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1. Title of Document: MODIFICATION/RELEASE AND ASSUMPTION AGREEMENT
2. Date of Document: May 8, 2017
3. Grantor(s): Gershman Investment Corp.
7 North Bemiston Avenue
St. Louis, MO 63105-3399
4. Grantee(s): Elk Hills Apartments, LLC
Attn: Donald Gardiner
3801 S. 181st Street
Omaha, NE 68130
5. Legal Description: See Exhibit A attached to the document
6. References to Instrument Numbers:
Multifamily Deed of Trust, Security Agreement, Assignment of Rents, and Fixture Filing
(Nebraska):
Regulatory Agreement For Multi-Family Projects:
UCC Financing Statement (Form UCC-1)

Note: The terms "grantor" and "grantee" as used in this Cover Page are for recording and indexing purposes only. The instrument itself refers to the parties by other designations.

Return:

This Instrument prepared by James E. Lang, Lang Law LLC,
13340 California Street, # 203, Omaha, NE 68154 (402) 330-1900

✓ 001195

Elk Hills Apartments
Elkhorn, Nebraska
FHA Project No. 103-35160

MODIFICATION/RELEASE AND ASSUMPTION AGREEMENT

THIS MODIFICATION/RELEASE AND ASSUMPTION AGREEMENT (this "Agreement") is made as of the 8th day of May, 2017, by and among DONALD L. GARDINER ("Gardiner"), NATHAN P. DODGE, III ("Dodge"), N.P. DODGE HOLDINGS I, LLC, a Nebraska limited liability company ("Dodge Holdings I"), ELK HILLS APARTMENTS, LLC, a Nebraska limited liability company (the "Owner"), GERSHMAN INVESTMENT CORP., an Arkansas corporation (the "Mortgagee"), and the SECRETARY OF HOUSING AND URBAN DEVELOPMENT, Washington, D.C., acting by and through the Federal Housing Commissioner (the "Secretary"), under certain provisions of the National Housing Act, as amended.

RECITALS

A. Gardiner is the owner of a membership interest in the Owner and is a Manager of the Owner under the Owner's Operating Agreement. Dodge is a Manager of the Owner with Gardiner under the Operating Agreement of the Owner. Dodge Holdings I is the holder of a Membership Interest in Owner. Gardiner has entered into an agreement with Dodge Holdings I and Dodge pursuant to which Dodge Holdings I shall transfer to Gardiner its membership interest in the Owner and Dodge shall resign as a Manager of the Owner under the Operating Agreement and as a result, Gardiner's membership interest shall be increased to a membership interest of 51% in the Owner and Gardiner shall be the sole Manager. Dodge shall no longer be a Manager and Dodge Holdings I shall no longer have a membership interest in the Owner. In consideration of Dodge resigning as Manager and Dodge Holdings I assigning its membership interest to Gardiner, Dodge and Dodge Holdings I is requiring the Mortgagee and the Secretary to release Dodge and Dodge Holdings I of its obligations under the Loan Documents described below, including Dodge's obligations under paragraph 50 of the Regulatory Agreement related to the Project, which relate to that certain real property located in the City of Elkhorn, Douglas County, Nebraska, as more particularly described in the attached Exhibit A, which is incorporated herein by this reference (the "Real Property"), on which is constructed that certain rental apartment project known as Elk Hills Apartments, FHA Project No. 103-35160 (the "Project" and, together with the Real Property, the "Property").

B. The Property is encumbered by that certain First lien mortgage loan (the "Loan") made to the Owner by the Mortgagee, which Loan is evidenced and/or secured by that certain Deed of Trust Note dated as of June 1, 2013, in the original principal amount of Eighteen Million Seventy Two Thousand Five Hundred Dollars (\$18,072,500.00)(the "Note"), that certain Multifamily Deed of Trust, Security Agreement, Assignment of Rents and Fixture Filing (Nebraska) of even date therewith and recorded on June 18, 2013, with the records of the Register of Deeds of Douglas County, Nebraska (the "Land Records"), as Instrument 2013-061898 (herein, the "Mortgage"), those certain UCC-1 Financing Statements filed in the Land Records and with the Nebraska Secretary of State showing Owner (as debtor) and Mortgagee (as secured party), that certain Supplemental Note in the original principal amount of \$422,800.00 executed by Owner and payable to Mortgagee (the "Supplemental Note"), that certain Modification and Consolidation Agreement dated as of July 31, 2015 and recorded on July 31, 2015, with the Land Records as Instrument No. 2015-063936 (herein the "Modification and Consolidation Agreement"), and that certain Supplemental Multi-Family Deed of Trust, Assignment of Leases and Rents, and Security Agreement in the amount of \$422,800.00 dated as of July 31, 2015 and recorded on July 31, 2015 in the Land Records as Instrument No. 2015-063937 (herein the "Supplemental Mortgage"), and all other instruments executed in accordance with the Loan (collectively, the "Loan Documents").

