

THIS SECURITY INSTRUMENT WAS
PREPARED BY, AND UPON
RECORDING SHOULD BE RETURNED

Helen E. Quick, Esquire
Epstein, Becker & Green, P.C.
1227 25th Street, N.W., #700
Washington, D.C. 20037



200608240150

Skagit County Auditor

8/24/2006 Page

1 of

33 2:15PM

LAND TITLE OF SKAGIT COUNTY

122449-5e

**DEED OF TRUST, ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND
FIXTURE FILING**

GRANTOR: HP Burlington Partners, LLC, a Washington
limited liability company

GRANTEE (Beneficiary): Ziegler Healthcare Fund I, L.P., a Delaware
limited partnership

TRUSTEE: Land Title Co. of Skagit County

DATED: August 24, 2006

LEGAL OR ABBREVIATED LEGAL DESCRIPTION:

Ptn of Lot 2, Blk 136, First Add. To Burl.

Additional legal description on pages: Exhibit A

**THIS DEED OF TRUST IS SECOND AND SUBORDINATE TO THE DEED OF TRUST RECORDED
CONCURRENTLY HERewith UNDER AUDITOR'S FILE NO. 200608240148.**

ASSESSOR'S TAX PARCEL NUMBERS:

P72259

P72260

NOTICE TO RECORDER: FOR PURPOSES OF ARTICLE 9 OF THE UNIFORM COMMERCIAL
CODE (RCW 62A.9) ("UCC"), THIS DEED OF TRUST CONSTITUTES A SECURITY
AGREEMENT AND FIXTURE FILING (RCW 62A.9A-502), WITH GRANTOR BEING THE
"DEBTOR" AND GRANTEE/LENDER BEING THE "SECURED PARTY". THIS DEED OF TRUST
COVERS GOODS THAT ARE OR ARE TO BECOME FIXTURES, IS EFFECTIVE AS A
FINANCING STATEMENT FILED AS A FIXTURE FILING, AND IS TO BE FILED IN THE REAL
ESTATE RECORDS.

STATE OF WASHINGTON

COUNTY OF SKAGIT

**DEED OF TRUST, ASSIGNMENT OF RENTS
SECURITY AGREEMENT AND FIXTURE FILING**

THIS DEED OF TRUST, ASSIGNMENT OF RENTS, SECURITY AGREEMENT, AND FIXTURE FILING (this "Deed of Trust"), made and entered into as of the 24th day of August, 2006, by **HP BURLINGTON PARTNERS, LLC**, a Washington limited liability company whose address is c/o Frontier Management, 17400 SW Upper Boones Ferry Road, Durham, Oregon 97224 Attention: Greg Roderick (the "Grantor") in favor of **LAND TITLE CO. OF SKAGIT COUNTY**, whose address is 111 East George Hopper Road, Burlington, Washington 98233, as trustee (the "Trustee"); said term referring always to the named Trustee and its successors in trust), for the use and benefit of **ZIEGLER HEALTHCARE FUND I, L.P.**, a Delaware limited partnership, as beneficiary, having an office in Shrewsbury, New Jersey, whose address is Third Floor, Executive Center No. 2, 1040 Broad Street, Shrewsbury, New Jersey 07702, Attention: Mr. Eric Smith (the "Lender"; said term referring always to the lawful owner and holder of the indebtedness secured hereby).

WITNESSETH:

For and in consideration of the sum of Ten Dollars, and other valuable considerations, the receipt and sufficiency whereof are hereby acknowledged, and in order to secure the indebtedness and other obligations of Grantor hereinafter set forth, Grantor does hereby GRANT, BARGAIN, SELL, AND CONVEY TO TRUSTEE IN TRUST, WITH POWER OF SALE, all of the following described land and interests in land, estates, easements, rights, improvements, fixtures, appurtenances, and other property whether now owned or hereafter acquired and including replacements and additions thereto (hereinafter referred to collectively as the "Collateral"):

(a) The tract(s) or parcel(s) of land located in Skagit County, Washington as are more particularly described in Exhibit A attached hereto and by this reference made a part hereof (referred to individually and collectively as (the "Property");

(b) All Improvements and Equipment, all of which are hereby declared and shall be deemed to be fixtures and accessions to the Property and a part of the Property as between the parties hereto and all persons claiming by, through or under them, and which shall be deemed to be a portion of the security for the Loan Obligations herein described to be secured by this Deed of Trust;

(c) All building materials, equipment, fixtures, fittings, and personal property of every kind or character now owned or hereafter acquired by Grantor for the purpose of being



used or useful in connection with the Improvements, whether such materials, equipment, fixtures, fittings, and personal property are actually located on or adjacent to the Property or not, and whether in storage or otherwise, wheresoever the same may be located, including, but without limitation, all lumber and lumber products, bricks, building stones, and building blocks, sand and cement, roofing material, paint, doors, windows, hardware, nails, wires and wiring, plumbing and plumbing fixtures, heating and air conditioning equipment and appliances, electrical and gas equipment and appliances, pipes and piping, ornamental and decorative fixtures, furniture, and in general all building materials and equipment of every kind and character used or useful in connection with said Improvements;

- (d) All Appurtenant Rights;
- (e) All Rents;
- (f) All Accounts, General Intangibles, Instruments, Inventory, Money, and (to the full extent assignable) Permits; and
- (g) All Proceeds.

Grantor further grants to Lender a security interest in all of the Collateral which may from time to time constitute fixtures or personal property.

THIS DEED OF TRUST SECURES A COMMERCIAL LOAN. THE GRANTOR IS PROHIBITED FROM USING ANY OF THE PROCEEDS OF THE LOAN FOR PERSONAL, FAMILY OR HOUSEHOLD PURPOSES.

THE LENDER'S RIGHTS HEREUNDER ARE SUBJECT TO THOSE OF THE SENIOR LENDER UNDER THOSE DOCUMENTS, AS AMENDED, SECURING THE SENIOR LOAN INCLUDING THE SUBORDINATION AND STANDSTILL AGREEMENT, AS AMENDED, ALL AS DEFINED IN THE LOAN AGREEMENT.

This Deed of Trust, and all rights, remedies, powers, privileges, and benefits and all titles, interests, liens, and security interests created hereby or arising by virtue hereof, are given to secure payment and performance of all of the Loan Obligations including, without limitation, all of the following:

- (a) Payment of indebtedness in the total principal amount of up to TWO MILLION FIVE HUNDRED THOUSAND AND NO/100 Dollars (\$2,500,000.00) ("Loan"), including future advances, with interest thereon, evidenced by that certain Promissory Note of even date herewith (as it may be amended, modified, extended, and renewed from time to time, the "Note"), bearing interest and being payable in installments as therein stated, executed by Grantor and Grantor's Affiliates payable to Lender pursuant to that certain Loan Agreement between Grantor, Grantor's Affiliates and Lender, dated the date of this Deed of Trust (as it may be amended, modified, extended and renewed from time to time, the "Loan Agreement").



(b) All sums advanced by Lender to Grantor or expended by Lender for Grantor's account, including but not limited to advances for taxes and insurance, or for Grantor's benefit pursuant to the terms of this Deed of Trust and the faithful performance by Grantor of all terms and conditions contained herein;

(c) Payment of all court costs, expenses and costs of whatever kind incident to the collection of any indebtedness secured hereby and the enforcement or protection of the lien of this conveyance and the enforcement of one or more of the Loan Documents, including attorneys' fees, whether at trial, on appeal or review or other proceedings, or in any bankruptcy case or proceedings and including issues particular to bankruptcy;

(d) All fees (including exit fees and cash flow participation), premiums (including prepayment premiums), charges, expenses and other amounts from time to time due to Lender pursuant to the Loan Documents; and

(e) All Future Advances (if any), as provided in Section 4.13.

Notwithstanding anything to the contrary set forth herein or in any other Loan Document, this Deed of Trust shall not secure:

(i) the obligations of Frontier Management, LLC, an Oregon limited liability company ("Frontier"), as member of the Grantor, under that certain Environmental Indemnity Agreement of even date herewith made by Grantor in favor of Beneficiary (the "Indemnity Agreement") or the substantial equivalent of the obligations arising under the Indemnity Agreement. All of such obligations (and the substantial equivalents thereof) shall constitute the separate, unsecured full recourse obligations of Frontier and any other parties identified as indemnitors in the Indemnity Agreement and shall not be deemed to be evidenced by the Note or secured by this Deed of Trust;

(ii) the obligations of Frontier under that certain Guaranty of Payment and Performance of even date herewith made by Frontier in favor of Beneficiary (the "Frontier Guaranty") or the substantial equivalent of the obligations arising under the Frontier Guaranty. All of such obligations (and the substantial equivalents thereof) shall constitute the separate, unsecured full recourse obligations of Frontier and any other parties identified as indemnitors in the Frontier Guaranty and shall not be deemed to be evidenced by the Note or secured by this Deed of Trust; nor

(iii) the obligations of Gregory A. Roderick ("Roderick"), as manager of Frontier, under that certain Guaranty and Agreement of even date herewith made by Roderick in favor of Beneficiary (the "Roderick Guaranty") or the substantial equivalent of the obligations arising under the Roderick Guaranty. All of such obligations (and the substantial equivalents thereof) shall constitute the separate, unsecured full recourse obligations of Roderick and any other parties identified as indemnitors in the Roderick Guaranty and shall not be deemed to be evidenced by the Note or secured by this Deed of Trust.



ARTICLE I DEFINITIONS

The following terms will have the following meanings:

"Accounts" means any rights of Grantor arising from the operation of the Facility to payment for goods sold or leased or for services rendered, not evidenced by an Instrument, including, without limitation, (a) all accounts arising from the operation of the Facility and (b) all rights to payment from Medicare or Medicaid programs, or similar state or federal programs, boards, bureaus or agencies and rights to payment from patients, residents, private insurers, and others arising from the operation of the Facility, including rights to payment pursuant to Reimbursement Contracts.

