Conditions Precedent; Consent to Transfer.

(a) The District Court's approval of the Transaction.

(b) Borrower represents and warrants to Lender as of the Effective Date that Borrower has satisfied all requirements in connection with the assumption of the Loan set forth in the Original Borrower's Loan Documents.

(c) In reliance upon the representations, warranties and covenants set forth herein by Borrower, New Borrower and New Guarantor, Lender hereby consents to the Transaction and waives its right to accelerate the Loan pursuant to any provision of the Original Borrower's Loan Documents which might otherwise provide such right to Lender solely on account of the Transfer and the Assumption. Lender's consent to the Transaction is not intended to be and shall not be construed as a consent to any subsequent transfer, assumption or modification, which requires Lender's consent pursuant to the terms of the Security Instrument or any other Loan Document.

(d) New Borrower hereby authorizes the Lender to file any and all UCC financing statements and UCC financing statement amendments as Lender may deem necessary from time to time including, without limitation, financing statements containing the description "all assets of Borrower" or "all personal property of New Borrower" or similar language.

3. Assumption of Obligations. As of the Effective Date, Borrower does hereby assign, transfer and convey to New Borrower all of its right, title and interest in and to the Loan

Documents, and New Borrower hereby unconditionally assumes the Loan Documents and agrees to comply with all covenants and obligations therein, including, without limitation, the obligation to pay the unpaid balance due and owing on the Loan and all interest thereon, as and when required under the Loan Documents. Without limiting the foregoing, from and after the Effective Date, New Borrower agrees to keep and observe all of the covenants, terms and conditions required to be kept, observed and performed pursuant to the Note, the Security Instrument and all of the other Loan Documents, to the same effect as if New Borrower were the original maker of, and a party to, the Loan Documents including, but not limited to, payment of all sums presently outstanding under the Note, as and when required under the Loan Documents. Subject to the modifications specifically set forth in **Section 6** of this Agreement, New Borrower hereby: (i) makes for the benefit of Lender as of the Effective Date all of the representations and warranties of Borrower contained in **Sections 5** (as modified by this Agreement) and **12.1** of the Security Instrument (ii) adopts, ratifies and confirms as of the Effective Date all of the covenants of Borrower contained in the Loan Documents.

4. No Representations of Lender. New Borrower and New Guarantor hereby agree that (a) Lender has made no representations or warranty, either express or implied regarding the Property and has no responsibility whatsoever with respect to the Property, its condition, or its use, occupancy or status, and (b) no claims relating to the Property, its condition, or its use, occupancy or status, will be asserted against Lender or its agents, employees, professional consultants, affiliated entities, successors or assigns, either affirmatively or as a defense. Notwithstanding the foregoing, nothing in **Section 4(b)** shall be construed as a waiver of Borrower's rights and remedies under the Loan Documents or applicable law from and after the Effective Date.

5. Limited Release of Borrower; Reaffirmation.

(a) In reliance upon the representations, warranties and covenants set forth herein by Borrower, New Borrower and New Guarantor, Lender hereby releases: (i) Borrower from any liability for repayment of the principal and interest under the terms of the Note, the Security Instrument and the other Original Borrower's Loan Documents, and other obligations under the Original Borrower's Loan Documents, to the extent such obligations arise from matters not otherwise caused by it (or them) first occurring from and after the Effective Date. Lender hereby reserves all rights it may have against Borrower for acts, omissions or events occurring prior to the Effective Date.

(b) The release of Borrower provided for in **Section 4(a)** above shall be deemed withdrawn and shall have no effect to the extent that this Agreement is held to be void or is determined to be unenforceable by any court in a final non-appealable order as a result of any action or inaction by or on behalf of Borrower, or if any representation or warranty by Borrower made in connection with this Agreement is false or misleading in any material respect when made. In all cases, Borrower shall bear the burden of proof on the issue of the time at which an act or event first occurred or an obligation first arose, which is the subject of claimed liability under any of the Loan Documents.

(c) Notwithstanding anything to the contrary contained herein, and subject to the release contained in **Section 4(a)** hereof, Borrower does hereby ratify and confirm its obligations under the Original Borrower's Loan Documents to the extent arising or resulting from acts, omissions or events occurring prior to the Effective Date.

6. Modifications to Loan Documents.

**I. Modifications to the Security Instrument.**

(a) Payment of Taxes. Section 3.4 of the Security Instrument shall be amended by inserting the following at the end thereof:

“Notwithstanding the foregoing or anything to the contrary in any Loan Document, Borrower’s obligation to directly pay Taxes shall be suspended for so long as Borrower has complied with its obligations under Section 3.5 hereof.”

(b) Escrow Fund. Section 3.5 of the Security Instrument shall be amended by:

(i) deleting the first sentence thereof in its entirety and replacing it with the following:

“Borrower shall pay to Lender on each scheduled payment date, as set forth in the Note, one-twelfth ( $1/12$ ) of an amount which would be sufficient to pay the Taxes payable, or estimated by Lender to be payable during the next ensuing twelve (12) months (the “Escrow Fund”).”

(ii) deleting the words “and Insurance Premiums” from the seventh (7<sup>th</sup>), twelfth (12<sup>th</sup>), thirteenth (13<sup>th</sup>) and fourteenth (14<sup>th</sup>) lines thereof.

(iii) deleting the words “Sections 3.3 and” on the twelfth (12<sup>th</sup>) and fourteenth (14<sup>th</sup>) lines thereof and inserting the word “Section” in lieu thereof; and

(iv) deleting the words “the items set forth in (a) and (b) above” on the seventeenth (17<sup>th</sup>) and Eighteenth (18<sup>th</sup>) lines thereof and inserting the words “the Taxes” in lieu thereof.

(c) Leases and Rents. Section 3.7(a) of the Security Instrument shall be amended by inserting the following sentence at the end thereof: “Notwithstanding anything to the contrary in the foregoing, items (vi) through (viii) shall not apply to residential Leases.”

(d) Management. Section 3.13 of the Security Instrument shall be deleted in its entirety and replaced with the following:

**3.13 MANAGEMENT.** The Property shall be managed by Emeritus Corporation, a Washington corporation (the “**Manager**”), pursuant to the terms of a management agreement acceptable to Lender. The Manager shall keep and perform all of its obligations and duties under that certain Management Agreement dated as of November 19, 2010, and shall permit no default to exist thereunder.

(a) The Borrower shall not enter into any other management agreement with respect to all or substantially all of the Property without first obtaining Lender’s prior written consent (which shall not be unreasonably withheld) to the proposed manager and approval of the form and substance of the management agreement. The new manager shall enter into a subordination agreement reasonably acceptable in form and substance to the Lender and which shall provide, among other things, that the new management agreement may be terminated by Lender by 30-days’ notice to Borrower upon the occurrence of an Event of Default.