C. The Loan is insured by the Secretary under Section 221(d)(4) of the National Housing Act, as amended. In connection therewith, the Owner and the Secretary executed that certain Regulatory Agreement for Multifamily Projects dated June 1, 2013, and recorded on June 18, 2013, with the records of the Register of Deeds in Douglas County, Nebraska, as Instrument 2013-061899 (the "Regulatory Agreement"). The Regulatory Agreement is incorporated by reference into and made a part of the Mortgage.

D. Gardiner has agreed to assume Dodge's obligations under the Loan Documents, including paragraph 50 of the Regulatory Agreement (collectively the "Loan Documents" and individually referred to herein as a "Loan Document") pursuant to the terms of this Agreement, and as the Manager under the Operating Agreement. Dodge shall be released of his obligations under the Loan Documents and as Manager of Owner under the Operating Agreement as of the date hereof, both with the Mortgagee's and the Secretary's consent thereto, as set forth herein.

E. Dodge Holdings I shall transfer to Gardiner all of Dodge Holdings I's right, title and interest in to the Dodge Holding I Membership Interest in the Owner.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto, for themselves and for their respective successors and assigns, hereby agree as follows:

1. Incorporation of Recitals. The foregoing recitals are hereby incorporated by reference as if fully set forth herein.

2. Release and Assumption.

- a. Gardiner agrees to assume, and does hereby assume, the obligations of Dodge under the Loan Documents from and after the date of this Agreement and does hereby agree to be bound by each and every Loan Document, where applicable. Gardiner shall remain obligated under the Loan Documents pursuant to their terms, including paragraph 50 of the Regulatory Agreement.
- b. Conditioned upon Dodge resigning as Manager and Dodge Holdings I transferring its membership interest to Gardiner, the Mortgagee and the Secretary jointly and severally hereby release Dodge and Dodge Holdings I from all liability arising under or in connection with the Loan Documents, including the Regulatory Agreement; and after the parties execute this document and the membership interest is transferred to Mr. Gardiner.
- c. The Mortgagee and the Secretary jointly and severally consent to Dodge resigning as a Manager under the Owner's Operating Agreement and further consent to Gardiner being the sole Manager of the Owner under the Owner's Operating Agreement.
- d. The Mortgagee and the Secretary consent to the assignment, transfer and conveyance of the Dodge Holding I's membership interest to Gardiner.

3. Revised References. All references in any of the foregoing Loan Documents to the "Maker", the "Mortgagor", or the "Grantor" shall hereinafter refer to the Owner.

4. Equal Opportunity Compliance. The Owner agrees that there shall be full compliance with the provisions of (1) any laws prohibiting discrimination in housing on the basis of race, color, creed or national origin; and (2) with the Regulations of the Federal Housing Administration providing for non-discrimination and equal opportunity in housing. It is understood and agreed that failure or refusal to comply with any such provisions shall be a proper basis for the Secretary to take any corrective action he may deem necessary, including, but not limited to, the rejection of future applications for FHA mortgage insurance and the refusal to enter into future contracts of any kind with which the Owner is identified; and further, the Secretary shall have a similar right of corrective action (1) with respect to any individuals who are officers, directors, principal stockholders, trustees, managers, partners or associates of the Owner; and (2) with respect to any corporation or any other type of business association or organization with which the officers, directors, principal stockholders, trustees, managers, partners or associates of the Owner may be identified.

5. No Defenses. The Owner acknowledges and affirms to the Mortgagee and the Secretary that, as of the date hereof, there are no defenses, set-offs or counterclaims, whether legal or equitable, to the Owner's obligations under the Loan Documents and the Owner hereby waives the right to raise or assert any such defenses, set-offs or counterclaims that the Owner may have had with respect to any suit, proceeding or foreclosure action under any of said instruments that the Mortgagee or the Secretary, or any of its or their predecessors in interest in and to the Loan may or could have brought against the Owner prior to the date hereof.

6. No Impairment. Nothing in this Agreement shall in any way impair the Loan Documents or any other security now held for such indebtedness, or alter, waive, compromise, annul, impair or prejudice any provision, condition or covenant in the aforesaid instruments, except as specifically provided herein, nor affect or impair any rights, owners or remedies of the Mortgagee or the Secretary under the Loan Documents, nor create a novation or new agreement by and between the parties thereto, it being the intent of the parties that the terms and provisions of the Loan Documents, are expressly approved, ratified and confirmed, and shall continue in full force and effect except as expressly modified hereby, and that the lien of the Mortgage and the priority thereof shall be unchanged.

7. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and/or assigns. The Mortgagee's execution and delivery of the Agreement is contingent upon the execution and delivery of this Agreement by the Secretary.

8. Amendment. The Loan Documents, each as amended by this Agreement, shall not be further modified except by an instrument in writing executed by each of the parties thereto.

9. Severability. Notwithstanding anything herein contained, if any one or more of the provisions of the Agreement shall for any reason whatsoever be held to be illegal, invalid or unenforceable in any respect, such illegality, invalidity or unenforceability shall not affect any other provision of this Agreement, but this Agreement shall be construed as if such illegal, invalid or unenforceable provision had never been contained herein.

10. Headings. The headings and titles to the sections of this Agreement are inserted for convenience only and shall not be deemed a part hereof nor affect the construction or interpretation of any provisions hereof.

11. Governing Law. This Agreement shall be governed by all applicable federal laws and the laws of the state in which the Project is located.

12. Counterparts. This Agreement may be executed in any number of counterparts, all of which counterparts shall be construed together and shall constitute but one agreement.

13. Modifications to existing Agreements.

a. The Mortgage and Supplemental Mortgage.

Section 6 of the Mortgage and Section 6 of the Supplemental Mortgage is hereby deleted and the following Section 6 is inserted in lieu thereof:

"6. EXCULPATION. Except for personal liability expressly provided for in this Security Instrument or in the Note or in the Regulatory Agreement, the execution of the Note shall impose no personal liability upon Borrower (which is Elk Hills Apartments, LLC), and Donald L. Gardiner for payment of the Indebtedness evidenced thereby and in the Event of Default, the holder of the Note shall look solely to the Mortgaged Property in satisfaction of the Indebtedness and will not seek or obtain any deficiency or personal judgment against Borrower or Donald L. Gardiner except such judgment or decree as may be necessary to foreclose or bar its interest in the Mortgaged Property and all other property mortgaged, pledged, conveyed or assigned to secure payment of the Indebtedness; provided, that nothing in this Section 6 of this Security Instrument and no action so taken shall operate to impair any obligation of Borrower under the Regulatory Agreement."

b. The Regulatory Agreement.

Section 50 of the Regulatory Agreement is hereby deleted and the following Section 50 is inserted in lieu thereof:

"50. NONRECOURSE DEBT. The following individuals/entities:

Elk Hills Apartments, LLC and
Donald L. Gardiner

do not assume personal liability for payments due under the Note and Security Instrument, or for the payments to Reserve for Replacements, or for matters not under their control, provided that said individuals/entities shall remain personally liable under this Agreement only with respect to the matters hereinafter stated, namely: (a) for funds or property of the Project coming into its hands which, by the provisions hereof, it is not entitled to retain; (b) for authorizing the conveyance, assignment, transfer, pledge, encumbrance, or other disposition of the Mortgaged Property or an interest therein in violation of Section 36(a) of this Agreement without the prior written approval of HUD; and (c) for its own acts and deeds, or acts and deeds of others, which it has authorized in violation of the provisions of this Section 50. The obligations of the individuals/entities referenced above shall survive any foreclosure proceeding, any foreclosure sale, any delivery of any deed in lieu of foreclosure, any termination of this Agreement or any release of record of the Security Instrument.

Donald L. Gardiner

Elk Hills Apartments, LLC, a Nebraska limited liability company

By: _____
Donald L. Gardiner, Manager

c. The Note.

The Note is amended by an Allonge, a copy of which is attached hereto as Exhibit B and made a part of this Agreement.

d. Agreements to remain in effect.

Except as specifically set forth herein, the Mortgage, the Regulatory Agreement, the Note, the Modification and Consolidation Agreement, the Supplemental Note and the Supplemental Mortgage, shall remain in full force and effect as originally written.

14. HUD requirements shall control. In order to induce HUD to approve the Application for Transfer of Physical Assets of which this Agreement is a part, the Owner agrees to execute and comply with any modification or revision of the existing agreements set forth in Section 13 above in accordance with promulgated HUD policy.
15. No Waiver. Nothing in this Agreement shall waive, compromise, impair or prejudice any right HUD may have to seek judicial recourse of any breach of that certain Regulatory Agreement executed by the parties hereto, recorded on even date with the Mortgage, which breach may have occurred prior to or may occur subsequent to the date of this Agreement.