"Applicable Environmental Law" shall mean any applicable laws, rules or regulations pertaining to health or the environment or petroleum products or radon radiation, or oil or hazardous substances, including, without limitation, (i) the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA"), as codified at 42 U.S.C. § 9601 et seq., as amended, (ii) the Resource Conservation and Recovery Act of 1976, as amended ("RCRA"), (iii) and the Federal Emergency Planning and Community Right-To-Know Act of 1986, (iv) the Washington Model Toxics Control Act (RCW Chapter 70.105D), (v) the Washington Hazardous Waste Management Act (RCW Chapter 70.105), and (vi) the Washington Underground Petroleum Storage Tanks Act (RCW Chapter 70.148). The terms "hazardous substance" and "release" shall have the meanings specified in CERCLA, and the terms "solid waste," "disposal," "dispose," and "disposed" shall have the meanings specified in RCRA, except that if such acts are amended to broaden the meanings thereof, the broader meaning shall apply herein prospectively from and after the date of such amendments). . Notwithstanding the foregoing, to the extent that the laws of the State where the Property is located establish a meaning for "hazardous substance" or "release" which is broader than that specified in CERCLA, as CERCLA may be amended from time to time, or a meaning for "solid waste," "disposal," and "disposed" which is broader than specified in RCRA, as RCRA may be amended from time to time, such broader meanings under said state law shall apply in all matters relating to the laws of such State.

"Appurtenant Rights" means all easements, rights-of-way, strips and gores of land, vaults, streets, ways, alleys, passages, sewer rights, waters, water courses, water rights and powers, minerals, flowers, shrubs, crops, trees, timber and other emblements now or hereafter appurtenant to, or used or useful in connection with, or located on, under or above the Property, or any part or parcel thereof, and all ground leases, estates, rights, titles, interests, privileges, liberties, tenements, hereditaments and appurtenances, reversions, and remainders whatsoever, in any way belonging, relating or appertaining to the Property or any other Collateral, or any part thereof.

"Bankruptcy Default" means an Event of Default pursuant to Section 7.1(e) or 7.1(f) of the Loan Agreement.



"Default Rate" has the meaning set forth in the Loan Agreement.

"Equipment" means all of Grantor's fixtures and equipment located on, attached to or used or useful in connection with the Property or Facility, including, but not limited to, all beds, linen, televisions, carpeting, telephones, cash registers, computers, lamps, glassware, rehabilitation equipment, and restaurant and kitchen equipment; provided, however, that with respect to any items which are leased and not owned, the Equipment shall include the leasehold interest only together with any options to purchase any of said items and any additional or greater rights with respect to such items which are hereafter acquired.

"Facility" means the assisted living facility now or hereafter located at the Property.

"General Intangibles" means all of Grantor's general intangibles and other intangible personal property arising out of or connected with the Property or the Improvements (other than Accounts, Rents, Instruments, Inventory, Money, Permits and Reimbursement Contracts), including, without limitation, things in action, contract rights and other rights to payment of money.

"Grantor's Affiliates" means HP Oak Harbor Partners, LLC and HP Heart Partners, LLC, each a Washington limited liability company.

"Improvements" means all buildings, structures and improvements of every nature whatsoever now or hereafter situated on the Property, including, but not limited to, all gas and electric fixtures, radiators, heaters, engines and machinery, boilers, ranges, elevators and motors, plumbing and heating fixtures, air conditioning equipment, carpeting and other floor coverings, water heaters, awnings and storm sashes, cleaning apparatus, signs, landscaping and parking areas, which are or shall be attached to the Property or said buildings, structures or improvements.

"Instruments" means all of Grantor's instruments, chattel paper, documents or other writings obtained from or in connection with the operation of the Property or the construction and operation of the Facility (including, without limitation, all ledger sheets, computer records and printouts, data bases, programs, books of account, trademarks or trade names, utility contracts, maintenance and service contracts, and files relating thereto).

"Inventory" means all of Grantor's inventory from time to time used at the Facility, including, but not limited to, food, beverages, other comestibles, soap, paper supplies, medical supplies, drugs and all other such goods, wares and merchandise held by Grantor for sale to or for consumption or use by guests or residents of the Property or the Facility, including all such goods that are returned to or repossessed by Grantor.

"Loan Agreement" means the certain Loan Agreement dated the same date herewith between the Grantor, Grantor's Affiliates and Lender.



"Loan Documents" means, collectively, the Loan Agreement, the Note, this Deed of Trust and all other Loan Documents, each as defined in the Loan Agreement, together with any and all other documents executed by Grantor or others, evidencing, securing, or otherwise relating to the Loan, but excluding the Indemnity Agreement, the Frontier Guaranty and the Roderick Guaranty.

"Loan Obligations" means the aggregate of all principal and interest owing from time to time under the Note, and all expenses, fees, premiums, charges, and other amounts from time to time owing under the Note, the Loan Agreement, this Deed of Trust or any other Loan Documents and all covenants, agreements and other obligations from time to time owing to, or for the benefit of, Lender pursuant to the Loan Documents.

"Money" means all of Grantor's monies, cash, rights to deposit or savings accounts or other items of legal tender obtained from or for use in connection with the operation of the Facility.

"Note" has the meaning heretofore set forth in this Deed of Trust.

"Permits" means all licenses, permits and certificates, obtained by Grantor from any governmental or quasi-governmental authority, or from any private person or entity, and used or useful in connection with the ownership, operation, use or occupancy of the Property or the Facility, including, without limitation, business licenses, state health department licenses, food service licenses, licenses to conduct business, certificates of need and all such other permits, licenses and rights.

"Permitted Encumbrances" means the Senior Loan Deed of Trust and all matters set forth in Exhibit B attached hereto and made a part hereof, provided that to the extent any of the same are listed as subordinate, such matters are permitted only so long as they are in fact subordinate to this Deed of Trust.

"Proceeds" means all awards, payments, earnings, royalties, issues, profits, liquidated claims and proceeds (including proceeds of insurance and condemnation or any conveyance in lieu thereof), from the sale, conversion (whether voluntary or involuntary), exchange, transfer, collection, loss, damage, condemnation, disposition, substitution or replacement of any of the Collateral.

"Reimbursement Contracts" shall mean all of Grantor's contracts and rights pursuant to reimbursement or third party payor programs and contracts for the Facility which are now or hereafter in effect with respect to residents qualifying for coverage under the same, including, but not limited to, Medicare, Medicaid, any successor program or other similar reimbursement program (whether operated by a governmental or quasi-governmental agency or by a private Person) and private insurance agreements.

"Rents" means all rent and other payments of whatever nature from time to time payable to Grantor pursuant to any lease of the Property or the Facility or any part thereof, including, but not limited to, leases of individual units to residents and leases of retail space or other space at the Property for businesses such as newsstands, barbershops, beauty shops, physicians' offices, pharmacies and specialty shops.

"Senior Loan Deed of Trust" means that deed of trust of even date herewith, among the Grantor, Ziegler Healthcare Fund II, LLC, as beneficiary and the trustee named therein.

"Washington Foreclosure Statutes" mean Chapter 61.12 RCW, "Foreclosure of Real Estate Mortgages and Personal Property Liens" and Chapter 61.24 RCW, "Deeds of Trust," as hereafter supplemented, amended or recodified.

"Waste" means any action that results in physical or economic destruction to or loss of the Collateral or otherwise impairs the value of the Collateral. Without limiting the foregoing, waste includes any action that results in the decrease or loss of use of 10% or more of the licensed beds at the Facility.

Singular terms shall include the plural forms and vice versa, as applicable of the terms defined.

All references to other documents or instruments shall be deemed to refer to such documents or instruments as they may hereafter be extended, renewed, modified or amended, and all replacements and substitutions therefor.

All other capitalized terms not otherwise defined in this Deed of Trust shall have the meanings set forth in the Loan Agreement.

ARTICLE II GRANTOR'S COVENANTS, AGREEMENTS, AND REPRESENTATIONS

The Grantor covenants with the Trustee and Lender and represents and warrants unto Trustee and Lender as follows:

Section 2.1 **Performance of Loan Documents.** The Grantor will perform, observe and comply with the provisions hereof and of each of the other Loan Documents when due or within any applicable cure period and duly and punctually will pay to the Lender when due or within any applicable cure period the sum of money expressed in the Note with interest thereon and all other sums required to be paid by the Grantor pursuant to the provisions of this Deed of Trust, all without any deduction or credit for taxes or other similar charges paid by the Grantor.

Section 2.2 **Warranty of Title.** The Grantor is lawfully seized of an estate in fee simple in the Property, Improvements, and Appurtenant Rights hereby mortgaged and has good and absolute title to all other Collateral in which a security interest is herein granted, and Grantor



has good right, full power and lawful authority to sell, convey, mortgage, and grant a security interest in the same in the manner and form aforesaid subject to any limitations which may be imposed under applicable law on the granting of a security interest in or assignment of certain of the Collateral, such as Medicare and Medicaid Accounts and Permits; that, except for Permitted Encumbrances and the Liens permitted by the Loan Agreement, the same are free and clear of all liens, charges, and encumbrances whatsoever, including, as to the Equipment (subject to the terms and conditions of the leases existing as of the Closing Date for certain copy machines), conditional sales contracts, chattel mortgages, security agreements, financing statements, and anything of a similar nature, and that Grantor shall and will warrant and forever defend the title thereto unto the Trustee and Lender, their successors and assigns, against the lawful claims of all persons whomsoever.

Section 2.3 Taxes, Liens and Other Charges.

(a) Subject to Grantor's right to duly contest the same in accordance with this Section 2.3(a), Grantor shall pay, on or before the due date thereof, all taxes, levies, license fees, permit fees and all other charges (in each case whether general or special, ordinary or extraordinary, or foreseen or unforeseen) of every character whatsoever (including all penalties and interest thereon) now or hereafter levied, assessed, confirmed or imposed on, or in respect of, or which may be a lien upon the Collateral, or any part thereof, or any estate, right or interest therein, or upon the rents, issues, income or profits thereof, and shall submit to Lender upon request such evidence of the due and punctual payment of all such taxes, assessments and other fees and charges as may be required by law. Grantor shall have the right before they become past due to contest or object to the amount or validity of any such tax, assessment, fee or charge by appropriate legal proceedings, but this shall not be deemed or construed in any way as relieving, modifying or extending Grantor's covenant to pay any such tax, assessment, fee or charge at the time and in the manner provided herein, unless Grantor has given prior written notice to Lender of Grantor's intent to so contest or object, and unless (i) Grantor shall demonstrate to Lender's reasonable satisfaction that the legal proceedings shall conclusively operate to prevent the sale of the Collateral, or any part thereof, to satisfy such tax, assessment, fee or charge prior to final determination of such proceedings; and (ii) if required by Lender, Grantor shall furnish a good and sufficient bond or surety as requested by and satisfactory to Lender in an amount sufficient to fully pay the contested amount, with penalties, interest and other charges if Grantor should be unsuccessful in such contest; and (iii) Grantor shall diligently pursue such contest. Grantor's right to reimbursement from any amounts paid to Lender in escrow for taxes shall be subject to the terms and conditions of the Tax and Insurance Escrow and Security Agreement of even date herewith.