(b) If a Manager Termination Event (as defined below) occurs, Lender may, at its option, require Borrower to engage a bona-fide, independent third-party manager approved by Lender in its reasonable discretion (the "**New Manager**") to replace the Manager. For purposes of this **Section 3.13(b)**, a "**Manager Termination Event**" shall be deemed to have occurred if, commencing with the calendar quarter ending on March 31, 2013, (i) the Property shall fail to maintain a Debt Service Coverage Ratio (as defined in **Section 4.3** of this Security Instrument) (which shall, solely for the purposes of this **Section 3.13**, be measured at the end of the quarter using NOI (as defined in **Section 4.3** of this Security Instrument) for the trailing three months, annualized) of at least 1.0:1.0, and (ii) Lender, in its sole discretion, determines that such failure was due to Manager's grossly negligent or materially substandard performance. The occurrence of a Manager Termination Event shall not constitute an Event of Default hereunder or under any Other Security Document."

(e) Debt Service Coverage Ratio. **Section 3.17** of the Security Instrument shall be deleted in its entirety and the following shall be inserted in lieu thereof "Intentionally Deleted."

(f) Restoration. **Section 4.3** of the Security Instrument is hereby amended to delete the language in **Section 4.3(b)(i)(F)** in its entirety and insert the language "intentionally deleted" in lieu thereof.

(g) Debt Service Reserve and Taxes and Insurance Reserve. **Section 4.5** of the Security Instrument shall be deleted in its entirety and the following shall be inserted in lieu thereof: "4.5 **RESERVED.**"

(h) Validity of Documents. **Section 5.4(a)(vi)** of the Security Instrument is hereby amended by adding the following language to the end of the language inside the parenthetical thereof: "and any healthcare and other certificates, licenses or other approvals necessary for the operation of the Property as an assisted living facility".

(i) Status of Property. **Section 5.6(c)** of the Security Instrument is hereby amended by inserting the following " , to best of Borrower's knowledge," after the word "and" and the words "the present" in the first line thereof. For the avoidance of doubt, this insertion is intended to qualify the representation with respect to the present use and occupancy of the Property and in no way qualifies the representation with respect to the contemplated use and occupancy of the Property.

(j) Status of Property. **Section 5.6(h)** of the Security Instrument is hereby amended by deleting the word "All" from the beginning thereof and inserting the following language in lieu thereof: "To the best of Borrower's knowledge, all".

(k) Status of Property. **Section 5.6(i)** of the Security Instrument is hereby amended by inserting the following at the end thereof: "and purchase money liens and other trade payables, in each case, incurred in the ordinary course of business of owning and operating the Property, provided that such debt is paid when due in accordance with **Section 4.2(g)** of this Security Instrument".

(l) ERISA Compliance. **Section 5.9** of the Security Instrument shall be deleted in its entirety and the following shall be inserted in lieu thereof:



“5.9 **ERISA COMPLIANCE.** Borrower is not and shall not become DURING THE COURSE OF THE LOAN (a) an “employee benefit plan” which is subject to Title I of ERISA, (b) a “plan” which is subject to Section 4975 of the Code, or (c) an entity the underlying assets of which constitute “plan assets” within the meaning of Section 3(42) of ERISA and the Department of Labor Regulation 29 C.F.R. Section 2510.3-101. THE CONSUMMATION OF THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT DOES NOT AND SHALL NOT DURING THE COURSE OF THE LOAN CONSTITUTE A NON-EXEMPT PROHIBITED TRANSACTION OR SIMILAR VIOLATION OF APPLICABLE STATE OR OTHER GOVERNMENTAL LAW.”

(m) **Leases.** Section 5.10(c) of the Security Instrument is hereby amended by deleting the language of such subsection and inserting the words “intentionally deleted,” in lieu thereof.

(n) **Leases.** Section 5.10(d) of the Security Instrument is hereby amended by inserting the following at the end thereof: “, except for those assignments as otherwise expressly set forth in this Security Instrument.”

(o) **Mailing Address.** Section 5.14 of the Security Instrument shall be deleted in its entirety and the following inserted in lieu thereof:

“5.14 **MAILING ADDRESS.** Borrower’s mailing address is c/o The Blackstone Group, 345 Park Avenue, New York, New York 10154, Attention: David Roth, with a copy to Emeritus Corporation, 3131 Elliott Avenue, Suite 500, Seattle, WA 98121, Attention: Eric Mendelsohn.”

(p) **No Change in Facts or Circumstances.** Section 5.15 of the Security Instrument shall be deleted in its entirety and the following inserted in lieu thereof:

“5.15 **FINANCIAL INFORMATION.** To the best of Borrower’s knowledge, all financial information regarding Borrower, BRE/SW Holdings LLC, a Delaware limited liability company (“Principal”), and Borrower’s affiliates provided by or on behalf of Borrower and Principal to Lender was accurate, complete and correct in all material respects as of the date of delivery thereof, and there has been no adverse change in any condition, fact, circumstance, or event that would make any such information inaccurate, incomplete or otherwise misleading, in each case, in any material respect.”

(q) **Medicare and Medicare Reimbursement Programs.** Section 5.19 of the Security Instrument is hereby amended by deleting all references to Medicaid therein and deleting the following words: “the Medicare and Medicaid programs” everywhere they appear therein and replacing such words with the following instead: “the Medicare program”.

(r) **Estoppel Certificates.** Section 7.4(b) of the Security Instrument shall be amended by inserting the words “Notwithstanding the foregoing, Borrower shall not be required to seek or deliver estoppel certificates from residents.” at the end thereof.

(s) **No Sale/Encumbrance.** Section 8.2 of the Security Instrument shall be amended by inserting the following at the end thereof: “, provided that nothing herein or in any other

Loan Document shall prohibit or otherwise restrict transfers of direct or indirect ownership interests in New Guarantor's sole member, as long as, following any such transfers, any one or more Emeritus Corporation, Columbia Pacific Management, Inc., or the real estate opportunity fund known as Blackstone Real Estate Partners VI, retain a majority ownership interest in, or control of New Guarantor's sole member."

(i) The names "Gregory Vislocki", "Harold G. Delamarter", "Phillip G. Fogg", "Prestige Care, Inc." and "Richard B. Delamarter" shall be deleted in their entirety from the Security Instrument and any of the other Loan Documents, and all references, and provisions relating, to such terms in the Security Instrument and any of the other Loan Documents shall also be deemed deleted and shall be of no further force and effect.

(ii) From and after the Effective Date, the term "Other Security Documents" as used in the Loan Documents, shall be deemed to have the meaning ascribed to the term "Loan Documents" in this Agreement.