IN WITNES WHEREOF, the parties hereto have caused this Agreement to be executed and made effective as of the date first above written.

(The rest of this page is intentionally left blank; the signature pages follow this page.)

GARDINER:

Donald L. Gardiner
Donald L. Gardiner

OWNER:

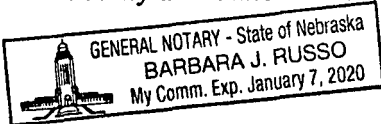
Elk Hills Apartments, LLC a Nebraska limited liability company

By: Donald L. Gardiner
Donald L. Gardiner, Manager

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

On this 5th day of May, 2017 before me, the undersigned, a Notary Public in and for said state, appeared Donald L. Gardiner, to me personally known, who, being by me duly sworn, acknowledged the execution to be his free act and deed.

In Testimony Whereof, I have set my hand and affixed my official seal at my office in the County and State aforesaid, the day and year first above written.

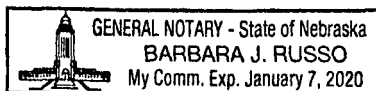


Barbara J. Russo
Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

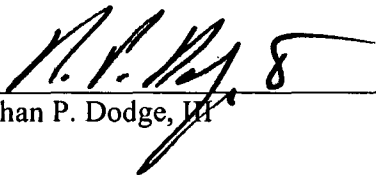
On this 5th day of May, 2017 before me, the undersigned, a Notary Public in and for said state, appeared Donald L. Gardiner, to me personally known, who, being by me duly sworn, did say that he is the Manager of Elk Hills Apartments, LLC, a Nebraska limited liability company, and that said instrument was signed on behalf of said limited liability company by authority of its Manager who acknowledged said instrument to be the free act and deed of said limited liability company.

In Testimony Whereof, I have set my hand and affixed my official seal at my office in the County and State aforesaid, the day and year first above written.



Barbara J. Russo
Notary Public

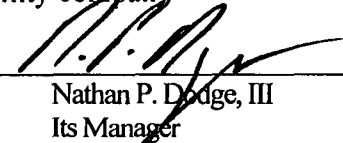
DODGE:



Nathan P. Dodge, III

DODGE HOLDINGS I:

N.P. Dodge Holdings I, LLC a Nebraska limited liability company

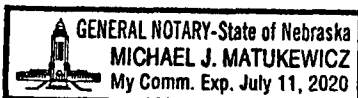
By: 

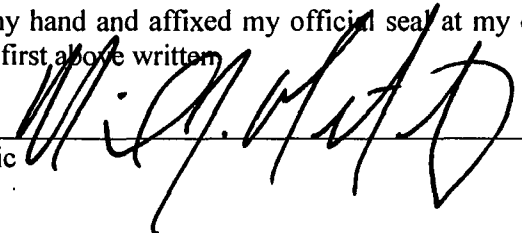
Nathan P. Dodge, III
Its Manager

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

On this 8th day of May, 2017, before me, the undersigned, a Notary Public in and for said state, appeared Nathan P. Dodge, III, to me personally known, who, being by me duly sworn, acknowledged the execution to be his free act and deed.

In Testimony Whereof, I have set my hand and affixed my official seal at my office in the County and State aforesaid, the day and year first above written.



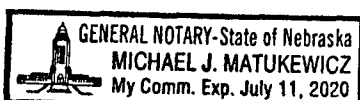


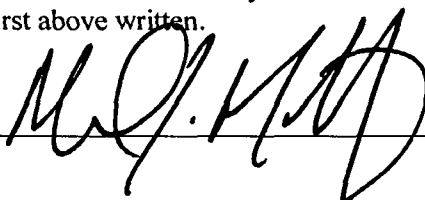
Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

On this 8th day of May, 2017, before me, the undersigned, a Notary Public in and for said state, appeared Nathan P. Dodge, III, to me personally known, who, being by me duly sworn, did say that he is the Manager of N.P. Dodge Holdings I, LLC, a Nebraska limited liability company, and that said instrument was signed on behalf of said limited liability company by authority of its Manager who acknowledged said instrument to be the free act and deed of said limited liability company.

In Testimony Whereof, I have set my hand and affixed my official seal at my office in the County and State aforesaid, the day and year first above written.