(b) Grantor shall pay, on or before the due date thereof, all taxes, assessments, charges, expenses, costs and fees which may now or hereafter be levied upon, or assessed or charged against, or incurred in connection with, the Note, this Deed of Trust or any other Loan Documents; provided, however, nothing herein shall be construed as requiring Grantor to pay any of Lender's income or gross receipts taxes or any other taxes customarily paid by Lender. Without limiting the generality of the foregoing, if, by the laws of the United



States of America, or of any state having jurisdiction over Grantor, any stamp tax or similar tax is due or becomes due in respect of any of the Loan Obligations or the recording of this Deed of Trust, Grantor covenants and agrees to pay such tax in the manner required by any such law. Grantor further covenants to hold harmless and agrees to indemnify Lender, its successors or assigns, against any liability incurred by reason of the imposition of any stamp tax or similar tax on the issuance of the Loan Obligations or the recording of this Deed of Trust.

(c) Grantor shall pay, on or before the due date thereof, all premiums on policies of insurance covering, affecting or relating to the Collateral, as required by the Loan Agreement; all ground lease rents and other payments; and all utility charges with respect to the Collateral, or which may become a charge or lien against the Collateral, for gas, electricity, water and sewer services and the like furnished to the Collateral, and all other public or private assessments or charges of a similar nature affecting the Collateral or any portion thereof, whether or not the nonpayment of same may result in a lien thereon. Grantor shall submit to Lender such evidence of the due and punctual payment of all such premiums, rentals and other sums as Lender may require.

(d) Grantor shall not suffer any construction, mechanic's, materialman's, laborer's, statutory or other lien (except as expressly permitted by the Loan Agreement) to be created or remain outstanding against the Collateral; provided, however, that Grantor may contest any such lien in good faith by appropriate legal proceedings provided the lien is bonded off and removed as an encumbrance upon the Collateral. Lender has not consented and will not consent to the performance of any work or the furnishing of any materials which might be deemed to create a lien or liens superior to the lien hereof.

(e) In the event of the passage of any state, federal, municipal or other governmental law, order, rule or regulation, subsequent to the date hereof, in any manner changing or modifying the laws now in force governing the taxation of mortgages or security agreements or debts secured thereby or the manner of collecting such taxes so as to adversely affect Lender, Grantor will pay any such tax on or before the due date thereof. If Grantor fails to make such prompt payment or if, in the opinion of Lender, any such state, federal, municipal, or other governmental law, order, rule or regulation prohibits Grantor from making such payment or would penalize Lender if Grantor makes such payment or if, in the opinion of Lender, the making of such payment might result in the imposition of interest beyond the maximum amount permitted by applicable law, then the entire balance of the Loan Obligations shall, at the option of Lender, become immediately due and payable.

(f) The Grantor hereby indemnifies, agrees to reimburse Lender and holds Lender harmless for, from and against any sales or use tax that may be imposed on the Lender by virtue of Lender's Loan to Grantor; provided, however, nothing herein shall be construed as requiring Grantor to pay any of Lender's income or gross receipts taxes.

Section 2.4 **Monthly Deposits.** Grantor shall, upon request of Lender, deposit with Lender, on the due date of each installment under the Note, an amount equal to one-twelfth



(1/12) of the yearly taxes and assessments and insurance premiums with respect to the Collateral as estimated by the Lender to be sufficient to pay such charges; said deposits to be held and to be used by Lender to pay current taxes and assessments, insurance premiums and other charges on the Collateral as the same accrue and are payable. Payment from said sums for said purposes shall be made by Lender at its discretion and may be made even though such payments will benefit subsequent owners of the Collateral. Said deposits shall not be, nor be deemed to be, trust funds, but may be, to the extent permitted by applicable law, commingled with the general funds of Lender without payment of interest. If said deposits are insufficient to pay the taxes and assessments, insurance premiums and other charges in full as the same become payable, Grantor will deposit with Lender such additional sum or sums as may be required in order for Lender to pay such taxes and assessments, insurance premiums and other charges in full. Upon any Event of Default, Lender may, at its option, apply any money in the fund relating from said deposits to the payment of the Loan Obligations in such manner as it may elect

Section 2.5 **Condemnation.**

(a) If all or any part of the Collateral shall be damaged or taken through condemnation (which term when used in this Deed of Trust shall include any damage or taking by any governmental authority, and any transfer by private sale in lieu thereof), either temporarily or permanently, other than a taking of a part of the Collateral which does not in Lender's opinion adversely affect access to or use of the Collateral or operation of the Facility, the entire Loan Obligations secured hereby shall at the option of the Lender become due and payable within thirty (30) days of written notice by Lender to Grantor.

(b) Grantor, immediately upon obtaining knowledge of any institution, or any proposed, contemplated or threatened institution of any action or proceeding for the taking through condemnation of the Collateral or any part thereof, will notify Lender, and Lender is hereby authorized, at its option, to commence, appear in and prosecute, through counsel selected by Lender, in its own or in Grantor's name, any action or proceeding relating to any condemnation. Grantor may compromise or settle any claim for compensation so long as no Event of Default exists and any compromise or settlement results in a payment to Lender not less than the amount that would permit Grantor to obtain a release of the Property and Improvements pursuant to Section 4.5 of the Loan Agreement. If an Event of Default exists, Lender shall have the sole and exclusive right to compromise or settle any claim for compensation. All such compensation, awards, damages, claims, rights of action and proceeds and the right thereto are hereby assigned by Grantor to Lender, and Lender is authorized, at its option, to collect and receive all such compensation, awards or damages and to give proper receipts and acquittances therefor without any obligation to question the amount of any such compensation, awards or damages. After deducting from said condemnation proceeds all of its expenses incurred in the collection and administration of such sums, including reasonable attorney's fees, Lender may release any moneys so received by it for the repair or restoration of the Collateral taken, or may apply the same in such manner as the Lender shall determine to reduce the Loan Obligations in such order as Lender may elect, whether or not then due, and without affecting this Deed of



Trust as security for any remaining Loan Obligations, and any balance of such moneys shall be paid to the Grantor.

Section 2.6 Care of Collateral.

(a) Grantor will keep the Improvements in good condition and repair ordinary wear and tear excepted, will not commit or suffer any waste and will not do or suffer to be done anything which would reasonably be expected to increase the risk of fire or other hazard to the Collateral or any other part thereof or which would or could result in the cancellation of any insurance policy carried with respect to the Collateral.

(b) Except in connection with the repair or replacement of the Facility after damage thereto or destruction or condemnation thereof, Grantor will not remove, demolish or alter the structural character of any Improvements in any material respect without the written consent of Lender, nor will Grantor make or permit use of the Collateral for any purpose other than that for which the same are now used.

(c) Grantor will maintain the insurance relating to Grantor or the Collateral as required by the Loan Agreement. If the Collateral or any part thereof is damaged by fire or any other cause, Grantor will give immediate written notice thereof to Lender.

(d) Lender or its representative is hereby authorized to enter upon and inspect the Collateral during normal business hours upon reasonable advance notice to Grantor.

(e) Grantor will promptly comply with all present and future laws, ordinances, rules and regulations of any governmental authority affecting the Collateral or any part thereof; provided, however, Grantor shall have the right to contest the application of such laws, ordinances, rules and regulations to Grantor provided such contest does not impair the validity of Lender's lien on the Collateral or present a risk of forfeiture of the Collateral.

(f) If all or any part of the Collateral shall be damaged by fire or other casualty, Grantor will promptly restore the Collateral to the equivalent of its original condition in accordance with Section 4.5 of the Loan Agreement (or, if Grantor chooses not to rebuild the Facility or is unable to satisfy the conditions of Section 4.5 of the Loan Agreement, Grantor shall pay to Lender in full an amount sufficient to obtain a release of the Property and Improvements pursuant to Section 4.5 of the Loan Agreement); and if a part of the Collateral shall be taken or damaged through condemnation, Grantor will promptly restore, repair or alter the remaining portions of the Collateral in a manner satisfactory to Lender.

Section 2.7 Further Assurances; After-Acquired Property. At any time, and from time to time, upon request by Lender, Grantor will make, execute and deliver or cause to be made, executed and delivered to Lender and, where appropriate, cause to be recorded and/or filed and from time to time thereafter to be rerecorded and/or refiled at such time and in such offices and places as shall be requested by Lender such certificates, documents, statements,



amendments and other instruments and/or filings (i) to perfect and protect the security interest created or purported to be created hereby; (ii) to enable the Lender to exercise and enforce its rights and remedies hereunder in respect of the Collateral; or (iii) to effect otherwise the purposes of this Deed of Trust, including, without limitation: (A) executing and filing such financing or continuation statements, or amendments thereto, as may be necessary or desirable or that the Lender may request in order to perfect and preserve the security interest created by this Deed of Trust as a first and prior security interest upon and security title in and to all of the Collateral, whether now owned or hereafter acquired by Grantor; provided, however, Grantor authorizes Lender to file any financing statements describing the Collateral in such jurisdictions and filing offices as Lender deems appropriate without the necessity of Grantor's signature; (B) if certificates of title are now or hereafter issued or outstanding with respect to any of the Collateral, by immediately causing the interest of Lender to be properly noted thereon at Grantor's expense; and (C) furnishing to the Lender from time to time statements and schedules further identifying and describing the Collateral and such other reports in connection with the Collateral as the Lender may reasonably request. Upon any failure by Grantor so to do, Lender may make, execute, record, file, re-record and/or refile any and all such financing statements, continuation statements, or amendments thereto, certificates, and documents for and in the name of Grantor, and Grantor hereby irrevocably appoints Lender the agent and attorney-in-fact of Grantor so to do. The lien of this Deed of Trust will automatically attach, without further act, to all after-acquired property attached to and/or used in the operation of the Collateral or any part thereof.