**II. Replacement Reserve Agreement.** Notwithstanding **Section 8** of the Replacement Reserve Agreement, for so long as New Borrower is Borrower under the Loan Documents Lender agrees not to increase the Monthly Deposit (as defined in the Replacement Reserve Agreement) to an amount that in the aggregate would exceed, with respect to any given 12-month period, an amount equal to \$350.00 multiplied by the number of beds at the Property. Notwithstanding the foregoing, nothing in this **Section 6.II** shall in any way limit, waive or modify Borrower's obligation to maintain the Property and provide needed replacements and repairs as required by and in accordance with the Loan Documents or comply with the terms of the Replacement Reserve Agreement.

**III. Application of Amounts currently held by Lender as Insurance Premiums.** As of the Effective Date, New Borrower **(A)** acknowledges that Lender is holding **\$63,571.76** as Insurance Premiums, and **(B)** acknowledges and agrees that all such amounts being held by Lender as Insurance Premiums will be continued to be held by Lender in the Escrow Fund but applied by Lender to the payment of the Taxes and/or Lender's Costs (as defined in **Section 6.V** of this Agreement).

**IV. Waiver of Default Interest and Late Charges.** As of the Effective Date, Borrower and New Borrower acknowledge that the amount of **\$1,465.00** (the "**Late Charge Payment Due**") is due and owing to Lender as a result of Borrower's failure to make the September 1, 2010 payment within ten (10) days of the date such payment was due. Borrower and New Borrower acknowledge that other defaults and Events of Default have occurred under the Loan Documents arising out of the Bankruptcy Proceeding and/or the SEC Proceeding and/or any failure to pay principal and interest or other amounts due under the Loan Documents that occurred prior to the Effective Date (collectively, "**Payment Default**"; Payment Default together with the Bankruptcy Proceeding and the SEC Proceeding are collectively referred to herein as the "**Existing Default**"). On and subject to the terms and conditions of this Agreement and the other Loan Documents provided the Transaction is consummated and in strict reliance on the representations, warranties, acknowledgements and covenants set forth in this Agreement and the other Loan Documents, Lender hereby waives the Existing Default together with Late Charge Payment Due and any default interest that has accrued due to the Existing Default (the "**BK Default Interest**", the BK Default Interest together with the Late Charge Payment Due are collectively referred to as the "**Default Payment Amounts**"). If, for any reason whatsoever, the Transaction is not consummated and/or the conditions set forth in this Agreement are not satisfied, this provision will automatically become null and void, be of no further force and effect, and the Default Payment Amounts will become immediately due and payable to Lender. The Existing Default Waiver and the waiver of any other Events of Default relating solely to the status of Borrower and/or the status or actions of Guarantor shall not constitute a

waiver of (a) any other default that may exist with respect to the Loan or the Loan Documents (as modified, amended and supplemented by this Agreement) or (b) any interest at the Applicable Interest Rate or the Default Rate or any late charges or other sums accruing under the Loan Documents from and after the date of this Agreement. Lender shall have no obligation to reach any agreement or waive any amounts accruing or becoming due under the Loan Documents from and after the date of this Agreement, or to reach any agreement or waive any other defaults or Events of Default now or hereafter existing under the Loan Documents.

**V. Reimbursement of Lender's Costs and Expenses.** As of the Effective Date, Borrower and New Borrower acknowledge that Lender has incurred costs, fees and expenses (including attorneys' fees) in connection with the Bankruptcy Proceeding, the Distribution Plan and the Transactions in the amount of **\$59,095.31** (the "**Lender's Costs**"). Borrower and/or New Borrower agree to deposit the Lender's Costs with Lender prior to or on the Effective Date.

**VI. Modifications to Loan Documents only Apply to New Borrower.** New Borrower and New Guarantor hereby acknowledge and agree that notwithstanding Lender's agreement to accept the aforementioned modifications to the Loan Documents with respect to the Transaction, Lender reserves the right to condition its consent to future transfers and assumptions on, among other things, the payment of Insurance Premiums into escrow in accordance with the original provisions of the Loan Documents and removing the cap on the Monthly Deposit as set forth in **Section 6.II** of this Agreement.

7. Representations.

(a) **New Borrower** represents and warrants to Berkadia and Lender as of the Effective Date that:

(i) **New Borrower** is duly organized, validly existing and in good standing under the laws of its state of formation or organization and is duly qualified and authorized to conduct business in the State in which the Property is located, and has full power and authority to own, lease and operate the Property, and to conduct its affairs as now being conducted and as proposed to be conducted;

(ii) **New Borrower** has full power and authority to enter into, execute, deliver and carry out this Agreement and the Loan Documents to which it is a party, by assumption or otherwise, and to perform its obligations hereunder and thereunder and all such actions have been duly authorized by all necessary actions on its part;

(iii) This Agreement and the other documents executed in connection herewith have been duly executed and delivered by **New Borrower**. This Agreement and the Loan Documents to which **New Borrower** is a party, by assumption or otherwise, constitute legal, valid and binding obligations of **New Borrower**, enforceable against **New Borrower** in accordance with their respective terms, subject to bankruptcy, insolvency and other similar laws affecting the rights of creditors generally;

(iv) **New Borrower** has received and reviewed copies of all of the Loan Documents and will continue to comply with all of the covenants of Borrower contained therein, including, but not limited to the covenants set forth in **Sections 4.2 and 5.9** of the Security Instrument;

(v) Neither New Borrower, New Guarantor nor, to New Borrower's knowledge, any person owning an interest in New Borrower or New Guarantor (except that New Borrower's knowledge shall not require any investigation into ownership of publicly traded stock or other publicly traded securities), is a country, territory, individual or entity named on a list maintained by the U.S. Treasury Department's Office of Foreign Assets Control ("OFAC"), or is a Specially Designated National or Blocked Person under the programs administered by OFAC;

(vi) No equity interest in New Borrower has been pledged, hypothecated or otherwise encumbered as security for any obligation, and none of the capital contributed to New Borrower was made in the form of a loan;

(vii) There is no litigation or other proceeding against New Borrower pending or overtly threatened, by written communication to New Borrower, wherein an unfavorable decision might reasonably result in a material adverse change in the financial condition of New Borrower or its ability to legally perform its obligations under this Agreement and the other Loan Documents;

(viii) The execution, delivery and performance of this Agreement, and the performance of New Borrower's obligations under the Loan Documents, (A) does not conflict with or result in a violation of New Borrower's organizational documents or any judgment, order or decree of any court or arbiter in any proceeding to which New Borrower is a party, and (B) does not conflict with, or constitute a material breach of, or constitute a material default under, any contract, agreement or other instrument by which New Borrower is bound or to which New Borrower is a party;

(ix) There is no bankruptcy, receivership or insolvency proceeding pending or threatened against New Borrower; and

(x) No proceeding is pending for the dissolution or annulment of New Borrower, and all license, income and franchise taxes due and payable by New Borrower have been paid in full.