Notary Public

MORTGAGEE:

Gershman Investment Corp., an Arkansas
Corporation

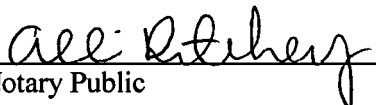
By: _____


Bruce Sandweiss
Executive Vice President

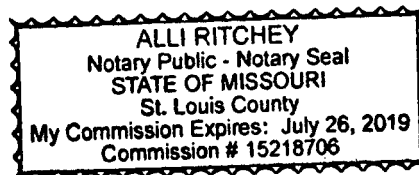
STATE OF MISSOURI)
) ss.
COUNTY OF ST. LOUIS)

On this 27th day of April, 2017, before me, the undersigned, a Notary Public in and for said state, appeared Bruce Sandweiss, to me personally known, who, being by me duly sworn, did say that he is the Executive Vice President of Gershman Investment Corp., an Arkansas corporation, and that said instrument was signed on behalf of said corporation by authority of its Executive Vice President, and said Executive Vice President acknowledged said instrument to be the free act and deed of said corporation.

In Testimony Whereof, I have set my hand and affixed my official seal at my office in the County and State aforesaid, the day and year first above written.



Notary Public



SECRETARY OF HOUSING AND

SECRETARY OF HOUSING AND
URBAN DEVELOPMENT,
WASHINGTON, D.C.

By: Edward P. Manning
Authorized Agent

STATE OF Kansas)
COUNTY OF Wyandotte) ss.

On this 1st day of June, 2017, before me, the undersigned, a Notary Public in and for said state, personally appeared Edward P. Manning as Authorized Agent for the Secretary of Housing and Urban Development, personally known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

In Testimony Whereof, I have set my hand and affixed my official seal at my office in the County and State aforesaid, the day and year first above written.

Kyle A. Johnson
Notary Public

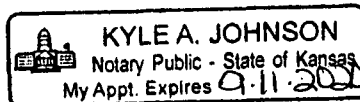


Exhibit A

ELK HILLS APARTMENTS, LLC
OMAHA, DOUGLAS COUNTY, NEBRASKA PROJECT N0.103-35160

DESCRIPTION OF THE LAND

Lots 1 and 2, Elk Hills Replat 1, a subdivision to the City of Omaha, as surveyed, platted and recorded in Douglas County, Nebraska.

EXHIBIT B
ALLONGE TO NOTE
(See Attached)

ALLONGE TO
NOTE
(MULTISTATE)

HUD PROJECT NO.
HUD PROJECT NAME: Elk Hills Apartments

US\$18,495,300.00

_____, 2017

(the "Note")

Elk Hills Apartments, LLC, a Nebraska limited liability company (the "Borrower"), hereby assumes and agrees to be bound by the Note from and after the date of the Note, pursuant to the terms of that certain Modification/Release and Assumption Agreement executed by Donald L. Gardiner, Nathan P. Dodge, III, N.P. Dodge Holdings I, LLC, a Nebraska limited liability company, the Borrower Elk Hills Apartments, LLC, a Nebraska limited liability company (the original Maker of the Note), Gershman Investment Corp., an Arkansas corporation, as Lender, and the U.S. Department of Housing and Urban Development ("HUD").

The Note shall otherwise remain in full force and effect as originally written except as follows:

In Section 8. Exculpation; Remedies, subsection (a) is hereby deleted and the following subsection (a) is inserted in lieu thereof:

"(a) Except for personal liability expressly provided for in this Note or in the Security Instrument or in the Regulatory Agreement, the execution of the Note shall impose no personal liability upon Borrower and Donald L. Gardiner for payment of the Indebtedness evidenced thereby and in the Event of Default, the holder of the Note shall look solely to the Mortgaged Property in satisfaction of the Indebtedness and will not seek or obtain any deficiency or personal judgment against Borrower and Donald L. Gardiner except such judgment or decree as may be necessary to foreclose or bar its interest in the Mortgaged Property and all other property mortgaged, pledged, conveyed or assigned to secure payment of the Indebtedness; provided, that nothing in this Section 8 of this Note and no action so taken shall operate to impair any obligation of Borrower under the Regulatory Agreement."

IN WITNESS WHEREOF, Borrower, Lender and HUD have caused this Allonge to Note (Multistate) to be executed by their duly authorized representatives and to be effective on the day and year first hereinabove written.

BORROWER:

Elk Hills Apartments, LLC, a
Nebraska limited liability company

By: _____
Donald L. Gardiner, Manager

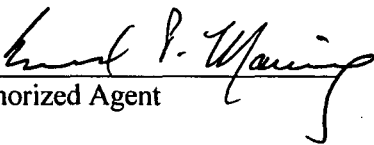
LENDER:

Gershman Investment Corp., an
Arkansas corporation

By: _____
Amy Mitchell, Vice President

HUD:

SECRETARY OF HOUSING AND
URBAN DEVELOPMENT,
WASHINGTON, D.C.

By: 
Authorized Agent