Section 2.8 Indemnity; Expenses. Grantor will pay or reimburse Lender for all attorney's fees, costs and expenses incurred by Lender in any suit, action, trial, appeal, review, bankruptcy (including issues particular to bankruptcy) or other legal proceeding or dispute of any kind in which Lender is made a party or appears as party plaintiff or defendant, affecting the Loan Obligations, this Deed of Trust or the interest created herein, or the Collateral, or any appeal thereof, including, but not limited to, any foreclosure action, any condemnation action involving the Collateral or any action to protect the security hereof, any bankruptcy or other insolvency proceeding commenced by or against the Grantor, any lessee of the Collateral (or any part thereof), and including, without limitation, costs of title searches, appraisals, environmental reports and expert witness fees, any such amounts paid by Lender shall be added to the Loan Obligations, shall be secured by this Deed of Trust and shall bear interest at the Default Rate from the date advanced. Grantor will indemnify, reimburse and hold Lender harmless for, from and against all claims, actions, losses, damages, costs, expenses, including attorney's fees and court costs, and other liabilities of every description related to or resulting from any action by a third party against Lender relating to this Deed of Trust or any interest created herein, or the Collateral, including, but not limited to, any action or proceeding claiming loss, damage or injury to person or property, or any action or proceeding claiming a violation of any national, state or local law, rule or regulation, including those Applicable Environmental Laws, provided Grantor shall not be required to indemnify Lender for matters directly and solely caused by Lender's willful misconduct or gross negligence.



The foregoing notwithstanding, this Deed of Trust does not secure any guaranty or indemnification of Grantor or any third party to the extent the instrument evidencing the same states that such obligations are not so secured. Grantor's indemnities in this Deed of Trust shall be limited to the actual damages incurred by Lender, including all advances or payments paid or agreed to be paid by Lender pursuant to its rights to require environmental assessments, join or participate in any proceedings, cure Grantor's default or enforce its remedies (a) prior to and after any judicial foreclosure of this Deed of Trust or deed accepted in lieu thereof, or (b) prior to any non-judicial foreclosure of this Deed of Trust or deed delivered and accepted in lieu thereof. The obligations of Grantor under this Section shall be mutually exclusive of any liabilities arising after a non-judicial foreclosure of this Deed of Trust or the delivery and acceptance of a deed in lieu of such non-judicial foreclosure which are evidenced by and subject to the terms of the Indemnity Agreement, the Frontier Guaranty and the Roderick Guaranty.

Section 2.9 **Assignment of Rents.** Subject to the Senior Loan Deed of Trust, all Rents are hereby assigned to Lender to be applied against the Loan Obligations secured by this Deed of Trust in such order as Lender may elect; provided, however, that a revocable license is hereby given to Grantor (subject to the requirement that Lender approve any lease other than leases with residents of the Improvements), unless and until the breach of any covenant or condition of this Deed of Trust which is not cured within any applicable cure period or the occurrence of any Event of Default, to collect and use such Rents as they become due and payable, but not in advance thereof. This Deed of Trust constitutes an absolute and present assignment of the Rents, subject, however, to the Senior Loan Deed of Trust and the conditional and revocable license given to Grantor to collect and use the same as provided hereinabove. The foregoing assignment shall be fully operative without any further action on the part of either party, and specifically, Lender shall be entitled, at its option upon the breach of any covenant or condition of this Deed of Trust which is not cured within any applicable cure period or the occurrence of any Event of Default hereunder, to collect all such Rents whether or not Lender takes possession of the Property. Exercise by Lender of its rights under this Section, and the application of any such Rents to such Loan Obligations shall not cure or waive any Event of Default or notice of Event of Default hereunder or invalidate any act done pursuant hereto or any such notice, but shall be cumulative of all other rights and remedies. Grantor shall not, without the prior written consent of Lender, further assign the Rents that are assigned to Lender herein, and any such assignment without the express written consent of Lender shall be void as against Lender (except that assignment of accounts shall be permitted to the extent provided in the Loan Agreement).

Section 2.10 **Estoppel Affidavits.** Grantor, upon ten (10) days prior written notice from Lender, shall furnish Lender a written statement, duly acknowledged, based upon its records, setting forth the unpaid principal of, and interest on, the Loan Obligations, stating whether or not to its knowledge any offsets or defenses exist against the Loan Obligations, or any portion thereof, and, if such offsets or defenses exist, stating in detail the specific facts relating to each such offset or defense.



Section 2.11 **Leases.** Grantor shall not, without the prior written consent and approval of Lender, enter into any lease or permit any tenancy (except for tenancy or residency agreements with patients or residents of individual units at the Facility), or enter into or permit any management agreement, of or affecting the Collateral, except as expressly permitted in the Loan Agreement.

Section 2.12 **Limit of Validity.** If from any circumstances whatsoever, fulfillment of any provision of this Deed of Trust, the Note or any other Loan Document, at the time performance of such provision shall be due, shall involve transcending the limit of validity presently prescribed by any applicable usury statute or any other applicable law, with regard to obligations of like character and amount, then, *ipso facto*, the obligation to be fulfilled shall be reduced to the limit of such validity, so that in no event shall any exaction be possible under this Deed of Trust, the Note, or any other Loan Document that is in excess of the current limit of such validity, but such obligation shall be fulfilled to the limit of such validity. The provisions of this Section shall control every other provision of this Deed of Trust, the Note and any other Loan Document.

Section 2.13 **Compliance with Other Deeds of Trust.** To the extent there at any time exists any other deed of trust, mortgage or security agreement encumbering all or any part of the Collateral ("Other Mortgage Debt") (a) the same is expressly permitted so long as, but only if, it is shown as a "Permitted Encumbrance" on Exhibit B hereto or is otherwise expressly permitted by the Loan Agreement, and (b) Grantor will perform, observe and comply with the same and with all related documents and instruments when due or within any applicable cure period and will maintain the same free from default and not obtain additional advances or increase the principal amount secured thereby without Lender's prior written consent. If a default thereunder should occur or an Event of Default exists, Lender shall have the right, but not the obligation, to cure the same or to advance such additional amounts as are necessary to protect the Lender's interest in the Collateral, including, without limitation, payment in full of all debts and other obligations if and to the extent Lender deems necessary to prevent foreclosure or sale of all or any part of the Collateral or purchase such Other Mortgage Debt. All amounts so advanced by Lender shall constitute Loan Obligations and shall bear interest at the Default Rate from the date advanced until repaid in full, such advance and interest shall be secured by this Deed of Trust, and such advance and interest shall be immediately due and payable.

Section 2.14 **Legal Actions.** In the event that Lender is made a party, either voluntarily or involuntarily, in any action or proceeding affecting the Collateral, the Note, the Loan Obligations or the validity or priority of this Deed of Trust, Grantor shall immediately, upon demand, reimburse Lender for all costs, expenses and liabilities incurred by Lender by reason of any such action or proceeding, including attorney's fees, any such amounts paid by Lender in connection therewith shall be added to the Loan Obligations, shall be secured by this Deed of Trust and shall bear interest at the Default Rate from the date advanced until repaid in full.

Section 2.15 **Prohibited Person Compliance.** Grantor warrants, represents and covenants that neither Grantor, any guarantor, nor any of their respective affiliated entities is or



will be a Person (a) that is listed in the Annex to or is otherwise subject to the provisions of Executive Order 13224 issued on September 24, 2001 ("EO13224"), (b) whose name appears on the United States Treasury Department's Office of Foreign Assets Control ("OFAC") most current list of "Specifically Designated Nationals and Blocked Persons," (which list may be published from time to time in various mediums including, but not limited to, the OFAC website, [http:// www.treas.gov/ofac/t11sdn.pdf](http://www.treas.gov/ofac/t11sdn.pdf)), (c) who commits, threatens to commit or supports "terrorism", as that term is defined in EO 13224, or (d) who is otherwise affiliated with any person listed above. (Any and all Persons described in subparts [a] - [d] above are herein referred to as a "Prohibited Person). Grantor covenants and agrees that neither Grantor, any guarantor, nor any of their respective affiliated entities will (i) conduct any business, or engage in any transaction or dealing, with any Prohibited Person, including, but not limited to the making or receiving of any contribution of funds, goods, or services, to or for the benefit of a Prohibited Person, or (ii) engage in or conspire to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in EO13224. Grantor further covenants and agrees to deliver (from time to time) to Lender any such certification or other evidence as may be requested by Lender in its sole and absolute discretion, confirming that (i) neither Grantor nor any guarantor is a Prohibited Person and (ii) neither Grantor nor any guarantor has engaged in any business, transaction or dealing with a Prohibited Person, including, but not limited to, the making or receiving of any contributions of funds, goods, or services, to or for the benefit of a Prohibited Person.

Section 2.16 **Use of Property.** The Property shall be used solely as an assisted living/Alzheimer's care facility and for the purposes set forth in the Loan Agreement. Grantor represents, warrants and covenants that the Property is not and will not be used principally for agricultural purposes. Grantor further represents, warrants and covenants that the Property is not and will not become the homestead of Grantor.

ARTICLE III EVENTS OF DEFAULT; REMEDIES

Section 3.1 **Events of Default.** The terms "Event of Default" or "Events of Default," wherever used in this Deed of Trust, shall mean any one or more of the following events:

(a) The occurrence of any Event of Default (as therein defined) under any other Loan Documents; or

(b) The sale, transfer, lease, assignment, or other disposition, voluntarily or involuntarily, of the Collateral, or any part thereof or any interest therein, including a sale or transfer in lieu of condemnation, or, except for Permitted Encumbrances, any further encumbrance of the Collateral, unless (i) expressly permitted or required by the Loan Agreement (ii) the prior written consent of Lender is obtained (which consent may be withheld, conditioned or granted with or without cause in Lender's sole and unfettered discretion) or (iii) such disposition is of any of the Equipment which has become worn out or obsolete provided the



same is replaced with property of similar value and of a similar quality if and to the extent such worn out or obsolete Equipment is required for the continued lawful operation of the Facility.

Section 3.2 Acceleration of Maturity. If an Event of Default shall exist, then the entire Loan Obligations shall, at the option of Lender, immediately become due and payable without notice or demand, time being of the essence of this Deed of Trust, and no omission on the part of Lender to exercise such option when entitled to do so shall be construed as a waiver of such right; provided, however, if a Bankruptcy Default occurs, then all such amounts shall become immediately due and payable automatically without any election by the Lender.

Section 3.3 Right to Enter and Take Possession.