(b) **New Guarantor** represents and warrants to Berkadia and Lender as of the Effective Date that:

(i) New Guarantor is duly organized, validly existing and in good standing under the laws of the state of its formation and has full power and authority to conduct its affairs as now being conducted and as proposed to be conducted;

(ii) This Agreement, the New Guaranty, the New Environmental Indemnity have been duly executed and delivered by each of them. This Agreement, the New Guaranty and the New Environmental Indemnity constitute New Guarantor's legal, valid and binding obligations, enforceable against New Guarantor in accordance with their respective terms, subject to bankruptcy, insolvency and other similar laws affecting the rights of creditors generally;

(iii) New Guarantor has received and reviewed copies of all of the Loan Documents;

(iv) There is no litigation or other proceeding against New Guarantor pending or overtly threatened, by written communication to New Guarantor, wherein an unfavorable decision might reasonably result in a material adverse change in the financial condition of New Guarantor or its ability to legally perform its obligations under this Agreement and the other Loan Documents to which New Guarantor is a party;

(v) New Guarantor has full power and authority to enter into, execute, deliver and perform this Agreement and the other Loan Documents contemplated herein and such execution, delivery and performance (A) have been duly and validly authorized by all necessary actions on the part of New Guarantor, (B) does not conflict with or result in a violation of New Guarantor's organizational documents or any judgment, order or decree of any court or arbiter in any proceeding to which New Guarantor is a party, and (C) does not conflict with, or constitute a material breach of, or constitute a material default under, any contract, agreement or other instrument by which New Guarantor is bound or to which New Guarantor is a party;

(vi) There is no bankruptcy, receivership or insolvency proceeding pending or threatened against New Guarantor; and

(vii) No proceeding is pending for the dissolution or annulment of New Guarantor, and all license, income and franchise taxes due and payable by New Guarantor have been paid in full.

(c) **Borrower** represents and warrants to Berkadia and Lender as of the Effective Date that:

(i) Contemporaneously with the execution and delivery hereof, Borrower has conveyed and transferred the Property to New Borrower;

(ii) Contemporaneously with the execution and delivery hereof, Borrower has assigned and transferred to New Borrower the Tenant Leases (as hereinafter defined), and Borrower has retained no rights therein or thereto;

(iii) Borrower has not received a security instrument or security agreement from New Borrower encumbering the Property to secure the payment of any sums due Borrower or obligations to be performed by New Borrower;

(iv) There exist no defenses, offsets or counterclaims by Borrower to this Agreement or the Original Borrower's Loan Documents;

(v) Except for defaults caused by the SEC Proceeding and the Bankruptcy Proceeding, there are no defaults by Borrower under the provisions of Original Borrower's Loan Documents executed or assumed by Borrower, nor are there any conditions which with the giving of notice or the passage of time or both may constitute a default by Borrower under the provisions of the Original Borrower's Loan Documents;

(vi) The Original Borrower's Loan Documents are in full force and effect;

(vii) There are no subordinate liens of any kind covering or relating to the Property, nor are there any mechanics' liens or liens for delinquent taxes or assessments encumbering the Property, nor has notice of a lien or notice of intent to file a lien been received;

(viii) To Borrower's knowledge, there are no pending or threatened condemnation or annexation proceedings affecting the Property, or any agreements to convey any portion of the Property or any rights thereto not disclosed in this Agreement, including, without limitation, to any governmental agency;

(ix) The certified rent roll for the Property provided to Lender of even date herewith, is a true, complete and accurate list of all tenant leases ("**Tenant Leases**") or individually a "**Tenant Lease**") affecting the Property as of the Effective Date hereof;

(x) Except for the SEC Proceeding and the Bankruptcy Proceeding, there is no litigation or other proceeding against Borrower or the Property pending or overtly threatened, by written communication to Borrower, wherein an unfavorable decision might reasonably result in a material adverse change in the financial condition of Borrower or its ability to legally perform its obligations under this Agreement and the Original Borrower's Loan Documents;

(xi) Except for the SEC Proceeding and the Bankruptcy Proceeding there are no bankruptcy, receivership or insolvency proceedings pending or threatened against Borrower;

(xii) No proceeding is pending for the dissolution or annulment of Borrower, and all license, income and franchise taxes due and payable by Borrower have been paid in full; and

(xiii) Borrower has full power and authority to enter into, execute, deliver and perform this Agreement and such execution, delivery and performance (A) have been duly and validly authorized by all necessary actions on the part of Borrower, (B) does not conflict with or result in a violation of Borrower's organizational documents or any judgment, order or decree of any court or arbiter in any proceeding to which Borrower is a party, and (C) does not conflict with, or constitute a material breach of, or constitute a material default under, any contract, agreement or other instrument by which Borrower is bound or to which Borrower is a party.

8. **Financial Information.** New Borrower and New Guarantor hereby each represent and warrant to Lender that, to the best of its knowledge, all financial information regarding New Guarantor, New Borrower and its affiliates provided by or on behalf of New Borrower and New Guarantor to Berkadia was true and correct in all material respects as of the date of delivery thereof and remains materially true and correct as of the Effective Date.

9. **Addresses.** Lender, New Borrower and New Guarantor agree that all notice provisions contained in the Loan Documents are hereby modified to amend the notice address for Lender, New Borrower and New Guarantor, and that from and after the Effective Date, the notice address for Lender, New Borrower and New Guarantor are as follows:

**If to Lender:**

Bank of New York Mellon Trust Company, N.A. (successor in interest to Chase Bank of Texas, National Association), as Trustee for the Bondholders of Commercial Capital Access One, Inc. Commercial Mortgage Bonds, Series 3  
118 Welsh Road  
Horsham, PA 19044  
Attn: Client Relations Manager for Loan No. 99-1091699

**If to New Borrower:**

BRE/SW Eldorado Heights LLC  
c/o The Blackstone Group  
345 Park Avenue  
New York, New York 10154  
Attention: David Roth

**With a copy to:**

Simpson Thacher & Bartlett LLP  
425 Lexington Avenue  
New York, New York 10017  
Attention: Gregory J. Ressa

**With a copy to:**

Emeritus Corporation  
3131 Elliot Avenue, Suite 500  
Seattle, Washington 98121  
Attention: Eric Mendelssohn

**If to New Guarantor:**

BRE/SW Holdings LLC  
c/o The Blackstone Group  
345 Park Avenue  
New York, New York 10154  
Attention: David Roth

10. Release of Berkadia and Lender. Borrower, New Borrower and New Guarantor hereby each unconditionally and irrevocably release and forever discharge Berkadia and Lender and their respective successors, assigns, agents, directors, officers, employees, and attorneys (collectively, the "**Indemnitees**") from all Claims, as defined below, and (i) Borrower agrees to indemnify the Indemnitees, hold the Indemnitees harmless, and defend the Indemnitees with counsel reasonably acceptable to the Indemnitees from and against any and all claims, losses, causes of action, costs and expenses of every kind or character in connection with any Claims asserted by Borrower or Guarantor and/or the Transaction contemplated by this Agreement, and (ii) New Borrower and New Guarantor agree to indemnify the Indemnitees, hold the Indemnitees harmless, and defend the Indemnitees with counsel reasonably acceptable to Indemnitees from and against any and all claims, losses, causes of action, costs and expenses of every kind or character in connection with any Claims asserted by New Borrower or New Guarantor and/or the Transaction contemplated by this Agreement. 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 Effective Date, which Borrower, New Borrower or New Guarantor or any of their respective directors, partners, principals, affiliates, members, shareholders, officers, agents, employees or successors, 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 the Loan or any of the Loan Documents or the Original Borrower's 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 any of the Indemnitees. Borrower, New Borrower and New Guarantor agree that Berkadia and Lender have no fiduciary or similar obligations to Borrower, New Borrower or New Guarantor or either of them and that their relationship is strictly that of creditor and debtor. This release is accepted by Berkadia and Lender pursuant to this Agreement and shall not be construed as an admission of liability on the part of either of them. Borrower, New Borrower and New Guarantor each 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.

11. **Confirmation of Waivers.** New Borrower, without limiting the generality of its obligations under the Loan Documents, hereby confirms and ratifies the submission to jurisdiction and waivers set forth in the Loan Documents.

12. **Nonwaiver.** New Borrower and New Guarantor hereby acknowledge and agree that (a) any performance or non-performance of the Loan Documents prior to the Effective Date does not affect or diminish Lender's ability to require future compliance with the Loan Documents, and (b) in the future, Lender will require strict compliance with and performance of the Loan Documents. Other than as expressly set forth herein, the execution, delivery and effectiveness of this Agreement shall not operate as a waiver of any right, power or remedy of Lender under the Loan Documents, or any other document, instrument or agreement executed and/or delivered in connection therewith. Notwithstanding the foregoing, Lender is waiving the Existing Default as set forth in **Section 6.IV** of this Agreement; provided, however, that Borrower agrees to indemnify Lender and hold Lender harmless from any and all claims against any Lender in connection with the Existing Default and/or the Transaction.

13. **Binding Effect.** This Agreement shall be binding upon the parties and their respective heirs, executors, administrators, successors, permitted assigns and representatives.

14. **Ratification.** Subject to the express provisions of this Agreement, Lender and New Borrower hereby ratify and affirm all of the Loan Documents and all of its or the other's, as applicable, respective rights, agreements, obligations, priorities, reservations, promises and waivers as made and agreed and contained therein and as assumed pursuant to this Agreement by New Borrower, all of which shall remain in full force and effect.

15. **No Impairment of Lien; No Satisfaction.** Nothing set forth herein shall affect the priority or extent of the lien of the Security Instrument or any of the other Loan Documents, nor, except as expressly set forth herein, release or change the liability of any party who may now be or after the Effective Date, become liable, primarily or secondarily, under the Loan Documents. This Agreement does not, and shall not be construed to, constitute the creation of new indebtedness or the satisfaction, discharge or extinguishment of the debt secured by the Loan Documents.



16. Third Party Beneficiary Status of Berkadia. New Borrower, Borrower New Guarantor hereby each acknowledge and agree that Berkadia, its successors and assigns, are all intended third party beneficiaries of this Agreement.

17. Bankruptcy Remote Single Purpose Entities. New Borrower is currently a bankruptcy-remote single purpose entity and will take all necessary company action (including, but not limited to, revising and filing charter and control documents in form, substance and structure as may be reasonably required by Lender) in order for the New Borrower to continue as a bankruptcy-remote single purpose entity.

18. Insurance. At all times from and after the Effective Date, New Borrower shall comply with all terms of the Loan Documents, including without limitation, the insurance requirements of the Loan Documents. Although Lender may accept certain evidence of insurance for purposes of closing the Transaction, Lender or its servicer may at any time and from time to time request additional insurance information from New Borrower to ensure or monitor New Borrower's compliance with the insurance provisions of the Loan Documents and may request that New Borrower provide such coverages as Lender or its servicer may require consistent with the terms of the Loan Documents. By entering into this Agreement, Lender specifically does not waive or modify any of the insurance requirements under the Loan Documents (except as expressly provided in this Agreement with respect to reserving amounts for Insurance Premiums) nor any of the remedies provided therein for failure to secure such required insurance coverage.

19. Compliance with Anti-Terrorism, Embargo, Sanctions and Anti-Money Laundering Laws. New Borrower shall comply with all Requirements of Law relating to money laundering, anti-terrorism, trade embargos and economic sanctions now or hereafter in effect. Upon Lender's request from time to time during the term of the Loan, New Borrower shall certify in writing to Lender that New Borrower's representations, warranties and obligations under this **Section 19** remain true and correct and have not been breached. New Borrower shall immediately notify Lender in writing if any of such representations, warranties or covenants are no longer true or have been breached or if New Borrower has reasonable basis to believe that they may no longer be true or have been breached. In connection with such an event, New Borrower shall comply with all Requirements of Law and directives of Governmental Authorities and, at Lender's request, provide to Lender copies of all notices, reports and other communications exchanged with or received from Governmental Authorities relating to such an event. New Borrower shall also reimburse Lender any expense incurred by Lender in evaluating the effect of such an event on the Loan and Lender's interest in the collateral for the Loan, in obtaining any necessary license from Governmental Authorities as may be necessary for Lender to enforce its rights under the Loan Documents, and in complying with all Requirements of Law applicable to Lender as the result of the existence of such an event and for any penalties or fines imposed upon Lender as a result thereof. Further, New Borrower shall immediately notify Lender in writing if any future tenant of the Property (a) is identified on the OFAC List, or (b) is a Person with whom a citizen of the United States is prohibited to engage in transactions by any trade embargo, economic sanction or other prohibition of United States law, regulation or Executive Order of the President of the United States. For purposes of this **Section 19**, the following definitions shall apply:

**"Governmental Authority"** means any nation or government, any state or other political subdivision thereof, and any Person exercising executive, legislative, judicial or administrative functions of or pertaining to such government.

**"OFAC List"** means the list of specially designated nationals and blocked Persons subject to financial sanctions that is maintained by the U.S. Treasury Department, Office of Foreign Assets Control and any other similar list maintained by the U.S. Treasury Department, Office of Foreign

Assets Control pursuant to any Requirements of Law including, without limitation, trade embargo, economic sanctions or other prohibitions imposed by Executive Order of the President of the United States. The OFAC List currently is accessible through the internet website [www.treas.gov/ofac/t11sdn.pdf](http://www.treas.gov/ofac/t11sdn.pdf).