(a) If an Event of Default shall have occurred and be continuing, Grantor, upon demand of Lender, shall forthwith surrender to Lender the actual possession of the Collateral and, if and to the extent permitted by law, Lender itself, or by such officers or agents as it may appoint, may enter and take possession of all or any part of the Collateral without the appointment of a receiver or an application therefor, and may exclude Grantor and its agents and employees wholly therefrom, and take possession of the books, papers and accounts of Grantor to the extent permitted by applicable law.

(b) If Grantor shall for any reason fail to surrender or deliver the Collateral or any part thereof after such demand by Lender, Lender may obtain a judgment or decree conferring upon Lender the right to immediate possession or requiring Grantor to deliver immediate possession of the Collateral to Lender. Grantor will pay to Lender, upon demand, all expenses of obtaining such judgment or decree, including compensation to Lender, its attorneys and agents, and all such expenses and compensation shall, until paid, become part of the Loan Obligations and shall be secured by this Deed of Trust.

(c) Upon every such entering upon or taking of possession, Lender may hold, store, use, operate, manage and control the Collateral and conduct the business thereof, and, from time to time (i) make all necessary and proper maintenance, repairs, renewals, replacements, additions, betterments and improvements thereto and thereon and purchase or otherwise acquire additional fixtures, personalty and other property; (ii) insure or keep the Collateral insured; (iii) manage and operate the Collateral and exercise all of the rights and powers of Grantor to the same extent as Grantor could in its own name or otherwise act with respect to the same; and (iv) enter into any and all agreements with respect to the exercise by others of any of the powers herein granted to Lender, all as Lender from time to time may determine to be in its best interest. Lender may collect and receive all the rents, issues, profits and revenues from the Collateral, including those past due as well as those accruing thereafter, and, after deducting (A) all expenses of taking, holding, managing and operating the Collateral (including compensation for the services of all persons employed for such purposes); (B) the cost of all such maintenance, repairs, renewals, replacements, additions, betterments, improvements, purchases and acquisitions; (C) the cost of such insurance; (D) such taxes, assessments and other similar charges as Lender may at its option pay; (E) other proper and reasonable charges upon



the Collateral or any part thereof; and (F) the reasonable compensation, expenses and disbursements of the attorneys and agents of Lender, Lender shall apply the remainder of the monies and proceeds so received by Lender, first, to the payment of accrued interest; second, to the payment of any deposits for taxes and insurance required in this Deed of Trust and to other sums required to be paid hereunder; and third, to the payment of overdue installments of principal and any other unpaid Loan Obligations then due. Anything in this Section to the contrary notwithstanding, Lender shall not be obligated to discharge or perform the duties of a landlord to any tenant except to the extent Lender has agreed to assume such duties under the terms of any applicable subordination, non-disturbance and attornment agreement or, absent gross negligence or willful misconduct, incur any liability as a result of any exercise by Lender of its rights under this Deed of Trust, and, absent gross negligence or willful misconduct, Lender shall be liable to account only for the rents, incomes, issues and profits actually received by Lender.

(d) If an Event of Default shall exist, Lender may require that Grantor cause all of its Accounts and Rents to be paid to one or more deposit accounts with Lender, or at Lender's option, with another financial institution approved by Lender. To the extent allowed by applicable law, Grantor assigns and grants to Lender a security interest in, pledge of and right of setoff against all moneys from time to time held in such deposit accounts. Grantor agrees to promptly notify all of its account debtors and tenants, including all third-party payors pursuant to any Reimbursement Contracts then in effect, to make payments to one or more such deposit accounts upon Lender's request and as designated by Lender, and Grantor agrees to provide any necessary endorsements to checks, drafts and other forms of payment so that such payments will be properly deposited in such accounts. Lender may require that the deposit accounts be established so as to comply with any applicable Reimbursement Contracts and other legal requirements, if any, applicable to payments of any accounts receivable. Lender may cause moneys to be withdrawn from such deposit accounts and applied to the Loan Obligations in such order as Lender may elect, whether or not then due subject to applicable law and the applicable Reimbursement Contract. Grantor appoints Lender as its attorney-in-fact, with full power of substitution, which appointment is coupled with an interest and is irrevocable, to provide any notice, endorse any check, draft or other payment for deposit, or take any other action which Grantor agrees to take in this Section. Lender shall not be liable for failure to collect any Accounts or Rents, or to enforce the contracts or leases pursuant to which such Accounts or Rents are payable, or for any action or omission on the part of Lender, its officers, agents and employees in collecting or enforcing such Accounts, Rents, contracts or leases.

(e) Whenever all the Loan Obligations shall have been paid and all Events of Default shall have been cured, Lender shall surrender possession of the Collateral to Grantor and its successors or assigns. The same right of taking possession provided for under this Section 3.3, however, shall exist if any subsequent Event of Default shall occur and be continuing.

Section 3.4 **Performance by Lender.** Upon the occurrence and during the continuance of an Event of Default in the payment, performance or observance of any term,



covenant or condition of this Deed of Trust, Lender may, at its option, pay, perform or observe the same, and all payments made or costs or expenses incurred by Lender in connection therewith, with interest thereon at the Default Rate or at the maximum rate from time to time allowed by applicable law, whichever is less, shall be secured hereby and shall be, without demand, immediately repaid by Grantor to Lender. Lender shall be the sole judge of the necessity for any such actions and of the amounts to be paid. Lender is hereby empowered and authorized to enter and to authorize others to enter upon the Collateral or any part thereof for the purpose of performing or observing any such defaulted term, covenant or condition without thereby becoming liable to Grantor or any person in possession holding under Grantor absent gross negligence or willful misconduct. Notwithstanding anything to the contrary herein, Lender shall have no obligation, explicit or implied, to pay, perform, or observe any such term, covenant, or condition.

Section 3.5 **Receiver.** If any Event of Default shall exist, Lender, upon application to a court of competent jurisdiction, to the extent allowed by applicable law, shall be entitled as a matter of right, without notice and without regard to the sufficiency or value of any security for the Loan Obligations or the solvency of any party bound for its payment, to the appointment of a receiver to take possession of and to operate the Collateral and to collect and apply the rents, issues, profits and revenues thereof. The receiver shall have all of the rights and powers permitted under the laws of the state wherein the Property is situated. Grantor will pay unto Lender upon demand all expenses, including receiver's fees, attorney's fees, costs and agent's compensation, incurred pursuant to the provisions of this Section, and upon any Grantor's failure to pay the same, any such amounts shall be added to the Loan Obligations and shall be secured by this Deed of Trust. Grantor consents to the appointment of a receiver if requested by Lender following an Event of Default. Grantor acknowledges that by giving such consent, the appointment of a receiver shall be deemed "provided for by agreement" and Lender shall be entitled to such appointment pursuant to RCW 7.60.025(1)(b)(ii). Grantor expressly acknowledges that enforcement of Lender's right to appointment of a receiver hereunder is necessary to secure ample justice to the parties. The receiver shall have, in addition to all the rights and powers customarily given to and exercised by such receivers, all the rights and powers granted to Lender by this Article III.

Section 3.6 **Foreclosure; Power of Sale, Enforcement.**

(a) If an Event of Default exists, Lender shall have the right to foreclose upon any or all of the Collateral by notice and sale by the Trustee or by judicial foreclosure, in either case in accordance with applicable law. At any foreclosure sale, Trustee shall make to the purchaser or purchasers thereunder good and sufficient deeds and assignments in the name of Grantor, conveying the Collateral or any part thereof, so sold to the purchaser or purchasers as provided by applicable law. The Trustee shall have the following options in foreclosing upon the Collateral:

(i) Upon the occurrence of an Event of Default, Beneficiary may notify Trustee to exercise the power of sale granted hereunder and upon such



notification it shall be lawful for and the duty of Trustee, and Trustee is hereby authorized and empowered to expose to sale and to sell the Collateral or any part thereof at public sale to the highest bidder for cash, in compliance with applicable requirements of Washington law governing the exercise of powers of sale contained in deeds of trust and upon such sale, Trustee shall collect the purchase proceeds and convey title to the portion of the Collateral so sold to the purchaser in fee simple. In the event of a sale of the Collateral or any part thereof, the proceeds of sale shall be applied in the following order of priority: (a) to the payment of all costs and expenses for and in connection with such sale, including a commission for Trustee's services as hereinafter provided and reasonable attorneys' fees incurred by Trustee for legal services actually performed; (b) to the reimbursement of Beneficiary for all reasonable sums expended or incurred by Beneficiary under the terms of this Deed of Trust or to establish, preserve or enforce this Deed of Trust or to collect the Loan Obligations (including, without limitation, reasonable attorneys' fees); (c) to the payment of the Loan Obligations and interest thereon and all other indebtedness hereby secured; and (d) the balance, if any, shall be paid to the Grantor or to the parties lawfully entitled thereto. In the event of a sale hereunder, Beneficiary shall have the right to bid at such sale and shall have the right to credit all or any portion of the indebtedness secured hereby against the purchase price. Trustee shall have the right to designate the place of sale in compliance with applicable law and the sale shall be held at the place designated by the notice of sale. Trustee may require the successful bidder at any sale to deposit immediately with Trustee cash or certified check or cashier's check in an amount up to five percent (5%) of the bid provided notice of such deposit requirement is published as required by law. The bid may be rejected if the deposit is not immediately made. Such deposit shall be refunded in case of a sale to another purchaser pursuant to an upset bid or if Trustee is unable to convey the portion of the Collateral so sold to the bidder because the power of sale has been terminated in accordance with applicable law. If the purchaser fails to comply with its bid, the deposit may, at the option of Trustee, be retained and applied to the expenses of the sale and any resales and to any damages and expenses incurred by reason of such default (including the amount that such bid exceeds the final sales price), or may be deposited with the Clerk of Superior Court. In all other cases, the deposit shall be applied to the purchase price. Pursuant to RCW 62A.9A-604(a)(2) of the Washington UCC (or any amendment thereto), Trustee is expressly authorized and empowered to expose to sale and sell, together with the real estate, any portion of the Collateral which constitutes personal property. If personal property is sold hereunder, it need not be at the place of sale.