**"Requirements of Law"** means (i) the organizational documents of an entity, and (ii) any law, regulation, ordinance, code, decree, treaty, ruling or determination of an arbitrator, court or other Governmental Authority or any Executive Order issued by the President of the United States, in each case applicable to or binding upon such Person or to which such Person any of its property or the conduct of its business is subject including, without limitation, laws, ordinances and regulations pertaining to the zoning, occupancy and subdivision of real property.

**"Person"** means an individual, partnership, limited partnership, corporation, limited liability company, business trust, joint stock company, trust, unincorporated association, joint venture, governmental authority or other entity of whatever nature.

20. **Fees.** Borrower, New Borrower and Lender have agreed that, simultaneously with the execution hereof, all fees, costs, and charges arising in connection with the execution of this Agreement, including without limitation, all reasonable attorneys' fees, title company fees, title insurance premiums, recording costs, assumption and/or transfer fees (if any) and other closing costs incurred by Lender in connection with this Agreement, will be paid as of the Effective Date, and that Lender shall have no obligation whatsoever for payment thereof. New Borrower acknowledges and agrees that none of the fees, costs, and charges paid in connection with the execution of this Agreement shall be applied to or set off against the principal balance of the Note.

21. **Miscellaneous.**

(a) **Choice of Law.** This Agreement shall be deemed to be a contract entered into pursuant to the laws of the State in which the Property is located and shall in all respects be governed, construed, applied and enforced in accordance with such laws without reference to choice of law principles.

(b) **Severability.** This Agreement is intended to be performed in accordance with and only to the extent permitted by applicable law. If any provisions of this Agreement or the application thereof to any person or circumstance shall, for any reason and to any extent, be invalid or unenforceable, the remainder of this Agreement and the application of such provision to other persons or circumstances shall not be affected thereby, but rather shall be enforced to the greatest extent permitted by law.

(c) **Modifications.** This Agreement, and any provisions hereof, may not be modified, amended, waived, extended, changed, discharged or terminated orally or by any act or failure to act on the part of any party hereto, but only by an agreement in writing signed by the party against whom enforcement of any modification, amendment, waiver, extension, change, discharge or termination is sought. In addition, nothing contained in any document submitted for Lender's review, including, without limitation any organizational documents of New Borrower or any of its managers/members or officers, shall modify, amend, waive, extend, change, discharge or terminate any term or provision of the Loan Documents or constitute Lender's consent to any matter in the Loan Documents requiring Lender's consent unless and until such time, if any, as an agreement specifically allowing such modification,

amendment, waiver, extension, change discharge or termination or consenting to such matter has been executed in writing by Lender..

(d) Complete Agreement. This Agreement and the Loan Documents (with respect to New Borrower and New Guarantor) and the Original Borrower's Loan Documents (with respect to Borrower) represent the complete agreement among the parties with regard to the items set forth herein, and there are no representations, covenants, warranties, agreements or conditions, oral or written, between the parties not set forth in this Agreement and the Loan Documents (with respect to New Borrower and New Guarantor) and the Original Borrower's Loan Documents (with respect to Borrower)..

(e) Headings. Section, paragraph or other headings contained in this Agreement are for reference purposes only and are not intended to affect in any way the meaning or interpretation of this Agreement.

(f) Counterparts. This Agreement may be executed in any number of counterparts, each of which when taken together shall be deemed an original constituting one and the same document.

(g) Joint and Several Liability. If New Borrower consists of more than one person or entity, each is jointly and severally liable to perform the obligations of New Borrower hereunder, and all representations, warranties, covenants and agreements made by New Borrower are joint and several.

22. Supremacy Clause. It is hereby agreed that the terms and conditions of the Security Instrument, the Note and other Loan Documents, as modified by this Agreement, shall remain in full force and effect and shall be binding upon New Borrower. It is understood and agreed that in the event there are any conflicting provisions or variations between the terms, conditions, rights, or remedies in the Security Instrument, the Note or any other Loan Document (other than this Agreement) and the terms of this Agreement, the terms, conditions, rights or remedies of this Agreement shall prevail. Notwithstanding the foregoing, however, nothing in this **Section 22** shall constitute a waiver or modification of the terms, provisions, or requirements in the Loan Documents in any respect except as expressly provided in this Agreement. A default under the terms and conditions of this Agreement shall constitute a default under the terms and conditions of the Security Instrument, the Note and other Loan Documents.

23. Waiver of Trial by Jury. BORROWER, NEW BORROWER AND NEW GUARANTOR HEREBY WAIVE, TO THE FULLEST EXTENT PERMITTED BY LAW, THE RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM, WHETHER IN CONTRACT, TORT OR OTHERWISE, RELATING DIRECTLY OR INDIRECTLY TO THE LOAN, THE APPLICATION FOR THE LOAN, THE NOTE, THE LOAN DOCUMENTS OR ANY ACTS OR OMISSIONS OF LENDER, ITS OFFICERS, EMPLOYEES, DIRECTORS OR AGENTS IN CONNECTION THEREWITH.

24. Further Assurances. Borrower, New Borrower and New Guarantor shall cooperate with Lender and shall execute and deliver, or cause to be executed and delivered, all such other documents and instruments, and shall take all such other action that Lender may request from time to time in order to accomplish and satisfy the provisions and purposes of this Agreement, including such confirmations and/or corrective instruments as Lender reasonably may require.

25. Language Required Under Oregon Law. Under Oregon law, most agreements, promises and commitments made by banking and/or financial institutions concerning loans and other credit extensions which are not for personal, family or household purposes or secured solely by the borrower's residence must be in writing, express consideration and be signed by a banking and/or financial institution to be enforceable.

It is acknowledged and understood that Lender is not a banking and/or financial institution, but rather a real estate mortgage investment conduit ("REMIC") formed as a New York common law trust.

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**LENDER:**

**BANK OF NEW YORK MELLON TRUST COMPANY, N.A.** (successor in interest to Chase Bank of Texas, National Association), as Trustee for the Bondholders of Commercial Capital Access One, Inc. Commercial Mortgage Bonds, Series 3, pursuant to that certain Series Supplement dated December 1, 1998 to an indenture dated November 1, 1993

By: **BERKADIA COMMERCIAL MORTGAGE LLC**, a Delaware limited liability company, as Special Servicer

By:

Name:

Julie B. Schwind

JULIE GSCHWIND

Authorized Representative

**Witness #1:**

John W. Egan  
Name: JOHN W. EGAN

**Witness #2:**

Erick W. Steward  
Name: ERICK W. STEWARD

The following acknowledgment page, including notary execution, is hereby incorporated by reference into this page as if set forth hereon in its entirety.