(ii) If Lender so elects, Trustee or Lender may sell the personal property covered by this Deed of Trust at one or more separate sales in any manner permitted by the UCC, and one or more exercises of the powers herein granted shall not extinguish or exhaust such powers, until the entire Collateral is sold or the Loan Obligations are paid in full. If the Loan Obligations are now or hereafter further secured by any chattel mortgages, pledges, contracts of guaranty, assignments of leases or other



security instruments, Lender at its option may exhaust the remedies granted under any of said security instruments or this Deed of Trust either concurrently or independently, and in such order as Lender may determine consistent with applicable law. Said sale may be adjourned by the Trustee, or his agent or successors, and reset at a later date consistent with applicable law without additional publication (except as may be required by applicable law); provided that an announcement to that effect be made at the scheduled place of sale at the time and on the date the sale is originally set.

(iii) To the extent permitted by applicable law, sale of a part of the Collateral shall not exhaust the power of sale until the Loan Obligations are paid and performed in full. It shall not be necessary to have present or to exhibit at any such sale any of the Collateral.

It is intended by each of the foregoing provisions of this subsection that Trustee may, after any request or direction by Lender, sell not only the Property but also the other Collateral, or any part thereof, along with the Property, or any part thereof, all as a unit and as a part of the single sale, or may sell any part of the Collateral separately from the remainder of the Collateral. In the event of the resignation or death of Trustee, or Trustee's failure, refusal, or inability, for any reason, to make any such sale or to perform any of the trusts herein declared, or, at the option of Lender, without cause, then Lender may appoint, in writing, a substitute trustee pursuant to applicable law, who shall thereupon succeed to all the Collateral, and trusts herein granted to and vested in Trustee. If Lender is a corporation, such appointment may be made on behalf of such Lender by any person who is an authorized officer or agent of Lender. In the event of the resignation or death of any such substitute trustee, or Trustee's failure, refusal, or inability to make any such sale or perform such trusts, or, at the option of Lender, without cause, successive substitute trustees may thereafter, from time to time, be appointed in the same manner. Wherever herein the word "Trustee" is used, the same shall mean the person who is the duly appointed trustee or substitute trustee hereunder at the time in question.

(b) If an Event of Default shall exist, Lender may, in addition to and not in abrogation of the rights covered under subsection (a) of this Section, either with or without entry or taking possession as herein provided or otherwise, proceed by a suit or suits in law or in equity or by any other appropriate proceeding or remedy (i) to enforce payment of the Loan Obligations or the performance of any term, covenant, condition or agreement of this Deed of Trust or any other right, (ii) to foreclose this Deed of Trust and to sell, as an entirety or in separate lots or parcels, the Collateral, as provided by applicable law, and (iii) to pursue any other remedy available to it, all as Lender in its sole discretion shall elect.

(c) After notification, if any, as hereafter provided in this subsection, to the extent permitted by applicable law, Lender may sell, lease, or otherwise dispose of (herein, a "disposition"), at the office of Lender, or on the Property, or elsewhere, as chosen by Lender, all or any part of the Inventory and Equipment, in their then condition or following any commercially reasonable preparation or processing, and each disposition may be as a unit or in parcels, by public or private proceedings, and by way of one or more contracts, and, at any



disposition, it shall not be necessary to have present or exhibit the Inventory and Equipment, or any part thereof being sold. The disposition of any part of the Inventory and Equipment shall not exhaust Lender's power of disposition, but dispositions may be made from time to time until the Loan Obligations are paid and performed in full. Reasonable notification of the time and place of any public disposition pursuant to this subsection, or reasonable notification of the time after which any private disposition is to be made pursuant to this subsection, shall be sent to Grantor and to any other person entitled to receive notice under the UCC or other applicable jurisdiction. It is agreed that notice sent or given not less than ten calendar days prior to the taking of the action to which the notice relates is reasonable notification for the purposes of this subsection.

(d) In the event a foreclosure hereunder should be commenced by Trustee in accordance with the powers of sale granted in this Deed of Trust, Lender may at any time before the sale, orally or in writing, direct Trustee to or delay or abandon the sale, and may upon abandonment institute suit for the collection of the Loan Obligations, and/or for the foreclosure of the liens hereof. If Lender should institute a suit for the collection of the Loan Obligations, and/or for a foreclosure of the liens hereof, Lender may at any time before the entry of a final judgment in such suit dismiss such suit (either totally or as to the counts thereof for judicial foreclosure), and require Trustee to sell the Collateral, or any part thereof, in accordance with the provisions of this Deed of Trust.

(e) Following the completion of a judicial or non judicial foreclosure action against all or a portion of the security for the obligations secured by this Deed of Trust, Beneficiary may seek and obtain a deficiency judgment to the extent permitted by applicable law, including, without limitation, RCW 61.24.100. In all actions for such deficiency judgment, Grantor does hereby agree to pay for any Property appraisals and all other costs that may be incurred in connection with an action for a deficiency.

Section 3.7 **Purchase by Lender.** Upon any foreclosure sale or sale of all or any portion of the Collateral under the power herein granted, Lender may bid for and purchase the Collateral and shall be entitled to apply all or any part of the Loan Obligations as a credit to the purchase price.

Section 3.8 **Grantor as Tenant Holding Over.** In the event of any such foreclosure sale or sale under the powers herein granted, Grantor (if Grantor shall remain in possession) shall be deemed a tenant holding over and shall forthwith deliver possession to the purchaser or purchasers at such sale or be summarily dispossessed according to provisions of law applicable to tenants holding over.

Section 3.9 **Waiver of Appraisement, Valuation, Etc.** Grantor agrees, to the full extent permitted by law, that in case of a default on the part of Grantor hereunder, neither Grantor nor anyone claiming through or under Grantor will set up, claim or seek to take advantage of any appraisement, valuation, stay, extension, homestead, or exemption laws now or hereafter in force in order to prevent or hinder the enforcement or foreclosure of this Deed of Trust, or the absolute sale of the Collateral, or the delivery of possession thereof immediately



after such sale to the purchaser at such sale, and Grantor, for itself and all who may at any time claim through or under it, hereby waives to the full extent that it may lawfully so do, the benefit of all such laws, and any and all right to have the assets subject to the security interest of this Deed of Trust marshaled upon any foreclosure or sale under the power herein granted. To the extent permitted by law, Grantor waives and relinquishes the statutory right of redemption, all equities of redemption and all other rights and exemptions of every kind in, to and with respect to the real and personal property described herein.

Section 3.10 **Discontinuance of Proceedings.** In case Lender shall have proceeded to enforce any right, power or remedy under this Deed of Trust by foreclosure, entry or otherwise, and such proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely to Lender, then in every such case, Grantor, Trustee and Lender shall be restored to their former positions and rights hereunder, and all rights, powers and remedies of Lender shall continue as if no such proceedings had occurred.

Section 3.11 **Remedies Cumulative.** No right, power or remedy conferred upon or reserved to Lender by this Deed of Trust is intended to be exclusive of any other right, power or remedy, but each and every such right, power and remedy shall be cumulative and concurrent and shall be in addition to any other right, power and remedy given hereunder or now or hereafter existing at law, in equity or by statute.

Section 3.12 **Expenses During Redemption Period.** If this Deed of Trust is foreclosed as a mortgage and the Property sold at a foreclosure sale, the purchaser may during any required redemption period that is not effectively waived pursuant to Section 3.9 hereof, make such repairs or alterations on the Property as may be reasonably necessary for the proper operation, care, preservation, protection and insuring thereof. Any sums so paid, together with interest thereon at the Default Rate from the time advanced until repaid in full, shall become a part of the amount required to be paid for redemption from such sale.

Section 3.13 **Foreclosure Subject to Tenancies.** Lender shall have the right at its option to foreclose this Deed of Trust subject to the rights of any tenant or tenants of the Property.

Section 3.14 **Lender's and Trustee's Expenses.** Grantor will pay all of Lender's and Trustee's reasonable expenses incurred in any efforts to enforce any terms of this Deed of Trust, whether or not any suit is filed, including without limitation legal fees and disbursements, foreclosure costs and title charges. All such sums, with interest thereon, shall be additional indebtedness of Grantor secured by this Deed of Trust. Such sums shall be immediately due and payable and shall bear interest at the Default Rate from the date advanced until repaid in full.

Section 3.15 **No Waiver.**

(a) No delay or omission by Lender or by any holder of the Note to exercise any right, power or remedy accruing upon any default shall exhaust or impair any such



right, power or remedy or shall be construed to be a waiver of any such default, or acquiescence therein, and every right, power and remedy given by this Deed of Trust to Lender may be exercised from time to time and as often as may be deemed expedient by Lender. No consent or waiver expressed or implied by Lender to or of any breach or default by Grantor in the performance of the obligations of Grantor hereunder shall be deemed or construed to be a consent or waiver to or of any other breach or default in the performance of the same or any other obligations of Grantor hereunder. Failure on the part of Lender to complain of any act or failure to act or failure to declare an Event of Default, irrespective of how long such failure continues, shall not constitute a waiver by Lender of its rights hereunder or impair any rights, powers or remedies of Lender hereunder.

(b) No act or omission by Trustee or Lender shall release, discharge, modify, change or otherwise affect the original liability under the Note or this Deed of Trust or any other obligation of Grantor or any subsequent purchaser of the Collateral or any part thereof, or any maker, cosigner, endorser, surety or guarantor, nor preclude Trustee and/or Lender from exercising any right, power or privilege herein granted or intended to be granted in the event of any default then existing or of any subsequent default, nor alter the lien of this Deed of Trust, except as expressly provided in an instrument or instruments executed by Lender. Without limiting the generality of the foregoing, Lender may: (i) grant forbearance or an extension of time for the payment of all or any portion of the Loan Obligations; (ii) take other or additional security for the payment of any of the Loan Obligations; (iii) waive or fail to exercise any right granted herein or in the Note; (iv) release any part of the Collateral from the security interest or lien of this Deed of Trust or otherwise change any of the terms, covenants, conditions or agreements of the Note or this Deed of Trust; (v) consent to the filing of any map, plat or replat affecting the Collateral; (vi) consent to the granting of any easement or other right affecting the Collateral; (vii) make or consent to any agreement subordinating the security title or lien hereof, or (viii) with the consent of Grantor modify, amend or increase the Note or the Loan Obligations hereby secured or take or omit to take any action whatsoever with respect to the Note, this Deed of Trust, the Collateral, the Loan Documents or Loan Obligations, all without releasing, discharging, modifying, changing or affecting any such liability, or precluding Lender from exercising any such right, power or privilege or affecting the lien of this Deed of Trust (except for any subordination of the lien expressly granted pursuant to (vii) above). In the event of the sale or transfer by operation of law or otherwise of all or any part of the Collateral, Lender, without notice, is hereby authorized and empowered to deal with any such vendee or transferee with reference to the Collateral or the Loan Obligations, or with reference to any of the terms, covenants, conditions or agreements hereof, as fully and to the same extent as it might deal with the original parties hereto and without in any way releasing or discharging any liabilities, obligations or undertakings.

Section 3.16 **Suits to Protect the Collateral.** In the event of the failure by Grantor to take any of actions provided for herein, Lender shall have power to institute and maintain such suits and proceedings as it may deem expedient (a) to prevent any impairment of the Collateral by any acts which may be unlawful or constitute a default under this Deed of Trust; (b) to preserve or protect its interest in the Collateral and in the rents, issues, profits and revenues



arising therefrom; and (c) to restrain the enforcement of or compliance with any legislation or other governmental enactment, rule or order that may be unconstitutional or otherwise invalid, if the enforcement of or compliance with such enactment, rule or order would materially impair the security hereunder or be prejudicial to the interest of Lender.

Section 3.17 **Proofs of Claim.** In the case of any receivership, insolvency, bankruptcy, reorganization, arrangement, adjustment, composition or other proceedings affecting Grantor, its creditors or its property, Lender, to the extent permitted by law, shall be entitled to file such proofs of claim and other documents as may be necessary or advisable in order to have the claims of Lender allowed in such proceedings for the entire amount due and payable by Grantor under this Deed of Trust at the date of the institution of such proceedings and for any additional amount which may become due and payable by Grantor hereunder after such date.

Section 3.18 **Tradenames, etc.** During the exercise of any right in the Collateral pursuant to this Article III, absent gross negligence or willful misconduct, Lender shall not be liable to Grantor for any inadvertent violation or infringement upon any trade name, trademark, service mark, or logo relating to the Collateral, and Grantor waives any claim for any such violation or infringement that occurs prior to written notice of such infringement by Grantor to Lender.

Section 3.19 **Compliance with Washington Foreclosure Law.** Without limiting the generality or efficacy of this Article III or any other provision benefiting Lender, Grantor and Lender intend and believe that each provision in this Deed of Trust comports with the Washington Foreclosure Statutes. If, however, any provision in this Deed of Trust or any other Loan Document shall be inconsistent with and unenforceable under any provision of the Washington Foreclosure Statutes, the provisions of the Washington Foreclosure Statutes shall take precedence over the provisions of this Deed of Trust or any other Loan Document, but shall not limit, waive, invalidate or render unenforceable any other provision of this Deed of Trust or any other Loan Document that can be construed in a manner consistent with the Washington Foreclosure Statutes. Furthermore, if any provision of this Deed of Trust or any other Loan Document shall grant to Lender any rights or remedies upon default of Grantor which are more limited than the rights that would otherwise be vested in Lender or in mortgagees generally under the Washington Foreclosure Statutes in the absence of said provision, Lender shall be vested with the rights granted in the Washington Foreclosure Statutes to the full extent permitted by law.

Section 3.20 **Forced Insurance Warning.**

(a) Unless Grantor provides Lender with evidence of the insurance coverage as required by the Loan Agreement upon Lender's request, Lender may purchase insurance at Grantor's expense to protect Lender's interest. This insurance may, but need not, also protect Grantor's interest. If the Collateral becomes damaged, the coverage Lender purchases may not pay any claim Grantor makes or any claim made against Grantor. Grantor



may later cancel this coverage by providing evidence that Grantor has obtained property coverage elsewhere.

(b) Grantor is responsible for the cost of any insurance purchased by Lender pursuant to paragraph (a) above. The cost of this insurance may be added to the unpaid principal balance of the Loan Obligation. If the cost is added to the unpaid principal balance of the Loan Obligation, the interest rate on the Loan Obligation will apply to this added amount. The effective date of coverage may be the date Grantor's prior coverage lapsed or the date Grantor failed to provide proof of coverage.

(c) The coverage Lender purchases may be considerably more expensive than insurance Grantor can obtain on Grantor's own and may not satisfy any need for property damage coverage or any mandatory liability insurance requirements imposed by applicable law.

ARTICLE IV MISCELLANEOUS

Section 4.1 **Security Agreement.** This Deed of Trust creates a lien on and a security interest in that part of the Collateral which constitutes personal property under the UCC, and shall constitute a security agreement under the UCC or other law applicable to the creation of liens on personal property. This Deed of Trust shall constitute a financing statement under the UCC with Grantor as the "debtor" and Lender as the "secured party." If an Event of Default exists, the Lender shall have all rights and remedies of a secured party under the UCC.

Section 4.2 **Assembly of Collateral.** Upon the occurrence and continuance of an Event of Default, the Grantor shall assemble, if requested by the Lender, at its expense, all of the personal property Collateral and the documents evidencing such personal property Collateral and the books and records applicable thereto and make them available to the Lender at a place to be designated by the Lender; provided, however, Grantor shall have no obligation to assemble the collateral in a manner which would impair the continued operation of the Facility as an assisted living facility.

Section 4.3 **Successors and Assigns; Successor Trustee.** This Deed of Trust shall inure to the benefit of and be binding upon Grantor, Trustee and Lender and their respective heirs, executors, legal representatives, successors, successors-in-title, and assigns. Whenever a reference is made in this Deed of Trust to "Grantor," "Trustee" or "Lender," such reference shall be deemed to include a reference to the heirs, executors, legal representatives, successors, successors-in-title and assigns of Grantor, Trustee or Lender, as the case may be, but shall not imply any permission to make or permit any transfer which is otherwise prohibited.

Section 4.4 **Terminology.** All personal pronouns used in this Deed of Trust, whether used in the masculine, feminine or neuter gender, shall include all other genders; the singular



shall include the plural, and vice versa. Titles and Articles are for convenience only and neither limit nor amplify the provisions of this Deed of Trust, and all references herein to Articles, Sections or subsections shall refer to the corresponding Articles, Sections or subsections of this Deed of Trust unless specific reference is made to Articles, Sections or subsections of another document or instrument.

Section 4.5 Severability; Complete Agreement. If any provisions of this Deed of Trust or the application thereof to any person or circumstance shall be invalid or unenforceable to any extent, the remainder of this Deed of Trust and the application of such provisions to other persons or circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law. This Deed of Trust, the Note and the instruments executed in connection herewith constitute the full and complete agreement of the parties and supersede all prior negotiations, correspondence, and memoranda relating to the subject matter hereof, and this Deed of Trust may not be amended except by a writing signed by the parties hereto.

Section 4.6 Applicable Law. This Deed of Trust shall be interpreted, construed and enforced according to the laws of the state wherein the Property is situated. If, for any reason or to any extent any word, term, provision, or clause of this Deed of Trust or any of the other Loan Documents, or its application to any person or situation, shall be found by a court or other adjudicating authority to be invalid or unenforceable, the remaining words, terms, provisions or clauses shall be enforced, and the affected word, term, clause or provision shall be applied, to the fullest extent permitted by law.

Section 4.7 Limitation of Interest. It is the intent of Grantor and Lender in the execution of this Deed of Trust and all other Loan Documents to contract in strict compliance with the usury laws governing the Loan Obligations. In furtherance thereof, Lender and Grantor stipulate and agree that none of the terms and provisions contained in the Loan Documents shall ever be construed to create a contract for the use, forbearance, or detention of money requiring payment of interest at a rate in excess of the maximum interest rate permitted to be charged by the laws governing the Loan Obligations. Grantor or any guarantor, endorser or other party now or hereafter becoming liable for the payment of the Loan or other amounts due to Lender shall never be liable for unearned interest on the Loan or other amounts due to Lender and shall never be required to pay interest on the Loan or other amounts due to Lender at a rate in excess of the maximum interest that may be lawfully charged under the laws governing the Loan Obligations, and the provisions of this paragraph shall control over all other provisions of the Note and other Loan Documents and any other instrument executed in connection therewith which may be in apparent conflict herewith. In the event Lender shall collect monies that are deemed to constitute interest and that would otherwise increase the effective interest rate on the Loan Obligations or other amounts due to Lender to a rate in excess of that permitted to be charged by the laws governing the Loan Obligations, all such sums deemed to constitute interest in excess of the legal rate shall be applied to the unpaid principal balance of the Loan Obligation and if in excess of such balance, shall be immediately returned to the Grantor upon such determination.



Section 4.8 **Notices, etc/Lender's Consent.** All notices and other communications provided for hereunder shall be in writing and be given and deemed received in accordance with the provisions of the Loan Agreement. Except where this Deed of Trust or the other instruments relating to the Loan Obligations expressly provides otherwise, wherever Lender's consent or approval is called for, Lender shall not unreasonably condition or withhold such approval or consent.

Section 4.9 **Assignment.** This Deed of Trust is assignable by Lender and any assignment hereof by Lender shall operate to vest in the assignee all rights and powers herein conferred upon and granted to Lender.

Section 4.10 **Time of the Essence.** Time is of the essence with respect to each and every covenant, agreement and obligation of Grantor under this Deed of Trust, the Note and any and all other instruments now or hereafter evidencing, securing or otherwise relating to the Loan Obligations.