County of Orange, State of CA :

**Multi-State Acknowledgment:**

On November 17, 2010, before me, the undersigned officer/notary public, personally appeared Julie Gschwind, personally known and acknowledged <sup>herself</sup> to me (or proved to me on the basis of satisfactory evidence) to be the Authorized representative of Berkadia Commercial Mortgage (hereinafter, the "Entity") and that as such officer, being duly sworn, and being authorized to do so, executed, subscribed and acknowledged the due execution of the foregoing instrument for the purposes therein contained, by signing the name of the Entity by himself in his authorized capacity as such officer as his free and voluntary act and deed and the free and voluntary act and deed of said Entity. \*\*\* Witness my hand and official seal.

**Uniform Acknowledgment which is supplemental to the foregoing acknowledgment:**

On November 17, 2010, before me, the undersigned, a Notary Public in and for said State, personally appeared Julie Gschwind, personally known to me or proved to me on the basis of satisfactory evidence to be the individual 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 individual, or the person upon behalf of which the individual acted, executed the instrument. I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct. \*\*\* Witness my hand and official seal.

Julie Marie Rylander  
Notary Public



**BORROWER:**

**ELDORADO HEIGHTS ASSISTED LIVING COMMUNITY, LLC**, an Oregon limited liability company, **SMITH'S ELDORADO HEIGHTS, LLC**, an Oregon limited liability company, **HOWARD'S ELDORADO HEIGHTS, LLC**, an Oregon limited liability company, and **RINI WECTAWSKI LLC**, an Oregon limited liability company

By: 

Name: Clyde A. Hamstreet

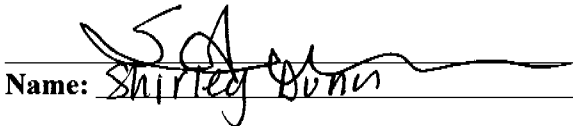
Title: Chief Restructuring Officer

**Witness #1:**



Name: VERONICA HAMSTREET

**Witness #2:**



Name: SHIRLEY DUNN

The following acknowledgment page, including notary execution, is hereby incorporated by reference into this page as if set forth hereon in its entirety.


**County of Multnomah, State of Oregon:**

**Multi-State Acknowledgment:**

On November 18, 2010, before me, the undersigned officer, personally appeared Clyde A. Hamstreet, personally known and acknowledged himself to me (or proved to me on the basis of satisfactory evidence) to be the Chief Restructuring Officer of the foregoing executing Grantor (hereinafter, the "Grantor") and that as such officer, being duly sworn, and being authorized to do so, executed, subscribed and acknowledged the due execution of the foregoing instrument for the purposes therein contained, by signing the name of the Grantor by himself in his authorized capacity as such officer as his free and voluntary act and deed and the free and voluntary act and deed of said Grantor. \*\*\* Witness my hand and official seal.

**Uniform Acknowledgment which is supplemental to the foregoing acknowledgment:**

On November 18, 2010, before me, the undersigned, a Notary Public in and for said State, personally appeared Clyde A. Hamstreet, personally known to me or proved to me on the basis of satisfactory evidence to be the individual 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 individual, or the person upon behalf of which the individual acted, executed the instrument. \*\*\* Witness my hand and official seal.

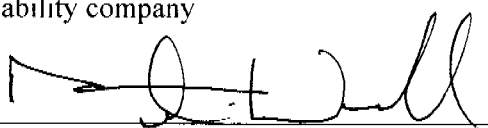
  
\_\_\_\_\_  
Notary Public, State of Oregon





NEW BORROWER:

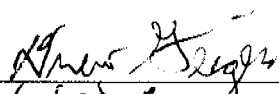
BRE/SW ELDORADO HEIGHTS LLC, a Delaware  
limited liability company

By: 


Name: Melanie Werdel

Title: Executive VP – Administration

Witness #1:

  
Name: David Berger

Witness #2:

  
Name: Parry Bowers

The following acknowledgment page, including notary execution, is hereby incorporated by reference into this page as if set forth hereon in its entirety.

County of King, State of Washington

**Multi-State Acknowledgment:**

On November 18<sup>th</sup>, 2010, before me, the undersigned officer/notary public, personally appeared Melanie Werdel, personally known and acknowledged herself to me (or proved to me on the basis of satisfactory evidence) to be the Executive VP – Administration of BRE/SW Eldorado Heights LLC, a Delaware limited liability company (hereinafter, the "Entity"), and that as such officer, being duly sworn, and being authorized to do so, executed, subscribed and acknowledged the due execution of the foregoing instrument for the purposes therein contained, by signing the name of the Entity by herself in her authorized capacity as such officer as her free and voluntary act and deed and the free and voluntary act and deed of said Entity. \*\*\* Witness my hand and official seal.

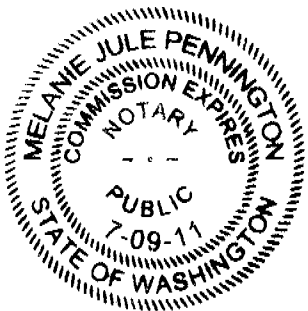
**Uniform Acknowledgment which is supplemental to the foregoing acknowledgment:**

On November 18<sup>th</sup>, 2010, before me, the undersigned, a Notary Public in and for said State, personally appeared Melanie Werdel, personally known to me or proved to me on the basis of satisfactory evidence to be the individual 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 individual, or the person upon behalf of which the individual acted, executed the instrument. \*\*\* Witness my hand and official seal.



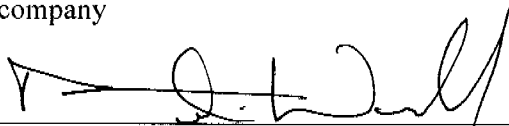
Notary Public

*Melanie Jule Pennington* *EX 7-9-11*



**NEW GUARANTOR:**

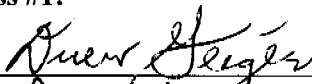
**BRE/SW HOLDINGS LLC**, a Delaware limited liability company

By: 

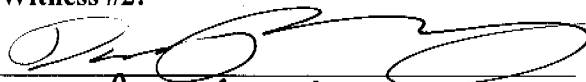
Name: Melanie Werdel

Title: Executive VP – Administration

**Witness #1:**

  
Name: Drew Geiger

**Witness #2:**

  
Name: Darcy Bowers

The following acknowledgment page, including notary execution, is hereby incorporated by reference into this page as if set forth heron in its entirety.

County of King, State of Washington

**Multi-State Acknowledgment:**

On November 18<sup>th</sup>, 2010, before me, the undersigned officer/notary public, personally appeared Melanie Werdel, personally known and acknowledged herself to me (or proved to me on the basis of satisfactory evidence) to be the Executive VP – Administration of BRE/SW Holdings LLC, a Delaware limited liability company (hereinafter, the "Entity"), and that as such officer, being duly sworn, and being authorized to do so, executed, subscribed and acknowledged the due execution of the foregoing instrument for the purposes therein contained, by signing the name of the Entity by herself in her authorized capacity as such officer as her free and voluntary act and deed and the free and voluntary act and deed of said Entity. \*\*\* Witness my hand and official seal.

**Uniform Acknowledgment which is supplemental to the foregoing acknowledgment:**

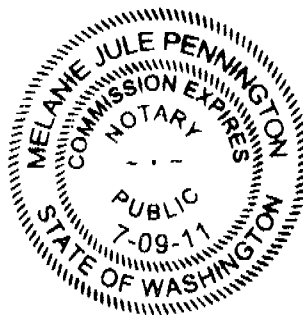
On November 18<sup>th</sup>, 2010, before me, the undersigned, a Notary Public in and for said State, personally appeared Melanie Werdel, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument. \*\*\* Witness my hand and official seal.



Notary Public

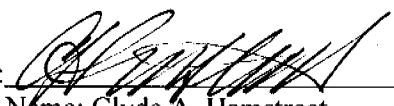
exp: 7.9.11

Melanie Jule Pennington

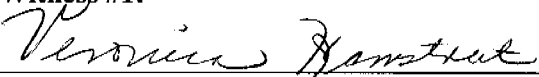


FOR PURPOSES OF ACKNOWLEDGING  
THE TERMS AND CONDITIONS OF THIS  
AGREEMENT, EQUITABLE TITLE HOLDER:


STAYTON SW ASSISTED LIVING, L.L.C., an  
Oregon limited liability company, constituting the  
Sunwest unified entity as determined by: (a)  
Order entered on October 2, 2009 in U.S. District  
Court Case No. 09 cv 6056-HO (United States  
District Court for the District of Oregon) entitled  
*Security and Exchange Commission vs. Sunwest  
Management, Inc., et al.*; and/or (b) Order entered  
on December 22, 2009 in U.S. District Court Case  
No. 09 cv 6082-HO (United States District Court  
for the District of Oregon) entitled *In re Stayton  
SW Assisted Living, LLC (the Consolidated  
Sunwest Related Entities)*; with an address at One  
SW Columbia, Suite 1000, Portland, OR 97258.

By:   
Name: Clyde A. Hamstreet  
Title: Chief Restructuring Officer

Witness #1:

  
Name: VERONICA HAMSTREET

Witness #2:

  
Name: Shirley Dunn

The following acknowledgment page, including notary execution, is hereby incorporated by  
reference into this page as if set forth hereon in its entirety.

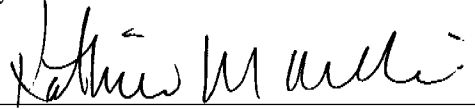
County of McHonomah, State of Oregon:

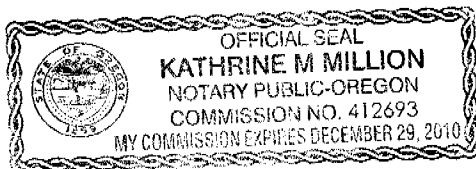
**Multi-State Acknowledgment:**

On November 18, 2010, before me, the undersigned officer, personally appeared Clyde A. Hamstreet, personally known and acknowledged himself to me (or proved to me on the basis of satisfactory evidence) to be the Chief Restructuring Officer of the foregoing executing Grantor (hereinafter, the "Grantor") and that as such officer, being duly sworn, and being authorized to do so, executed, subscribed and acknowledged the due execution of the foregoing instrument for the purposes therein contained, by signing the name of the Grantor by himself in his authorized capacity as such officer as his free and voluntary act and deed and the free and voluntary act and deed of said Grantor. \*\*\* Witness my hand and official seal.

**Uniform Acknowledgment which is supplemental to the foregoing acknowledgment:**

On November 18, 2010, before me, the undersigned, a Notary Public in and for said State, personally appeared Clyde A. Hamstreet, personally known to me or proved to me on the basis of satisfactory evidence to be the individual 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 individual, or the person upon behalf of which the individual acted, executed the instrument. \*\*\* Witness my hand and official seal.

  
\_\_\_\_\_  
Notary Public



**SCHEDULE 1**

**ESCROW/RESERVE BALANCES**

As of the Effective Date:

Taxes Escrow Balance:	\$9,708.49
Insurance Premiums Escrow Balance:	\$63,571.76
Replacement Reserve Account:	\$134,604.58
Total Escrow/Reserve:	\$207,884.83

**EXHIBIT A**  
**LEGAL DESCRIPTION**



**EXHIBIT "A"**  
**LEGAL DESCRIPTION**

All of that certain lot, piece or parcel of land, with the buildings and improvements thereon, situate, lying and being:

**PARCEL 1:**

A parcel of land situated in portions of vacated Blocks 2, 3, 6, 7, 9 and 10, ELDORADO ADDITION TO THE CITY OF KLAMATH FALLS, OREGON, in the County of Klamath, State of Oregon, more particularly described as follows:

Beginning at a point being the most Northerly corner of Lot 2, Block 10, ELDORADO ADDITION TO THE CITY OF KLAMATH FALLS, OREGON; thence along the Northwesternly line of said Lot 2, South 38 degrees 16' 30" West 100.00 feet to the most Westerly corner of said Lot 2; thence along the Southwesterly line of the vacated portion of Blocks 9 and 10 of said Eldorado Addition, North 51 degrees 42' 50" West 170.69 feet; thence leaving said Southwesterly line North 38 degrees 16' 30" East 667.37 feet to the Southerly line of Eldorado Boulevard; thence along said Southerly line of Eldorado Boulevard 182.39 feet along the arc of a 667.34 foot radius curve to the right, the long chord of which bears South 55 degrees 00' 55" East 181.84 feet; thence 29.87 feet along the arc of a 20.00 foot curve to the right, the long chord of which bears South 4 degrees 30' 47" East, to its point of tangency with the Westerly line of Sloan Street; thence along said Westerly line of Sloan Street South 38 degrees 16' 30" West 557.91 feet to the Northeasterly line of said Lot 2; thence along said Northeasterly line North 51 degrees 42' 50" West 29.31 feet to the point of beginning.

**PARCEL 2:**

Lot 2, Block 10, ELDORADO ADDITION to the City of Klamath Falls, in the County of Klamath, State of Oregon, EXCEPTING THEREFROM the Southeasterly 19 feet, according to the official plat thereof on file in the office of the County Clerk of Klamath County, Oregon.

TOGETHER WITH all rights contained in the Cross Easement Agreement recorded with the County Clerk of Klamath Falls, Oregon as Volume M96, page 922, Microfilm Records of Klamath County, Oregon.