Section 4.11 **Waiver of Jury Trial.** EACH OF GRANTOR BY ITS EXECUTION, AND LENDER BY ITS ACCEPTANCE, OF THIS DEED OF TRUST, HEREBY WAIVES ANY RIGHT THAT IT MAY HAVE TO A TRIAL BY JURY ON ANY CLAIM, COUNTERCLAIM, SETOFF, DEMAND, ACTION OR CAUSE OF ACTION (A) ARISING OUT OF OR IN ANY WAY RELATED TO THIS DEED OF TRUST, THE LOAN DOCUMENTS OR THE LOAN, OR (B) IN ANY WAY CONNECTED WITH OR PERTAINING OR RELATED TO OR INCIDENTAL TO ANY DEALINGS OF LENDER AND/OR GRANTOR WITH RESPECT TO THE LOAN DOCUMENTS OR IN CONNECTION WITH THIS DEED OF TRUST OR THE EXERCISE OF EITHER PARTY'S RIGHTS AND REMEDIES UNDER THIS DEED OF TRUST OR OTHERWISE, OR THE CONDUCT OR THE RELATIONSHIP OF THE PARTIES HERETO, IN ALL OF THE FOREGOING CASES WHETHER NOW EXISTING OR HEREAFTER ARISING AND WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE. EACH OF GRANTOR AND LENDER AGREES THAT THE OTHER MAY FILE A COPY OF THIS AGREEMENT WITH ANY COURT AS WRITTEN EVIDENCE OF THE KNOWING, VOLUNTARY, AND BARGAINED AGREEMENT OF GRANTOR AND LENDER IRREVOCABLY TO WAIVE ITS RIGHTS TO TRIAL BY JURY AS AN INDUCEMENT OF LENDER AND GRANTOR TO ENTER INTO THE LOAN AGREEMENT AND OTHER LOAN DOCUMENTS AND OF LENDER TO MAKE THE LOAN EVIDENCED AND SECURED THEREBY, AND THAT, TO THE EXTENT PERMITTED BY APPLICABLE LAW, ANY DISPUTE OR CONTROVERSY WHATSOEVER BETWEEN GRANTOR AND LENDER SHALL INSTEAD BE TRIED IN A COURT OF COMPETENT JURISDICTION BY A JUDGE SITTING WITHOUT A JURY.

_____ (Grantor's initials).



Section 4.12 Release upon Payment and Discharge of Grantor's Loan Obligations.

If Grantor shall fully pay and satisfy all of the indebtedness secured hereby and fully comply with, satisfy and discharge all of the other terms and provisions hereof and all other Loan Obligations to be paid, satisfied, performed and complied with by Grantor, then Lender shall request the Trustee to reconvey the Property to the person or persons legally entitled thereto. Upon payment of its fees and any other sums owing to it under this Deed of Trust, the Trustee shall reconvey the Property without warranty to the person or persons legally entitled thereto. Such person or persons shall pay all costs of recordation, if any. The recitals in such conveyance of any matters or facts shall be conclusive of the truthfulness thereof. The grantee in such reconveyance may be described as "the person or persons legally entitled thereto."

Section 4.13 Future Advances. This Deed of Trust is given to secure all present and future obligations of the Grantor to Beneficiary. The period in which future obligations may be incurred and secured by this Deed of Trust is the period between the date hereof and that date which is the earlier of (i) the stated maturity date of the Note or (ii) fifteen (15) years from the date hereof. The amount of present obligations secured by this Deed of Trust is TWO MILLION FIVE HUNDRED THOUSAND AND NO/100 Dollars (\$2,500,000.00), and the maximum principal amount, including present and future obligations, which may be secured by this Deed of Trust at any one time is FIVE MILLION AND NO/100 Dollars (\$5,000,000.00). Any additional amounts advanced by Beneficiary pursuant to the provisions of this Deed of Trust shall be deemed necessary expenditures for the protection of the security. The Grantor (and the maker of the Note, if the maker is a different party) does not need to sign any instrument or notation evidencing or stipulating that future advances are secured by this Deed of Trust. The provisions of this Section shall not be construed to imply any obligation on Lender to make any future advances; it being the intention of the parties that any future advances shall be made or withheld solely at the discretion and option of the Lender.

Section 4.14 Lender Not a Joint Venturer. Lender, by entering into this Deed of Trust or any of the other Loan Documents, or by any action taken pursuant thereto, will not be deemed a partner or joint venturer with Grantor. Grantor acknowledges and agrees that the sole relationship created between Grantor and Lender under this Deed of Trust and the other Loan Documents is that of borrower and lender.

Section 4.15 Leasing and Management Agreements. Grantor covenants and agrees that all agreements to pay leasing commissions with respect to the Property (a) shall provide that the obligation to pay such commissions will not be enforceable against any party other than the party who entered into such agreement; (b) shall be expressly subordinate to the lien of this Deed of Trust; and (c) shall not be enforceable against Lender. Grantor shall furnish Lender with evidence of the foregoing which is, in all respects, satisfactory to Lender. Grantor further covenants and agrees that all agreements to manage the Property and Improvements (i) shall provide that the obligation to pay any amount thereunder will not be enforceable against any party other than the party who entered into such agreement; (ii) shall provide that such agreement, together with any and all liens and claims for lien that any manager or other person or entity performing the duties of a manager thereunder has, or may thereafter have thereunder, or



for managing the Property and Improvements or any part thereof, shall be, in all respects, subordinate to the lien of this Deed of Trust; and (iii) shall not be enforceable against Lender. Grantor shall furnish Lender with evidence of the foregoing which is, in all respects, satisfactory to Lender.

Section 4.16 Remedies Against Other Collateral. Grantor hereby acknowledges that certain Loan Documents, including other deeds of trusts, other than this Deed of Trust create liens on collateral located in Skagit County and counties other than the county in which the Property is located and that a default under this Deed of Trust, any other deed of trust securing the Loan or other Loan Documents shall constitute a default under all of the deeds of trust securing the Loan including this Deed of Trust, or all of the Loan Documents. Grantor further acknowledges that this Deed of Trust and the other Loan Documents are cross-defaulted and the Loan secured hereby is also secured by the other Loan Documents. Grantor agrees that Lender may proceed, at the same or at different times, to foreclose any or all liens against such collateral, including the Property, by any proceedings appropriate in the county where such collateral lies, and that no event of enforcement taking place in any county or state pursuant to any of the Loan Documents shall preclude or bar enforcement in any other county. Any foreclosure or other appropriate remedy brought in any county in which collateral is located may be brought and prosecuted as to any part of such collateral without regard to the fact that foreclosure proceedings or other appropriate remedies have or have not been instituted elsewhere on any other part of the collateral for the Loan. The foregoing notwithstanding, any action for foreclosure of this Deed of Trust must be brought in the superior court of the county where the Property is located.

Section 4.17 Oral Agreement Not Enforceable. ORAL AGREEMENTS OR ORAL COMMITMENTS TO LOAN MONEY, EXTEND CREDIT, OR TO FORBEAR FROM ENFORCING REPAYMENT OF A DEBT ARE NOT ENFORCEABLE UNDER WASHINGTON LAW.

Section 4.18 Variable Interest Rate. The Loan Documents contain provisions for a variable rate of interest.

Section 4.19 Form of Statutory Notice. At Beneficiary's option, any written notice of default given to Grantor hereunder shall be given in the form of a statutory notice of default under the Washington Deed of Trust Act or in any other form Beneficiary may elect, subject to applicable laws.

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IN WITNESS WHEREOF, Grantor has caused this Deed of Trust to be executed as of the day and year first above written.

HP BURLINGTON PARTNERS, LLC,
a Washington limited liability company

By: [Signature]
Name: GREGORY A. RODERICK
Its: MANAGER

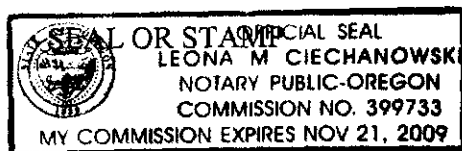
State of OREGON
~~Washington~~

County of WASHINGTON

I certify that I know or have satisfactory evidence that GREGORY RODERICK is the person who appeared before me, and said person acknowledged that (he/she) signed this instrument, on oath stated that (he/she) was authorized to execute the instrument and acknowledged it as the MANAGER of HP Burlington Partners, LLC to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: August 18, 2006

By: [Signature]
Name:
Title:



My appointment expires: 11-21-09

DEED OF TRUST SIGNATURE PAGE - SENIOR LOAN - BURLINGTON PARCEL B

Deed of Trust



200608240150

Skagit County Auditor

**EXHIBIT A
LEGAL DESCRIPTION
(Heart)**

PARCEL "D":

The West 145 feet of the South 60 feet of the North 70 feet of Lot 2, Block 136, "FIRST ADDITION TO BURLINGTON, SKAGIT CO., WASH.," as per plat recorded in Volume 3 of Plats, page 11, records of Skagit County, Washington.

TOGETHER WITH the North 10 feet of the West 120 feet of Lot 2, Block 136, "FIRST ADDITION TO BURLINGTON, SKAGIT CO., WASH.," as per plat recorded in Volume 3 of Plats, page 11, records of Skagit County, Washington.

ALSO TOGETHER WITH that portion of Lot 2, Block 136, "FIRST ADDITION TO BURLINGTON, SKAGIT CO., WASH.," as per plat recorded in Volume 3 of Plats, page 11, records of Skagit County, Washington, described as follows:

Beginning at the Northwest corner of Lot 3 of said Block 136;

thence East along the North line of said Lot 3, a distance of 223 feet to the Northwest corner of a tract conveyed to L.J. Sommer by Deed recorded December 9, 1946, under Auditor's File No. 398847;

thence South along the West line of said Sommer tract to the South line of said Lot 3, said point being the Northeast corner of a tract conveyed to Belle Brindle by Deed recorded March 5, 1946, under Auditor's File No. 389077;

thence West along the South line of said Lot 3 and the North line of said Brindle tract, a distance of 78 feet to the Northwest corner of said Brindle tract and the TRUE POINT OF BEGINNING;

thence South along the West line of said Brindle tract a distance of 10 feet to the Northeast corner of a tract conveyed to Henry G. Reinert, by Deed recorded September 9, 1946, under Auditor's File No. 395792;

thence West along the North line of said Reinert tract, a distance of 25 feet to the Southeast corner of a tract conveyed to said Henry Reinert by Deed recorded March 28, 1949, under Auditor's File No. 429473, said point being 120 feet East of the West line of Lot 2 of said Block 136;

thence North along the East line of the second referred to Reinert tract to the North line of said Lot 2;

thence Easterly along said North line to the TRUE POINT OF BEGINNING.

AND ALSO TOGETHER WITH an easement as disclosed in Declaration of Easement recorded August 14, 2006 under Auditor's File No. 200608140224, records of Skagit County, Washington.

Situate in the City of Burlington, County of Skagit, State of Washington.

Deed of Trust – Exhibit A



200608240150
Skagit County Auditor

EXHIBIT B
Permitted Encumbrances

1. Current year's property taxes a lien not yet due, provided the same are paid when due.
2. Other liens, easements, covenants and restrictions approved by Lender to appear in Schedule B to the title insurance policy issued by Land Title Company of Skagit County to Lender in connection with the Loan..
3. The Senior Loan Deed of Trust

Deed of Trust – Exhibit B



200608240150

Skagit County Auditor